

**SECURITIES AND FUTURES (LEVERAGED FOREIGN EXCHANGE
TRADING - ARBITRATION) RULES**

(CAP.[], SECTION 118(2))

ARRANGEMENT OF SECTIONS

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SECURITIES AND FUTURES (LEVERAGED FOREIGN EXCHANGE TRADING - ARBITRATION) RULES

(Made by the Securities and Futures Commission
under section 118(2) of the Securities and Futures
Ordinance (No.5 of 2002)

PART I PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part V of the Securities and Futures Ordinance (No.5 of 2002).

2. Interpretation

In these Rules, unless the context otherwise requires -

"Arbitration Panel" (仲裁委員會) means the Arbitration Panel established by section 4;

"chairman" (主席) means the chairman of the Arbitration Panel;

"claimant" (申索人) means the party making the claim in respect of the dispute being referred to arbitration;

"clerk" (書記) means the clerk to the Arbitration Panel referred to in section 4(6);

"client contract" (客戶合約) means any contract or arrangement between a licensed corporation and its client containing terms on which the licensed corporation is to provide leveraged foreign exchange trading services and, where applicable, includes any separate arbitration agreement between them;

"dispute" (爭議) means any dispute between a client and a licensed corporation regarding or touching upon any matter concerning the carrying on of leveraged foreign exchange trading;

"HKIAC" (香港國際仲裁中心) means the Hong Kong International Arbitration Centre; ;

"party" (當事人) means a party to a dispute;

"respondent" (答辯人) means the party against whom a claim is made in respect of the dispute being referred to arbitration.

3. Purpose of these Rules

For the purposes of section 118(1)(b) of the Ordinance these Rules govern the resolution of any dispute where a client requires, or agrees, that the dispute be referred to arbitration.

4. Constitution of Arbitration Panel

- (1) For the purposes of resolving disputes in accordance with these Rules, there is established a panel to be known as the Arbitration Panel.
- (2) The Arbitration Panel consists of members, including a chairman and a deputy chairman, who are appointed by the Financial Secretary.
- (3) Directors and employees of the Commission are not eligible for appointment as members of the Arbitration Panel.
- (4) A member of the Arbitration Panel holds office for such period as the Financial Secretary may determine but may resign his office at any time by letter sent to the Financial Secretary.
- (5) If the office of chairman is vacant or the chairman is unable to act as chairman due to illness, other incapacity or absence from Hong Kong, the deputy chairman of the Arbitration Panel or, failing him, such other member of the Arbitration Panel as the Financial Secretary may appoint, acts as chairman in his place.
- (6) The Arbitration Panel must have a clerk and such person is to be appointed from time to time by the Commission.
- (7) A list of members of the Arbitration Panel may be obtained from the clerk who must prepare and maintain such a list.

PART II

RULES RELATING TO THE COMMENCEMENT OF PROCEEDINGS

5. Commencement of proceedings

- (1) Where the claimant is a client, he may commence arbitration proceedings by sending to the licensed corporation with which he has a dispute, a letter signed by him or on his behalf, requiring the dispute to be settled by arbitration in accordance with these Rules.
- (2) Where the claimant is a licensed corporation, arbitration proceedings may be commenced by -
 - (a) the licensed corporation sending to the client with whom it has a dispute a letter (containing the particulars described in subsection (7)(b), (d) and (e)), signed by it or on its behalf, proposing that the dispute be settled by arbitration in accordance with these Rules; and
 - (b) the client sending to the licensed corporation a letter, signed by him or on his behalf, within 14 days of receipt of the letter under paragraph (a), agreeing to the proposal.
- (3) If the client does not send a letter under subsection (2)(b) agreeing to the proposal by the licensed corporation to refer a dispute to arbitration within the time prescribed -
 - (a) the proposal lapses; and
 - (b) the client is not entitled to refer the same dispute to arbitration.
- (4) Subject to subsection (5), despite court proceedings having commenced in respect of a dispute, the client may require that the dispute be settled by arbitration, by sending a letter signed by him or on his behalf to the licensed corporation to that effect within 14 days after the commencement of the court proceedings.

