

Chapter 9

Default

- 901. Payment Default**
- 902. Delivery Default**
- 903. Emergency Powers**
- 904. Non-Conformity to Product Specifications / Defects in Title**
- 905. Missing Product**
- 906. Rights of the Exchange and the Book Depository**

901. Payment Default

901.1 This Rule is subject to Rule 903 below.

901.2 In the event of a Payment Default by a Member, the following default settlement arrangements shall apply to settle all outstanding Contracts which are due for settlement on the relevant Settlement Date, including but not limited to sale or purchase Contracts of the defaulting Member or Members who have entered into Original Contracts with the defaulting Member, and Affected Contracts:

- (a) the Book Depository shall automatically drawdown the Member's Security Deposit in the SD Trust Account and/or call on the SD Bank Guarantee provided by the Member ("**Drawdown**") for the value of the relevant Net Debit Amount (as set out in the Settlement Statement) and/or any other Secured Obligations and transfer the same to the Book Depository's settlement account with the Settlement Bank and the moneys will be applied to satisfy the value of the relevant Net Debit Amount and/or any other Secured Obligations;
- (b) where there is insufficient Security Deposit to satisfy the value of the relevant Net Debit Amount and/or any other Secured Obligations, the Book Depository shall be entitled (but not obliged) to:
 - (i) Drawdown the Member's house settlement account (if any) that is held on trust by the Book Depository with the Settlement Bank and to apply such funds to satisfy the value of the Net Debit Amount and any other Secured Obligations; and/or
 - (ii) exercise its power of sale arising from the Pledge over the Member Specific Diamonds in the Member's House Depository Account and to sell the Member Specific Diamonds that are standing to the credit of the Member's House Depository Account on such Market and at such price and on such terms as the Book Depository may choose in its sole and absolute discretion, and to apply the payment proceeds from such sale to satisfy the value of the Net Debit Amount and any other Secured Obligations;
- (c) any Payment Default on the part of a defaulting Member shall be deemed to be a request for credit from the Book Depository, only to be granted at the sole and absolute discretion of the Book Depository for the full amount or any part of the shortfall. If the Book Depository grants such credit the Book Depository shall have a right of claim against the defaulting Member, and the defaulting Member shall pay the Book Depository the amount of credit furnished to the defaulting Member with interest at such rate as the Book Depository shall require;
- (d) where the Book Depository has procured sufficient moneys to satisfy the value of the Net Debit Amount and/or any other Secured Obligations, the Book Depository shall proceed to automatically effect cash settlement on the relevant Settlement Date in accordance with Rule 805.3;
- (e) the defaulting Member shall not be entitled to a physical settlement of the Product by the Book Depository in accordance with Rule 806.1(d) unless the Book Depository has managed to effect cash settlement in full on the relevant Settlement Date under this Rule 901.2;

(f) where exceptionally the Exchange and the Book Depository are of view that it is necessary in the interest of maintaining a fair, orderly and transparent market, and solely for the purposes of settlement:

(i) The Exchange and the Book Depository shall be entitled (but not obliged) at their discretion to:

(A) suspend the settlement on the Settlement Date for all Members (the “**Suspension**”) and (for the relevant settlement for that Settlement Date) to exclude the defaulting Member’s Contracts and/or any Affected Contracts from the settlement figures and to issue new settlement figures (which exclude the settlement figures of the defaulting Member, the defaulting Member’s Contracts and/or any Affected Contracts) in new Settlement Statements to all Members (other than the defaulting Member and/or in respect of Affected Contracts) and to carry out settlement at such time and on such date as specified in the new Settlement Statements, where settlement will take place in accordance with Rules 805 to 807; or

(B) exclude the defaulting Member’s Contracts and/or any Affected Contracts from settlement on the Settlement Date where the Exchange and the Book Depository are of the view that such exclusion will not affect the settlement figures of the other Members and to carry out settlement of such other Members’ Contracts based on their existing Settlement Statements in accordance with Rules 805 to 807.

