

## **Preliminary Draft of the Rules of Arbitration from SIX Exchange Regulation Ltd (VE SchO)**

### **1 General provisions**

#### **1.1 Scope of applicability**

These Rules of Arbitration govern the arbitration proceedings:

- a) in complaints filed against decisions of the Sanctions Commission within the meaning of clause 5.3 para. 2 of the Rules of Procedure from SIX Exchange Regulation Ltd (RP); and
- b) in complaints filed against decisions of the Appeals Court within the meaning of clause 6.15 of the Rules for the Appeals Board (ABR) of SIX Group Ltd, in place of the civil court within the meaning of art. 37 para. 4 of the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA).

#### **1.2 Applicability of the Swiss Code of Civil Procedure**

<sup>1</sup> Arbitration is subject to the provisions of Part 3 of the Swiss Code of Civil Procedure (CCP). The relevant procedural provisions apply unless otherwise stipulated in these Rules of Arbitration or if the Court of Arbitration decrees that deviating rules are applicable.

<sup>2</sup> The following provisions of the CCP are notably applicable:

- a) Replacement of Arbitrators (art. 371 CCP);
- b) Pendency (art. 372 CCP);
- c) Correction, explanation and amendment of the award (art. 388 CCP);
- d) Appeal (Objection) to the Federal Supreme Court (art. 389 CCP);
- e) Grounds for objection (art. 393 CCP).

#### **1.3 Place of arbitration**

The seat of the arbitration is Zurich. After hearing the parties, the Court of Arbitration may hold a verbal hearing and discussions at a location it deems suitable within Switzerland.

#### **1.4 Language**

<sup>1</sup> The proceedings will be conducted in the language of the decision against which the complaint was filed to the Court of Arbitration.

<sup>2</sup> Entries are to be submitted in the language of the proceedings. The same applies in principle to documents. However, the Court of Arbitration, after hearing the parties and upon request, may also permit the submission of documents not written in the language of the proceedings.

#### **1.5 Deadlines**

<sup>1</sup> The deadlines contained in these Rules of Arbitration are calculated according to the trading days for the regulated trading venues of SIX Group Ltd.

<sup>2</sup> Any additional deadlines will be set by the Court of Arbitration. The Court of Arbitration may extend the deadlines it sets in response to a reasoned request and in exceptional cases.

<sup>3</sup> The deadline period begins on the first trading day following receipt by the party concerned of the notification or decision. If the last day of the deadline period is not a trading day, the deadline expires on the following trading day. No recess is taken into account.

## **1.6 Appointing Authority**

Pursuant to these Rules of Arbitration, the Appointing Authority is designated as the Swiss Chambers' Arbitration Institution (SCAI). In the process, it shall apply the "*SCAI Rules as Appointing Authority in UNCITRAL or Other Ad Hoc Arbitration Proceedings*" (SCAI Rules), unless otherwise stipulated in these Rules of Arbitration.

## **2 Commencement of the arbitration**

### **2.1 Notice of Arbitration**

<sup>1</sup> Arbitration proceedings will be instituted upon delivery of a written notice of arbitration to the defendant.

<sup>2</sup> Any complaint against a decision of the Sanctions Commission or the Appeals Board must be filed within 20 trading days after the relevant decision has been imposed.

<sup>3</sup> The notice of arbitration must contain the following information in particular:

- a) Name, address, telephone and email address of the plaintiff and, where applicable, of the representatives of the plaintiff;
- b) a copy of the decision of the Sanctions Commission or the Appeals Board;
- c) Requests;
- d) a brief justification of the requests;
- e) Designation of an arbitrator.

### **2.2 Response to Arbitration**

<sup>1</sup> The defendant must deliver a written response to the plaintiff regarding the commencement of arbitration within 20 trading days of receipt of the notification.

<sup>2</sup> The response to arbitration must include the following information in particular:

- a) Name, address, telephone and email address of the defendant and, where applicable, of the representatives of the defendant;
- b) Requests;
- c) brief response to the notice of arbitration and justification for its own requests;
- d) Designation of an arbitrator.