(5) Subsection (4) does not apply where the client has refused an earlier request for arbitration in respect of the same dispute.

(6) Arbitration proceedings are deemed to commence on the date on which the letter referred to in subsection (1) or (4) or, where applicable, the letter referred to in subsection (2)(b), is received by the licensed corporation in accordance with section 34.

(7) A letter sent under subsection (1) or (4) must include -

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and addresses of the parties;
- (c) a reference to the arbitration clause that the client is relying on, where applicable;
- (d) a reference to the client contract; and
- (e) a brief summary of the dispute, the remedy sought and an indication of the amount of money involved.

(8) Where the claimant is a body corporate or a partnership, any letter sent under this section must be completed and signed on its behalf by one of its directors or partners, as the case may be.

(9) A copy of any letter sent under this section must be sent to the clerk for filing.

(10) During the arbitration of any matter, neither party may pursue any suit, action or proceedings against the other in respect of the dispute referred to arbitration under these Rules.

6. Initial deposit

(1) When a copy of the letter requiring or requesting arbitration, as the case may be, is sent to the clerk for filing, the party sending the letter must deposit with the clerk a sum of \$1,000.

(2) Where a licensed corporation requests arbitration but the client does not agree, the deposit referred to in subsection (1) must be returned to the licensed corporation as soon as practicable after deducting any amount reasonably incurred by the Arbitration Panel in relation to the matter.

7. Representation

(1) The parties may conduct arbitration proceedings in person or be represented by any other person of their choice.

(2) Where a party is a body corporate or a partnership, it may be represented by a director or a partner, as the case may be, or any other person of its choice authorized by it.

(3) The names and addresses of the persons referred to in subsections (1) and (2) must be sent to the other party, with a copy sent to the clerk for filing, as soon as they have been decided on.

(4) A party must notify the clerk and the other party immediately of any change of representative, or any change of particulars of the representative.

8. Oaths and affirmation

All evidence must be given under oath or affirmation.

PART III

THE ARBITRATOR

9. Selection of arbitrator

- (1) The chairman must select an arbitrator from the Arbitration Panel to conduct the arbitration as soon as practicable after -
 - (a) the arbitration has commenced as provided in section 5(6); and
 - (b) a deposit has been received by the clerk in accordance with section 6(1).
- (2) The parties must provide such information as may be required by the chairman to assist him in his selection of an arbitrator.
- (3) The chairman has full discretion in the selection of an arbitrator under these Rules.

10. Challenge of arbitrator

- (1) A party may challenge an arbitrator if circumstances exist to give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- (2) A party who proposes to challenge an arbitrator must send his challenge to the clerk, setting out the reasons for such challenge, with a copy to the other party, within 14 days of the notification of the appointment of the arbitrator in question or, if later, of his becoming aware of the circumstances giving rise to doubts about the arbitrator's suitability.
- (3) Where the other party concurs with the challenge posed or the challenged arbitrator withdraws from the appointment, the challenged arbitrator must vacate his office and section 9 applies for the purposes of selecting a new arbitrator. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- (4) Where the other party does not concur with the challenge and the challenged arbitrator does not withdraw, a decision on the challenge must be made by the chairman.
- (5) If the chairman upholds the challenge, section 9 applies for the purposes of selecting a new arbitrator.

11. Replacement of arbitrator

- (1) In the event of the death or resignation of the arbitrator during the course of the arbitration proceedings, section 9 applies for the purposes of selecting a new arbitrator.
- (2) If an arbitrator is unable to act due to illness or other incapacity or is absent from Hong Kong, sections 9 and 10 apply.
- (3) If the arbitrator is replaced, any hearings held previously must be repeated unless both parties and the new arbitrator agree to proceed on the basis of notes taken at such prior hearings.

12. Remuneration of arbitrator

The arbitrator is to be paid such remuneration and allowances as the Financial Secretary may determine.

