

Dahir no. 1-12-56 of 14 Safar 1434 (28 December 2012) enacting Law no.45-12 on securities lending.

PRAISE TO GOD ALONE!

(Great Seal of His Majesty Mohammed VI)

Let it be known hereby - May God elevate and strengthen the content!

That our Sherifian Majesty;

Having regard to the Constitution, particularly articles 42 and 50 thereof,

HAS DECIDED AS FOLLOWS:

Law no. 45-12 on securities lending, as adopted by the House of Representatives and the House of Counsellors, is hereby enacted and shall be published in the Official Gazette further to this Dahir.

Done in Agadir, on 14 Safar 1434 (28 December 2012).

For countersignature:

The Head of Government,

ABDEL-ILAH BENKIRAN.

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**Law no. 45-12
On securities lending**

Chapter one

General provisions

Article one

Securities lending is a contract by which a party delivers in full ownership to another party, upon an agreed remuneration, the securities referred to in article 4 of this law, by which the borrower irrevocably undertakes to return the securities and to pay the remuneration to the lender on an agreed date between the two parties.

Subject to the provisions of this law, securities lending is subject to the provisions of articles 856 to 869 inclusive of the Dahir of 9 Ramadan 1331 (12 August 1913) forming the code of obligations and contracts on consumer lending.

Article 2

Only the securities referred to in Article 4 below may be borrowed by legal entities subject to corporation tax, and having had the summary statements for the

last financial year preceding the loan transaction certified, undertakings for collective investment in transferable securities as defined by Dahir enacting law no.1-93-213 of 4 Rabi li 1414 (21 September 1993) on undertakings for collective investment in transferable securities and undertakings for investment in venture capital as defined by law no. 41-05 on undertakings for investment in venture capital.

Article 3

Without prejudice to the provisions of paragraph 2 of article 24 of this law, the provisions of article 18 of the Dahir enacting law no. 1-93-21 1 of 4 Rabi II 1414 (21 September 1993) on the Stock Exchange are not applicable to securities lending regarding securities listed on the Stock Exchange.

Article 4

Only the following are eligible for securities lending transactions:

- the securities listed on the Stock Exchange, as referred to in article 2 of the aforementioned Dahir enacting law no. 1-93-211 of 4 Rabi II 1414 (21 September 1993);
- marketable debt securities defined by law no. 35-94 on some marketable debt securities;
- securities issued by the Treasury.

Article 5

Securities lending concerns securities which are not likely to be subject, during the lending term, to the payment of income subject to withholding tax, an amortization, a draw that may lead to repayment, an exchange or a conversion provided for in the issuance contract.

Article 6

Securities lending transactions may only be carried out through a bank or any other body authorized for this purpose by the administration, after consulting the Ethics Council for Securities (CDVM).

To be authorized, an organization must have its own human, material and organizational resources to enable it to act as an intermediary in securities lending transactions.

The institutions referred to in the first paragraph of this article must ensure that securities lending transactions carried out through them are legal and in compliance with the provisions of this law and the master agreement provided for in article 9 of this law.

Article 7

A lent security may not be subject of a new loan by the borrower during the term of the loan.

Article 8

Securities lending may not exceed one year.

Chapter II

Terms for concluding securities lending transactions

Article 9

Securities lending transactions are subject to a written master agreement established between the parties which must be in accordance with a standard model prepared by the CDVM and approved by the administration.

On penalty of nullity, any master agreement drawn up between the parties and referred to in the preceding paragraph shall be notified without delay to the CDVM.

The securities or any of the rights or obligations arising therefrom for a party may not be transferred or assigned without prior consent of the other party.

Such transfers or assignments are reported to the CDVM by the party making them.

Article 10

Each party declares and certifies when concluding the master agreement referred to in article 9 of this law:

- that it is duly constituted and that it carries out its activities in accordance with laws and regulations in force, the articles of Association and other documents applicable to it;
- that it has full power and capacity to enter into the master agreement and any related securities lending transactions and that these have been validly authorized by its management bodies or by any other competent body;
- that the conclusion and execution of the master agreement and any securities lending transaction relating thereto do not breach any provision of the laws and regulations in force, the Articles of Association or other documents applicable to that party;
- that all authorizations possibly necessary for the conclusion and execution of the master agreement and any related securities lending transactions have been obtained and remain valid;
- that no event of default provided for in article 19 of this law exists with regard to it;

- that it has the necessary knowledge and experience to assess the benefits and risks of each securities lending transaction and that it has not relied on the other party to do so;

-that the master agreement and the securities lending transactions entered into under this law constitute a set of rights and obligations whose all provisions are legally enforceable against it; and

-that there is no action or proceeding against it, whether arbitral or judicial, or administrative or other measure, which could result in an evident and substantial deterioration of its activity, its assets or financial position or that could affect the validity or proper execution of the master agreement and any securities lending transaction relating thereto.

Article 11

Securities lending transactions take effect between the parties as soon as their mutual consent is expressed. The conclusion of each securities lending transaction will be followed by an exchange of written confirmation.