## **3 Court of Arbitration**

### **3.1 General provisions**

<sup>1</sup> The Court of Arbitration consists of three members.

<sup>2</sup> Each arbitrator must act impartially and independently of the parties concerned and remain so throughout the entire arbitration proceedings.

<sup>3</sup> Individuals nominated as arbitrators must promptly disclose any existing circumstances that could give rise to reasonable doubts concerning their ability to act independently or impartially. This obligation remains in effect throughout the entire arbitration proceedings.

### **3.2 Nominations**

<sup>1</sup> Each party designates an arbitrator. Should a party fail to designate an arbitrator in the notice of arbitration or in the response to arbitration, and if no designation is received within 15 trading days despite the request of the other party, the Appointing Authority shall, at the request of one of the parties, appoint an arbitrator.

<sup>2</sup> The Appointing Authority shall appoint the Chairman of the Court of Arbitration in accordance with the Rules of the Swiss Chambers' Arbitration Institution (SCAI Rules), including the Listing Procedure pursuant to Art. 8(2) of the UNCITRAL Arbitration Rules (2010).

<sup>3</sup> In particular, the Appointing Authority will take into account a possible candidate's professional qualifications in matters relating to stock exchange law, experience as an arbitrator in proceedings taking place in Switzerland, necessary language skills and availability.

<sup>4</sup> The parties are to share the costs of this appointment process by the Appointing Authority equally. In the event of a default by one of the parties, the other party has the option of making payment for the defaulting party in order to allow the Court of Arbitration to be constituted. The Court of Arbitration will decide on the final distribution of the appointment costs in the arbitration award.

### **3.3 Disqualification**

<sup>1</sup> Members of the Court of Arbitration may be disqualified if circumstances exist that give rise to reasonable doubts as to their ability to act impartially or independently.

<sup>2</sup> If a party challenge a member of the Court of Arbitration, it must submit its reasoned request for disqualification in writing within 10 trading days of receiving knowledge of the grounds for the challenge to the challenged arbitrator, the other members of the Court of Arbitration, and the other party.

<sup>3</sup> If the other party does not agree to the disqualification within 10 trading days of the date of the request for disqualification, or if the challenged arbitrator does not step down, the Appointing Authority will come to a decision regarding the request for disqualification at the request of one of the parties.

<sup>4</sup> This decision of the Appointing Authority is final. It may only be appealed together with an arbitration award. The Appointing Authority is not obligated to justify its decision.

### **3.4 Removal from office**

<sup>1</sup> If a member of the Court of Arbitration fails to fulfil his or her duties despite written notice by the other arbitrators, the Appointing Authority may, at the request of either party, dismiss the arbitrator.

<sup>2</sup> The arbitrator concerned must first be given the opportunity to present his or her point of view to the Appointing Authority.

<sup>3</sup> This decision of the Appointing Authority is final. It may only be appealed together with an arbitration award. The Appointing Authority is not obligated to justify its decision.

### **3.5 Secretary**

<sup>1</sup> The Court of Arbitration may appoint a secretary after hearing the parties.

<sup>2</sup> Clause 3.1 para. 2 and 3 as well as para. 3.3 - 3.4 of these Rules of Arbitration shall apply mutatis mutandis.

## **4 Arbitration Proceedings**

### **4.1 Procedural principles**

<sup>1</sup> All parties to the arbitration must act in good faith. They are to make every effort to ensure that the proceedings are carried out efficiently and to avoid causing any unnecessary costs and delays.

<sup>2</sup> The Court of Arbitration shall, after consultation with the parties, determine the proceedings at its own discretion. It shall take all procedural measures that it deems necessary and appropriate. It must ensure equal treatment of the parties and the right to be heard. The Court of Arbitration must hear the parties concerning important procedural issues.

<sup>3</sup> In as expeditious manner as possible after its constitution and after consultation with the parties, the Court of Arbitration shall specify a timetable for the entire proceedings as well as specific procedural rules.