PART IV

RULES RELATING TO THE ARBITRATION PROCEEDINGS

13. Conduct of proceedings

- (1) Despite other provisions of these Rules, the arbitrator -
 - (a) may adopt the widest discretion allowed by law;
 - (b) may conduct the arbitration in such manner as he considers appropriate and has the power to adopt, whenever possible, a simplified or expedited procedure and to conduct proceedings to ensure the just, expeditious, economical and final determination of the dispute; and
 - (c) must ensure that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity to present that party's case.
- (2) The arbitrator may, in his discretion, decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument, or to conduct the proceedings only on the basis of documents and other materials.
- (3) All documents or information to be supplied to an arbitrator must be sent to the clerk for transmission to the arbitrator, save where documents or information are submitted during a hearing.
- (4) All documents and information that are to be supplied to an arbitrator must be sent to the clerk as follows -
 - (a) where a party submits documents or information during a hearing, one copy must be sent to the clerk by that party immediately after the hearing; and
 - (b) in all other cases, a party must supply 2 sets of all documents or information to the clerk, except where they have been sent to the clerk by facsimile or electronic mail transmission in accordance with section 34.
- (5) The arbitrator may appoint any legally qualified person to advise him on any matter relating to the arbitration.
- (6) Without prejudice to subsection (5), the arbitrator may seek advice from any representative of the HKIAC who is attending the proceedings in accordance with section 17 on any matter relating to the practice and procedure of an arbitration.

14. Notes of proceedings

- (1) Notes of proceedings before an arbitrator may be taken by a person appointed as a note-taker by the arbitrator and any party is entitled to inspect and take copies of the transcript of such notes on payment of the note-taker's charges.
- (2) If no note-taker is appointed, the arbitrator must take a note of the proceedings and any party is entitled to inspect and take copies of such note.

15. Designation of time and place of arbitration

(1) The arbitrator must designate a date, time and place in Hong Kong for the arbitration to take place.

(2) Notice of the date, time and place for the initial hearing must be sent by the clerk to the parties, in accordance with section 34, at least 21 days prior to the date fixed for hearing and notice for each hearing thereafter must be given as the arbitrator may determine.

(3) The arbitrator may conduct hearings, hear witnesses and hold meetings for consultation at any place he considers appropriate, having regard to the circumstances of the arbitration.

16. Language

(1) The arbitrator may order that any documents annexed or otherwise attached to statements and any supplementary documents or exhibits submitted in the course of proceedings, if not in an official language, be accompanied by a translation into an official language, such translation to be certified if not agreed.

(2) Unless the arbitrator otherwise orders, witnesses are entitled to give their evidence in the language of their choice and the arbitrator may order the translation of that evidence, if not given in an official language, into an official language by a suitably qualified person.

17. Attendance

In addition to the clerk, a representative of the HKIAC may be present throughout the proceedings.

18. Statement of claim

(1) Unless a statement of claim was contained in or attached to the letter requiring or requesting arbitration, as the case may be, the claimant must send his statement of claim to the respondent and to the arbitrator in accordance with sections 13(3) and (4) and 34, within 14 days from the date the arbitration is deemed to have commenced under section 5(6).

(2) A copy of the client contract must be annexed or otherwise attached to the statement of claim.

(3) The statement of claim must include the following particulars -

- (a) the names and addresses of the parties;
- (b) a statement of the facts supporting the claim;
- (c) the points at issue; and
- (d) the remedy sought.

(4) The claimant may -

- (a) annex or otherwise attach to the statement of claim all documents the claimant considers relevant; or
- (b) add a reference to the documents or other evidence the claimant intends to submit.

19. Statement of defence or counterclaim

(1) The respondent must send a statement of defence to the claimant and to the arbitrator in accordance with sections 13(3) and (4) and 34, within 14 days from the date the statement of claim is received by the respondent.

(2) The statement of defence must reply to the particulars of the statement of claim referred to in section 18(3)(b), (c) and (d).