In the event of disagreement on the confirmation terms, which must be notified immediately to the other party, each party may refer to the terms of confirmation set out in the master agreement, provided for in article 9 of this Law, to establish the terms of the corresponding securities lending transaction.

Article 12

Securities lending can be guaranteed by the transfer of cash or securities.

Notwithstanding any contrary provision, the parties may agree that in the event of default by one of them, the other party shall definitively own the cash or securities transferred.

The parties may agree on additional, fully-owned, transfers of cash or securities to take into account the evolution of the value of the securities lent.

Chapter III

Loan and return of securities

Article 13

The parties may agree, in the master agreement provided for in article 9 of this law, on the possibility of amending the date of return initially agreed. In this case, they must specify in the agreement the terms of the right to such amendment including the events behind the amendment in question, the period of the notice and the possible financial compensation.

Article 14

The parties may agree in the master agreement provided for in article 9 of this law:

- that in the event of late delivery of the securities by the lender, the latter must pay default interest;
- that in the event of late return of the securities by the borrower, the borrower must pay default interest.

Article 15

The default interest referred to in article 14 of this law shall be due without delay, as of right and without prior formal notice. They shall be calculated according to the procedures set in the master agreement provided for in article 9 of this law.

Article 16

Without prejudice to the provisions of articles 14 and 15 of this law, the party issuing or returning securities late will be required to bear all costs, damages and interest and penalties that the other party would be liable for the delay in question, which are predictable at the date of conclusion of the securities lending transaction and that it would be able to justify.

Article 17

The provisions of articles 14, 15 and 16 of this law shall not prevent the application, where applicable, of the provisions of chapter IV of this law on the termination of securities lending transactions.

Chapter IV

Termination of securities lending transactions

Article 18

Securities lending transactions concluded pursuant to the master agreement provided for in article 9 of this Law may be terminated, in the event of default by one of the parties or in the event of new circumstances, under the conditions provided for in this Chapter.

Section 1 - Cases of default

Article 19

For the purposes of this law, an event of default for one of the parties is one of the following events:

- the breach of any provision of this law, the master agreement provided for in article 9 of this law or a securities lending transaction that has not been remedied either upon breach notification by the non-defaulting party when this breach concerns creation or resale of additional issues provided for in the third paragraph of article 12 of this law, i.e. within a period fixed by the contracting parties in the said master agreement as of the said notification, in other cases;

- any statement provided for in article 10 of this law that is found to have been inaccurate at the time it was made by the defaulting party, or that ceases to be accurate;

- the declaration by this party to the other party of the impossibility or refusal to settle all or part of its debts or to perform its obligations, the opening of an amicable settlement procedure provided for in title I of book V of law no. 15-95 on the Commercial Code, the initiation of a recovery and judicial liquidation procedure respectively provided for in titles II and III of book V of the same law, the appointment of a provisional director as well as any equivalent procedure;

- the de facto cessation of activity.

Article 20

The occurrence of an event of default provided for in article 19 of this law entitles the non-defaulting party, upon simple notification to the defaulting party, to suspend the performance of its payment and delivery obligations and terminate all outstanding security lending transactions between the parties. This notification shall specify the case of default invoked and the termination date chosen.

Section 2 - New circumstances

Article 21

For the purposes of this law, any of the following events constitutes a new circumstance for a party:

1-the entry into force of a new law or regulation, the amendment of a law or any mandatory text, which results in a securities lending transaction being unlawful for the party concerned or in a new deduction or withholding of a fiscal nature from an amount it shall receive from the other party in respect of the said securities lending transaction or;

2 – any merger or division affecting the party concerned or any transfer of assets by the latter resulting in a manifest and substantial deterioration in its business, assets or financial situation.

Article 22

Upon the occurrence of a new circumstance referred to in paragraph 1 of article 21 of this law, any party taking cognizance thereof shall notify the other party as soon as possible while mentioning the security lending transactions concerned by this new circumstance.

The parties shall then suspend the execution of their payment and delivery obligations only for the security lending transactions concerned and shall

seek in good faith, for a period of 30 days, a mutually satisfactory solution.

If at the end of this period no mutually satisfactory solution can be found, each of the parties, or the party receiving an amount less than the one provided for, may notify the other party of the termination of only the security lending transactions concerned by the new circumstance. This notification shall specify the termination date selected.

Article 23

Upon the occurrence of a new circumstance referred to in paragraph 2 of article 21 of this law, all security lending transactions shall be deemed affected by the said new circumstance. The party not affected by this new circumstance shall then have the right, upon simple notification to the other party, to suspend the performance of its payment and delivery obligations and to terminate all security lending transactions in progress between the parties. This notification shall specify the termination date chosen.

Section 3. - Termination Effects

Article 24

The parties are exempted, as from the termination date, from any payment or delivery obligations relating to the terminated security lending transactions.

