

**[ BIR REVENUE REGULATIONS NO. 1 - 2008,  
February 01, 2008 ]**

**AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS  
NO. 10 -2006 PRESCRIBING THE GUIDELINES AND CONDITIONS  
FOR THE TAX TREATMENT OF SECURITIES BORROWING AND  
LENDING TRANSACTIONS INVOLVING SHARES OF STOCK OR  
SECURITIES LISTED IN THE PHILIPPINE STOCK EXCHANGE**

*SECTION 1. Scope.* — Pursuant to Section 244 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to amend certain provisions of Revenue Regulations (RR) No. 10-2006 by prescribing the set of procedures to govern the registration of Master Securities Lending Agreement (MSLA) and providing the guidelines for the execution and registration of multilateral MSLAs during the transition period of the Securities Borrowing and Lending (SBL) Program.

*SECTION 2.* – Section 2 of RR 10-06 is hereby amended to read as follows:

"SECTION 2. Concept of Securities Borrowing and Lending (SBL). - Securities Borrowing and Lending (SBL) is an important element in securities trading and capital market development among emerging markets. It is a vital facility behind the efficient trading settlements and growth of derivatives and options market. SBL exists for both equity and debt securities. For purposes of these Regulations, however, SBL shall be limited to borrowing and lending of shares of stock or securities listed in the PSE unless declared by the Securities and Exchange Commission to be ineligible for borrowing and lending under an SBL Program. SBL Program for other securities listed and traded in other Exchanges shall be covered by a separate Regulation.

SBL involves the lending of shares of stocks or securities by the Lender, who owns or controls them, to the Borrower who needs the shares of stocks/securities borrowed to support trading strategies or settlement obligations, in exchange for a collateral and the promise to return the equivalent shares of stocks/ securities at the end of the borrowing period. The borrowing period in any agreement cannot be more than two (2) years.

Typically, the Borrower will use or dispose of the shares of stocks/securities borrowed strictly in connection with a particular purpose or purposes as herein mentioned. Being fungible in nature, the borrowed shares of stocks/securities are transferred from the Lender to the Borrower. For the duration of the borrowing and lending period under the agreement, the Lender temporarily loses ownership of the shares of stock/securities lent but acquires a contractual right to receive all

benefits accruing to the shares of stock/securities. The objective is to put the Lender into the same economic position as the Lender would have been had the securities not been lent. This means that in case of corporate actions like stock rights, dividend declarations, and other benefits accruing to the shares of stock, the Borrower would have to "manufacture" the corresponding benefits thereon and return the same to the Lender as if the shares of stock/securities "never left his hands"

Upon demand of the Lender or at the end of the stipulated borrowing period, the Borrower is then obligated to return the equivalent shares of stock/securities and the Lender, in turn, returns the collateral put up by the Borrower. If the borrower fails to return the shares of stock/securities or the Equivalent Shares of Stock/Securities, the Lender/ ending Agent, as part of the SBL transactions, may purchase shares of stock/securities from the stock exchange. In effect, SBL is similar to a simple collateralized cash loan transaction. However, instead of cash, what is borrowed are listed shares of stock/securities and what is provided as collateral is either cash, government or equity securities, or standby letter of credit issued by a bank."

*SECTION 3.* Section 3 of RR 10-06 is hereby amended to read as follows:

"SECTION 3. Definition of Terms. —

a. Borrowing Period. The period agreed upon by the parties during which an SBL transaction should be outstanding, which period, shall in no case exceed two (2) years from the date of execution of the SBL Confirmation Notice. At the end of this period, the Borrower must return to the Lender the equivalent shares of stock borrowed.

b. Collateral. Cash, government securities, equity securities, or standby letter of credit issued by a bank, provided to the Lender as security in accordance with the rules prescribed by the SEC and/or PSE until the borrowed share/security is returned.