(3) The respondent may -

(a) annex or otherwise attach to a statement of defence documents on which the respondent relies in defence; or

(b) add a reference to the documents or other evidence the respondent intends to submit.

(4) In the statement of defence, or at a later stage in the arbitration proceedings if the arbitrator decides that the delay was justified under the circumstances, the respondent may -

(a) make a counter-claim arising out of the same dispute; or

(b) rely on a claim arising out of that dispute for the purpose of a set-off.

(5) Section 18 applies to a counter-claim and a claim relied on for the purpose of a set-off in the same manner as it applies to a statement of claim.

20. Amendments and further statements

(1) During the arbitration proceedings, a party may amend or supplement that party's claim or defence except where the arbitrator considers it inappropriate to allow this, having regard to -

(a) any delay involved;

(b) the likelihood of prejudice to the other party; or

(c) any other relevant circumstances.

(2) The arbitrator may require or accept further statements, in addition to the statement of claim and the statement of defence, and must fix the periods of time for communicating such statements.

21. Time period for the communication of statements

The time period fixed by the arbitrator for the sending of statements (including the statement of claim and statement of defence) may not exceed 21 days unless an extension is requested by a party and the arbitrator is satisfied that such an extension is justified in the circumstances.

22. Evidence

(1) Each party has the burden of proving the facts relied on to support that party's statement.

(2) The arbitrator -

(a) must determine the admissibility, materiality, relevance and weight of any evidence; and

(b) may admit evidence irrespective of the rules governing the admissibility of evidence in court if, in his opinion, the interest of justice is served by so doing.

(3) If the arbitrator considers it appropriate, he may require a party to send to him and to the other party, within a period of time stipulated by him, a summary of the documents and other

evidence which that party intends to present in support of the facts in issue set out in that party's statement.

23. Hearing of witnesses

- (1) If any witnesses are to be heard, each party must send a notice to the arbitrator and to the other party at least 14 days before the hearing specifying -
 - (a) the name and address of each witness;
 - (b) the subject matter of each witness's testimony or, at the request of the arbitrator, a transcript of the witness's statement or expert report; and
 - (c) the language in which each witness will give his testimony.
- (2) The arbitrator may arrange for translations or recordings to be made at a hearing as he considers appropriate.
- (3) Hearings must be held in public unless the arbitrator decides otherwise.
- (4) The arbitrator may require the retirement of any witness during the testimony of any other witness.
- (5) Evidence of a witness may also be presented in the form of a written statement signed by him.
- (6) The arbitrator is free to determine the manner in which witnesses are examined.

24. Default

- (1) If, within the period of time fixed by the arbitrator, the claimant fails to file a statement of claim without showing sufficient cause for such failure, the arbitrator may issue an order for the termination of the arbitration proceedings in accordance with section 28.
- (2) If, within the period of time fixed by the arbitrator, the respondent fails to file a statement of defence without showing sufficient cause for such failure, the arbitrator may, as he thinks fit, make an order in favour of the claimant or an order for termination in accordance with section 28.
- (3) If one of the parties, duly notified under these Rules, fails to appear at a hearing or fails to produce any document in that party's possession when required to do so without any valid excuse, the arbitrator may proceed with the arbitration and such proceedings are deemed to have been conducted in accordance with section 13(1).

25. Consolidation of proceedings

- (1) Where in relation to 2 or more arbitration proceedings it appears to the chairman -
 - (a) that some common question of law or fact arises in both or all of them;
 - (b) that the claims arise out of the same transaction or series of transactions; or
 - (c) that for some other reason it is desirable to make an order under this section, the chairman may
 - (i) order those arbitration proceedings -
 - (A) to be consolidated on such terms as he thinks just; or
 - (B) to be heard immediately after one another; or
 - (ii) order any of those arbitration proceedings to be stayed until after the determination of any other of them.

(2) Subject to section 10, where the chairman orders arbitration proceedings to be consolidated under subsection (1)(c)(i)(A) he has power to select the arbitrator.