In this case and where the securities lent and/or the securities provided as collateral are listed on the Stock Exchange, the transfer of ownership becomes final and the provisions of article 18 of the Dahir on law no. 1-93-211 of 4 Rabii II 1414 (21 September 1993) on the Stock Exchange are applicable according to the practical procedures provided for by the general regulations of the company managing the stock exchange.

Article 25

Reciprocal debts and claims relating to terminated security lending transactions, governed by the master agreement provided for in article 9 of this law, are offset and a cancellation balance calculated in accordance with the terms set out in the master agreement provided for in article 9 of this law, receivable or payable, is set up.

Article 26

The termination of security lending transactions entitles one party, in the event of default by the other party, to the reimbursement of the costs and expenses incurred, including those relating to legal proceedings, if necessary, which it would be able to justify.

Chapter V *Accounting System*

Article 27

The remuneration allocated as consideration for securities lending constitutes debt income and is, for accounting purposes, subject to the interest scheme.

Article 28

When the loan term covers the date of payment of income attached to the securities lent, the borrower transfers them on the same said date to the lender, who records them with proceeds of the same nature.

Article 29

Where securities are lent by a company, they are deducted in priority from securities of the same type acquired or subscribed for at the most recent date.

Debt representing the securities lent is recorded separately on the lender's balance sheet at the original value of these securities.

At the expiration of the loan, the securities returned are recorded on the balance sheet at the same value.

The provision for depreciation previously made, where necessary, on the securities lent is not reinstated during the loan. It must appear in a separate line on the balance sheet and remain unchanged until these securities are returned.

Article 30

Borrowed securities and the debt representing the obligation to return these securities are recorded separately on the borrower's balance sheet at the market price on the day of the loan.

When the borrower transfers securities, these are deducted in priority from securities of the same type borrowed at the earliest date. Subsequent purchases of securities of the same type are allocated in priority to the replacement of borrowed securities.

At the end of the financial year, the borrowed securities appearing on the borrower's balance sheet and the debt representing the return obligation resulting from contracts in force are recorded at the price that these securities have on the market on that date.

Upon expiration of the loan, the borrowed securities are deemed to be returned at the value for which the debt representing the return obligation appears on the balance sheet.

The borrower may not make provisions on the securities borrowed.

Article 31

In the event of default by one of the parties, the proceeds from the transfer of securities are equal to the difference between their real value on the day of default and their acquisition price in the lender's records; it is included in the lender's income for the financial year during which the default has occurred.

Article 32

The recording procedures for security lending transactions are specified by the accounting rules applicable to the parties in accordance with the legislation in force.

Chapter VI

Securities transactions

Article 33

Amortization, the draw leading to redemption, the conversion or the exercise of a subscription warrant shall terminate the securities lending transaction. The return date of the securities lending transaction concerned shall automatically be brought forward to the second working day following the publication of the notice announcing the transaction concerned. Where the securities undergoing such an event are granted as a supplementary delivery, the party granting the said securities must substitute them with other securities having a value at least equal to that of the original securities.

Article 34

In case of a meeting involving the exercise of voting rights of the lent securities holders and unless special agreements have been made in the master agreement provided for in article 9 of this law, the lender may bring forward the return date of the securities to exercise the rights in question. To this end, the lender shall send a notice of early return no later than two working days in addition to the normal delivery timeframes before the deadline for the exercise of the rights in question.

Article 35

Other rights or securities allocated as a result of the holding of securities are retained by the borrower and returned simultaneously with the securities to which they relate. This is taken into account in the determination of the value of the securities and the value of the additional delivery.

Chapter VII

Control

Article 36

The CDVM is responsible for ensuring compliance by the bodies, referred to in the first paragraph of article 6 of this law, with the provisions of this law and the master agreement provided for in article 9 of this law and ensuring the proper functioning of the securities lending market.

To this end, the bodies referred to in the previous paragraph are required to send to the CDVM notification of security lending transactions in accordance with the model set by it and approved under the conditions provided for in article 9 of this law.

Any master agreement provided for in article 9 of this law and any securities lending transaction carried out in contravention of the provisions of this law shall be void by law.

The text in Arabic language was published in the general edition of the "Official Gazette" no. 6120 of 12 Rabii I 1434 (24 January 2013).

Dahir no. 1-13-01 of 18 Rabii I, 1434 (30 January 2013) enacting law no. 138-12 amending and completing law no. 46-02 on the regime of raw and manufactured tobacco.

PRAISE TO GOD ALONE!

(Great Seal of His Majesty Mohammed VI)

Let it be known hereby-May God raise and strengthen the content!

That Our Sherifian Majesty,

Having regard to the Constitution, in particular articles 42 and 50,

HAS DECIDED AS FOLLOWS:

Law no. 138-12 amending and completing law no. 46-02, on the regime of raw and manufactured tobacco, as adopted by the House of Representatives and the House of Counsellors, is hereby enacted and shall be published in the Official Gazette, further to this Dahir.

Done in Casablanca, on 18 Rabii I 1434 (30 January 2013).

For countersignature:

The Prime Minister,

ABDEL-I LAH BENKIRAN.

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