c. Equivalent Shares of Stock/Securities. Shares of stock/securities of the same type or class of issue and of equivalent number to the shares/securities borrowed. The term shall also refer to shares of stock/securities purchased by the Lender/Lending Agent through The Philippine Stock Exchange, Inc. using the collateral of the borrower, conversion, subdivision or consolidation, a take-over, or a rights issue where it is not possible to return such borrowed shares of stock/securities because of a corporate restructuring or similar event subsequent to the date of the SBL.

d. Lender(s)/Lending Agent(s). Any person or entity who lends shares of stock/ securities from his pool of assets as principal or from the assets of his client in case of a Lending Agent.

e. Failed Settlement. In the context of regular stock/securities transaction, failed settlement means the failure of the seller to deliver to the buyer the shares/securities subject of the transaction within the required period for settlement.

f. Manufactured Dividend or Benefits. The amount of dividend or other benefits that accrue on the shares of stock/securities that are lent out which the Borrower is obliged to pass on to the Lender in accordance with the terms of the agreement.

g. Mark-to-Market. The practice of periodically re-pricing the shares/securities on loan against the value of the Collateral based on current market prices of the shares of stock/securities and the Collateral.

h. Master Securities Lending Agreement (MSLA). A written contract between the Borrower and the Lender or the Lending Agent embodying the general terms and conditions for the conduct of SBL transactions.

i. Multilateral MSLA. An MSLA entered into by three or more borrowers and Lenders/Lending Agent embodying the general terms and conditions for the conduct of SBL transactions. For purposes of these Regulations, references to MSLA shall also include the Multilateral MSLA.

j. Securities Borrowing and Lending (SBL). The execution of an MSLA and the lending (borrowing) of shares of stock/securities listed in The Philippine Stock Exchange, Inc. from an investor's portfolio or investment account to support trading strategies of the borrower or for purposes specified under these Regulations, and the collateral securing the lending (borrowing), with the commitment by the borrower to return or deliver the equivalent shares/securities to the Lender/ Lending Agent at the end of the borrowing period.

k. Short Sale or Short Selling. Any sale of shares of stock/securities that the seller does not own or any sale of a security that will be settled by the delivery of borrowed securities.

l. SBL Confirmation Notice. A notice in a format prescribed by the PSE which is sent by the Lender/Lending Agent to the Borrower to confirm the details of the SBL transaction including, but not limited to, the securities borrowed and terms of the SBL.

m. Trading Participants/Agent Facilitator. – Brokers and/or dealers authorized to operate a trading right in PSE pursuant to PSE rules."

*SECTION 4.* Section 4 of the same RR is hereby amended to read as follows:

"SECTION 4. Parties to an SBL transaction. - The parties to an SBL transaction are as follows:

a. Borrower. -A Borrower is any person, whether natural or juridical, who obtains shares of stock/securities from a Lender's portfolio or investment account under a MSLA strictly for purposes specified under Section 6 (f) hereof. There are no restrictions on the status and qualifications of a person who enters into an MSLA as a Borrower. Consequently, a Borrower

is not necessarily one who is registered or accredited by the PSE.

b. Lender. -A Lender is any person, whether natural or juridical, who lends shares of stock/securities from his/its pool of assets. There are no restrictions on the status and qualifications of a person who enters into an MSLA as a Lender A foreign lender is contemplated within the definition of a Lender for the purpose of these Regulations.

c. Lending Agent. – A Lending Agent is any juridical person or institution acting on behalf of a client for SBL transactions. A Lending Agent shall comply with all the requirements under SEC Memorandum Circular No. 7 (2006)."