(3) Where the chairman selects an arbitrator pursuant to subsection (2), any prior appointment of an arbitrator for any of the arbitration proceedings being consolidated ceases to have effect.

26. Jurisdiction

(1) The arbitrator has the power to rule on any objection by either party to his jurisdiction to hear the dispute.

(2) An objection to the arbitrator's jurisdiction must be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.

(3) Normally, the arbitrator must rule on an objection to his jurisdiction as a preliminary question, but he has the power to proceed with the arbitration and rule on such an objection in his final award.

(4) Where applicable, an arbitration clause is treated as being independent of the other terms of a client contract and any decision by the arbitrator or a court of law declaring that the client contract is null and void does not of itself invalidate the arbitration clause.

PART V

RULES RELATING TO THE TERMINATION OF PROCEEDINGS

27. Settlement

(1) If, before the award is made, the parties agree on a settlement of the dispute, the arbitrator must record the settlement in the form of an arbitration award on agreed terms.

(2) The arbitrator is not obliged to give reasons for an award made under subsection (1).

(3) An award made under subsection (1) must be signed by the arbitrator, sent to the parties and lodged with the clerk for filing.

(4) An award made under subsection (1) is final and binding on the parties.

28. Termination of proceedings

(1) If, before the award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason other than by way of an agreement to settle between the parties, the arbitrator may, either upon his own initiative or at the request of a party, issue an order for the termination of the arbitration.

(2) The arbitrator must state in the order the reasons for the termination.

(3) An order made under subsection (1) must be signed by the arbitrator, sent to the parties and lodged with the clerk for filing.

(4) An order made under subsection (1) is final and binding on the parties.

29. Form and effect of awards

(1) An award must -

- (a) give reasons for the decision;
 - (b) be signed by the arbitrator; and
 - (c) contain the date on which and the place where it was made.
- (2) In addition to making a final award, the arbitrator has the power to make interim, interlocutory or partial awards during the arbitration proceedings.
- (3) An award made by the arbitrator under this section must be sent to the parties and lodged with the clerk for filing.
- (4) An award made by the arbitrator must be made public but, where the arbitrator considers it appropriate to do so, this may be done in a manner that preserves the anonymity of the parties.
- (5) Despite subsection (4), the Commission -
- (a) must be notified by the clerk of any award made in respect of a licensed corporation; and
 - (b) may make use of any findings made by an arbitrator for the purposes of exercising its functions under the Ordinance including, but without limitation, assessing whether the licensed corporation is a fit and proper person to be so licensed.
- (6) An award made by the arbitrator is final and binding on the parties.

30. Correction of awards

- (1) Within 14 days after receipt of the award, either party may, with notice to the other party, request the arbitrator to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature.
- (2) If the arbitrator considers the request made under subsection (1) to be justified, he must make the correction within 14 days of receiving the request.
- (3) The arbitrator may on his own initiative correct any error of the type referred to in subsection (1) within 28 days of the date of the award.
- (4) Section 29 applies to such corrections accordingly.

31. Additional awards

- (1) Within 14 days after receipt of an award, either party may, with notice to the other party, request the arbitrator to make an additional award as to claims presented in the arbitration proceedings but omitted from the award.
- (2) If the arbitrator considers the request for an additional award to be justified and considers that the omission can be rectified without any further evidence, he may make the additional award within 14 days after receipt of the request.
- (3) When an additional award is made, section 29 applies accordingly.

32. Costs

- (1) Whenever the arbitrator makes an arbitration award, including an award on agreed terms and an order for the termination of the arbitration proceedings, he must make an order for costs.
- (2) In principle, the costs of an arbitration are borne by the unsuccessful party.

(3) Despite subsection (2), the arbitrator is free to apportion costs between the parties if he considers that apportionment is reasonable in the circumstances.