#### **4.2 Jurisdiction**

If the defendant raises a plea of lack of jurisdiction, the Court of Arbitration itself shall decide on its jurisdiction.

#### **4.3 Precautionary measures**

<sup>1</sup> At the request of either party, the Court of Arbitration may take any precautionary measures it deems necessary and appropriate.

<sup>2</sup> Precautionary measures may be taken in the form of an interim arbitration award. The Court of Arbitration may demand the provision of reasonable assurance.

<sup>3</sup> The Court of Arbitration shall determine the costs for the enactment of precautionary measures in a provisional or final award. Clause 8.4 of these Rules of Arbitration apply *mutatis mutandis*.

<sup>4</sup> By submitting to these Rules of Arbitration, the parties waive the right to apply for preliminary measures from a judicial authority.

#### **4.4 Suspensive effect**

The initiation of arbitration proceedings has a suspensive effect within the scope of the requests. At the request of a party, the Court of Arbitration may withdraw the suspensive effect from the action.

#### **4.5 Requests**

The parties may request more than just an annulment or confirmation of the decision. Specifically, both the plaintiff and the defendant may request a modification of the decision, including a mitigation or aggravation of any sanctions imposed therein. However, requests that go beyond the scope of the original requests at first instance shall only be admitted should new facts become available.

#### **4.6 Exchange of written submissions**

<sup>1</sup> In principle, the parties must submit a statement of claim or a statement of defence within a deadline set by the Court of Arbitration to the other party and to each arbitrator. The statement of claim must also be submitted to the Sanctions Commission or the Appeals Board.

<sup>2</sup> Submissions are accepted in German, French, Italian and English. The Parties Concerned must have any documents which are written in another language translated into one of the permissible languages.

#### **4.7 Evidence and new facts**

<sup>1</sup> Each party bears the burden of proof for the facts on which it bases its claim or action.

<sup>2</sup> The Court of Arbitration may, at any stage of the proceedings, summon the parties to produce documents or evidence within a time period it sets.

<sup>3</sup> The parties may present new factual allegations and evidence. However, in the case that they were able to submit these facts and evidence in the preceding instance with reasonable effort, the Court of Arbitration may take this into account with regard to the cost ruling.

#### **4.8 Consultation**

The preceding instance may submit a written statement. The written statement must be submitted within the deadline set by the Court of Arbitration. It must be sent to the parties and to each member of the Court of Arbitration.

#### **4.9 Hearing**

The Court of Arbitration shall, at the request of one of the parties or on its own initiative, summon the parties to a verbal hearing.

#### **4.10 Requirement to give notice of defects**

Any party that is aware of a failure to comply with any of the provisions contained in these Rules of Arbitration or with any other applicable procedural rules shall submit immediate notification thereof. If this party fails to do so and continues the arbitration, it forfeits the right to appeal based on the violation at a later date.

### **5 Arbitration award**

#### **5.1 Cognition and decision-making authority**

The Court of Arbitration renders judgement on the merits of the case and with full cognition in regard to all requests from the parties.

#### **5.2 Applicable law**

The Court of Arbitration will rule on the dispute based on Swiss Law and applicable regulations.

#### **5.3 Decision-making**

The decision on the arbitration award is reached by majority vote. If a majority is not reached, the Chairman shall decide.

#### **5.4 Content and form**

<sup>1</sup> The Court of Arbitration is authorised to issue a final arbitration award as well as an interim or partial arbitration award.

<sup>2</sup> The arbitration award must include a reasoning and be issued in writing. It is to be dated and signed by the Court of Arbitration.

### **6 Amicable resolution of a dispute**

#### **6.1 Conciliation**

<sup>1</sup> With the express consent of all parties, the Court of Arbitration may seek to settle the dispute by mutual agreement. Specifically, it may conduct a verbal conciliation hearing.

<sup>2</sup> With consent granted pursuant to para. 1, the parties forfeit their right to disqualify a member of the Court of Arbitration due to a lack of impartiality as a result of his or her participation in the conciliation proceedings or as a result of the knowledge gained thereby.