*SECTION 5.* Section 5 of the RR 10-2006 is hereby amended to read as follows:

"SECTION 5. Tax Treatment of Securities Borrowing and Lending (SBL). - For Purposes of these Regulations, the Securities Borrowing and Lending transactions of shares of stock/securities listed in the PSE, as well as the delivery to, and return by, the Lender/Lending Agent of collateral appurtenant thereto or the Equivalent Shares of Stock/Securities, shall not be subject to the stock transaction tax under Section 127 or capital gains tax imposed under Section 24(C), 25(A)(3), 28(A)(7)(c), and 28(B)(5)(c) of the Tax Code, and documentary stamp taxes under Section 176 and Section 199(c) of the National Internal Revenue Code, as amended by RA 9243; provided, that, a valid MSLA is executed by the parties and registered with and approved by the BIR, the SBL Program is in accordance with the rules and regulations of the SEC, and such SBL Program is under the administration and supervision of the PSE. However, all other applicable taxes prescribed by the Tax Code and special laws shall continue to apply.

Unless the terms and conditions of these Regulations are complied with, the borrowing (lending) of shares of stock/securities shall be treated as a disposal (an acquisition) by the lender (Borrower), and the return of borrowed shares/ securities shall be treated as an acquisition (disposal) by the Lender (Borrower), in which case, the applicable taxes on the transaction shall be imposed."

*SECTION 6.* Section 6 of the RR 10-2006 is hereby amended to read as follows:

"SECTION 6. Master Securities Lending Agreement; Basic Requirements.  
– Prior to the borrowing of shares of stock/securities by the Borrower and negotiating the terms of an SBL, the parties must have entered into an MSLA or Multilateral MSLA. A valid MSLA or Multilateral MSLA contains the following features:

**a . Entitlement of Lender to Certain Stock Rights/Interest** - While there is transfer of the shares of stock/securities to the Borrower, the Lender retains certain rights accruing to the shares of stock/securities

lent, such as the right to receive cash, stock dividends or interest which the Borrower is obliged to manufacture or reimburse to the Lender during the borrowing period. These cash, stock dividends or interest which the Borrower is required to manufacture or reimburse to the Lender are otherwise referred to as "**Manufactured Dividends or Benefits**". The Lender may likewise retain voting rights over the loaned shares of stock/securities while in the possession of the Borrower, if mutually agreed upon by the parties.

Receipt of the Manufactured Dividends or Benefits shall not be a taxable income of the Lender since it just represents dividends/other benefits that the lender would have received had the share not been loaned pursuant to SBL. However, the payment of such amount by the Borrower shall not be a tax deductible expense. On the other hand, the receipt of cash dividend from the issuing company by the Borrower or Buyer shall be subject to the provisions of existing laws.

**b. Stock recall/return.** - The Lender is entitled to recall the loaned shares of stock/securities in whole or in part. Upon demand or at the end of the Borrowing Period, the Borrower has the corresponding obligation to return the Equivalent Shares of Stock/Securities, i.e., equivalent number of the same class or type of shares of stock/securities, carrying the same rights, and issued by the same company as that of the borrowed shares of stock/securities. The borrower may return the borrowed shares/securities or the Equivalent Shares of Stock/Securities pursuant to Section 18 of SEC Memorandum Circular No. 7 (2006).

**c. Collateral requirement.** - There is no consideration involved in the same manner as a regular buy and sell transaction. Instead, the Borrower merely puts up a collateral in accordance with the rules prescribed by the SEC and/or PSE in order to guarantee his obligations under the MSLA, which collateral may not be necessarily in the form of cash but may also be in the form of government or equity securities or letters of credit.

**d. Borrowing period.** - The period agreed upon by the parties during which the specific SBL transaction under the MSLA is made effective and upon the termination of which, the specific SBL transaction is likewise ended. However, this period shall in no case exceed two (2) years from the date of execution of SBL Confirmation Notice.

**e. Stock and collateral return.** - Upon the expiration of the Borrowing Period, the Borrower is bound to return the Equivalent Shares/Securities as the term is defined herein. Concomitantly, the Lender is required to return the collateral put up by the Borrower.

**f. Specified purpose(s).** - The purpose or purposes for which the borrowed shares of stock/securities will be used are specified in and accordingly limited by the MSLA, which must be any of the following:

1. *Settlement of sale of Philippine shares of stock/securities effected in the Philippines.* Shares of stock/securities may be borrowed to avoid