(4) The order for costs must specify -

(a) the sum to be paid, which must include -

- (i) the amount of fees of the arbitrator;
- (ii) costs for legal advice or for other assistance such as translation, oral interpretation and note-taking required by the arbitrator;
- (iii) travel and other expenses of witnesses to the extent allowed by the arbitrator;
- (iv) costs of the successful party, including the costs for representation, to the extent allowed by the arbitrator; and
- (v) the amount of administrative or other costs, incurred by the arbitrator and the Arbitration Panel;

(b) the parties to and by whom payment must be made; and

(c) the time limit for making payment.

(5) A party against whom such an order is made must make payment in accordance with the order.

33. Deposits of costs

(1) At any time during the arbitration proceedings, the arbitrator may require any party to deposit with the clerk such sum or sums to defray the expenses of the arbitration if the arbitrator considers it expedient to do so in the circumstances.

(2) The arbitrator determines the amount of any deposit, taking into account the amount in dispute, the complexity of the subject matter, the costs incurred or to be incurred by the arbitrator and other relevant circumstances of the case.

(3) If payment of the required deposit is not made within 14 days after receipt of the request, the arbitrator may order the termination of the arbitration proceedings in accordance with section 28.

(4) After the termination of proceedings, with the assistance of the arbitrator, the clerk -
(a) must render an accounting to the parties of the total deposits received under these Rules; and

(b) after all the costs required to be borne by a party have been paid, must return any unexpended balance of the party's portion of the deposits to that party.

PART VI MISCELLANEOUS

34. Communication and notice period

(1) Any letter, challenge, notice, order, award, or other document (regardless of description) sent to a party or the clerk under these Rules may be sent in accordance with the provisions of section 400 of the Ordinance.

(2) For the purposes of calculating a period of time under these Rules -

- (a) the period begins to run on the day following the day when the document is received;
- (b) if the last day of the period is an official holiday or a day on which banks are not generally open for business, the period is extended until the first business day which follows; and
- (c) official holidays or days on which banks are not generally open for business occurring during the running of the period of time are included in calculating the period.

35. Interest

The arbitrator has the power to order the payment of interest on any damages or costs including the payment of compound interest if appropriate in the circumstances.

36. Exclusion of liability

(1) An arbitrator is not liable to any party for any act or omission relating to an arbitration conducted under these Rules, unless he is found to have been fraudulent or dishonest.

(2) None of the following persons is liable to any party for any act or omission in connection with any arbitration conducted under these Rules unless he is found to have been fraudulent or dishonest -

- (a) the chairman;
- (b) the deputy chairman of the Arbitration Panel;
- (c) a member of the Arbitration Panel;
- (d) any representative of the HKIAC who attends arbitration proceedings in accordance with section 17.

37. Destruction of documents

The clerk and the arbitrator may destroy all documents relating to an arbitration sent to them under these Rules after the expiry of a period of 1 year from the date of the last correspondence received by them.

38. Confidentiality

(1) The arbitrator may in his discretion determine that certain information relating to the arbitration must be kept confidential.

(2) Without prejudice to section 29(5), such confidential information may not be disclosed by any person without the written consent of the arbitrator.

39. Applicable law

(1) Hong Kong law applies to the arbitration proceedings.

(2) In all cases, the arbitrator must take into account the usages of the trade applicable to the transaction.

(3) Pursuant to section 2J of the Arbitration Ordinance (Cap. 341), the provisions of that Ordinance apply to an arbitration conducted under these Rules save for those matters which have been specifically provided for in these Rules.

40. Interpretation and enforcement of rules

(1) The arbitrator is empowered to interpret and determine the applicability of all provisions under these Rules and to take appropriate action to obtain compliance with any ruling made by him whilst arbitration proceedings are being conducted.

(2) The arbitrator may modify the requirements of these Rules in relation to the sending of documents or the length of time periods in particular cases where, in his opinion, it is expedient to do so in the interest of justice.

(3) A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance is deemed to have waived his right to object.

Chairman,
Securities and Futures
Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 118(2) of the Securities and Futures Ordinance (No.5 of 2002). They prescribe for the purposes of section 118(1)(b) of the Ordinance the procedure for the settlement by arbitration of any dispute between a client and a licensed corporation in relation to leveraged foreign exchange trading.