#### **6.2 Settlement**

<sup>1</sup> The parties may terminate the arbitration proceeding by reaching an agreement (settlement).

<sup>2</sup> Settlements must be issued in writing and legally signed.

<sup>3</sup> The parties must submit the settlement to the Court of Arbitration. It is generally the case that the Court of Arbitration must approve the settlement. By way of exception, however, it is obliged to refuse approval if the settlement deemed manifestly inconsistent with the principles pertaining to the functioning and transparency of the trading venue, the protection and equal treatment of market participants, or the general preventive aims of the sanction regulations of SIX Exchange Regulation Ltd.

<sup>4</sup> Approved settlements shall be adopted in the form of an arbitration award on agreed terms.

## **7 Accelerated proceedings**

<sup>1</sup> If all parties submit a request and, following its constitution, the Court of Arbitration grants the reasoned request, accelerated proceedings will ensue.

<sup>2</sup> The Court of Arbitration shall issue orders for this purpose and take any appropriate measures.

## **8 Costs**

### **8.1 Definition**

The costs of the arbitration include:

- a) the fees of the Court of Arbitration, which are to be specified for each arbitrator in the arbitration award;
- b) the reasonable expenses of the members of the Court of Arbitration;
- c) the fees and expenses of any secretary, if applicable;
- d) the costs of the Appointing Authority;
- e) the reasonable expenses of the parties for their representation and other expenses in connection with the arbitration.

### **8.2 Advance payment of costs**

<sup>1</sup> As soon as the Court of Arbitration is appointed, it will prepare an estimate of the costs for the parties that are likely to be incurred by them and, where applicable, by any appointed secretary. It calls on each party to make an advance payment toward the costs according to clause 8.1 letters a - c in equal shares.

<sup>2</sup> If one party fails to comply with the advance payment charged to it, the other party may make an advance payment for the entire costs, or may waive the arbitration. If it waives the arbitration, it may initiate a new arbitration for this dispute.

<sup>3</sup> In its final arbitration award, the Court of Arbitration must give account for the use of the advanced payment made by the parties. Any unused balance must be returned to the parties.

### **8.3 Fees**

<sup>1</sup> The fees for the members of the Court of Arbitration and for the secretary depend on time expenditure.

<sup>2</sup> The hourly rate of all members of the Court of Arbitration and, where applicable, of the secretary shall be determined by the Appointing Authority. The hourly rate shall be determined by the Appointing Authority at the same time as the appointment of the Chairman of the Court of Arbitration.

<sup>3</sup> The Court of Arbitration must inform the parties at any time upon request regarding the amount of accrued fees.

### **8.4 Cost ruling**

<sup>1</sup> The Court of Arbitration determines the costs of arbitration in the final arbitration award.

<sup>2</sup> In principle, the unsuccessful party is to bear the costs of the arbitration. However, the Court of Arbitration may determine a different allocation of the costs among the parties if it deems this action appropriate, taking all circumstances into account.

## **9 Confidentiality and publication**

<sup>1</sup> The deliberations of the Court of Arbitration are confidential.

<sup>2</sup> While the arbitration process is ongoing, all parties involved in the arbitration must maintain confidentiality with regard to the process itself and to all information and documents obtained in the course of the arbitration that are not otherwise already accessible to the public. This applies insofar as and to the extent that disclosure is not required in allowing a party to fulfil a legal obligation or maintain or enforce a legal claim.

<sup>3</sup> After issuing the arbitration award, SIX Exchange Regulation Ltd will publish a press release informing the public of the outcome of the proceedings, provided that the commencement of the investigation was previously announced by means of a press release. In other cases, a press release is usually published. Once the matter has become res judicata, arbitration awards will be published anonymously on the website of SIX Exchange Regulation Ltd.

## **10 Final provisions**

<sup>1</sup> The Rules of Arbitration shall enter into force on [...] and shall apply to all arbitration proceedings commenced on or after this date.

<sup>2</sup> Arbitration proceedings initiated before the date of entry into force of these Rules of Arbitration shall be subject to the Rules of Arbitration if the parties reach an agreement to do so.