The Exchange and Book Depository shall be entitled to take such action as is necessary to exclude the defaulting Member’s Contracts and/or any Affected Contracts from settlement and/or re-cast settlement figures for that Settlement Date, and to make such determinations in the interests of a fair, orderly and transparent market, on whether action taken under this paragraph (i) will apply to Affected Contracts.

(ii) Separately and independently from the powers set out in Rule 901.2(f)(i) above, the Book Depository shall calculate the relevant settlement sum to be paid by and/or received by each defaulting Member and/or Affected Member in respect of the defaulting Member’s Contracts and/or any Affected Contracts, in accordance with the formula or methodology determined and/or prescribed by the Exchange and/or the Book Depository at its discretion from time to time and notify each Relevant Member that it shall be obliged to make payment of such settlement sum to such other Member as may be directed by the Book Depository and by such time as may be prescribed by the Book Depository.

(iii) Upon notifying the Relevant Members in accordance with Rule 901.2(f)(ii), each of the defaulting Member’s Contracts and the relevant Affected Contracts that have been Novated to the Book Depository shall be discharged in its entirety. The Members acknowledge and agree that upon the notification to the Relevant Members in accordance with Rule 901.2(f)(ii), the Indemnities shall not have, and shall be discharged and released from, any obligations, duties, claims or liabilities (including any obligations, duties, claims or liabilities that arose or accrued prior to the occurrence of the discharge of the affected

Novated Contracts) arising out of or in connection with the affected Novated Contracts.

- (iv) The Members acknowledge and agree that any determination by the Book Depository as to the settlement sum payable by a Relevant Member in respect of the defaulting Member's Contracts and/or any Affected Contracts shall be conclusive and binding on the Relevant Member and Affected Member save in cases involving manifest error. Each of the Relevant Member and Affected Member agrees that:

(A) the obligation to comply with any direction made by the Book Depository is a duty owed by it to any Member who may be affected by a contravention of it; and

(B) where a duty is owed by virtue of sub-paragraph (a) to any such Member, any breach of the duty which causes such Member to sustain loss or damage shall be actionable at the suit or instance of that Member as against the Relevant Member.

- (v) The Members acknowledge and agree that:

(A) any settlement sum has been determined by the Book Depository pursuant to Rule 901.2(f)(ii) in good faith and represent genuine pre-estimates of the anticipated or actual loss the Members who are entitled to receive payment of a settlement sum will or may suffer in connection with the Payment Default;

(B) the Members wish to avoid the difficulties of proof of damages in connection with any Payment Default; and

(C) the settlement sums determined by the Book Depository are reasonable and not intended as a penalty.

901.3 Each Member agrees that the Book Depository shall have recourse pursuant to the provisions of these Rules against moneys held on trust by the Book Depository for such Member with the Settlement Bank.

901.4 The Exchange and the Book Depository shall be entitled to impose a compensation sum on a Member who is in default of its payment obligations under Rule 805, regardless of whether the Book Depository was able to effect cash settlement eventually in accordance with this Rule.

901.5 A Payment Default by a Member shall constitute an Adverse Event for which the Exchange and the Book Depository are entitled (but not obliged) to suspend the Member or to terminate such Member's Membership under Rules 309 and 310.

901.6 Any reduction of the Security Deposit will result in a reduction of the Member's Net Trading Limit in accordance with Rule 711.2. Where there is no Security Deposit attributable to the Member following the Drawdown under Rule 901.2(a) above, the Net Trading Limit shall be reduced to zero.

- 901.7 No cause of action shall accrue to anyone (and if accrued is hereby waived) against the Exchange or the Book Depository in respect of any Contract and/or settlement sum and/or for exercising its rights and/or any action or inaction taken under this Rule.
- 901.8 For the avoidance of doubt, the Book Depository shall have the right to exercise all or any or each of the powers in this Rule 901 separately and/or a combination with one another.

902. Delivery Default

- 902.1 This Rule shall be subject to Rule 903 below.
- 902.2 In the event of a Delivery Default on one or more Contracts by an Approved Supplier who has consigned the relevant Product (the “**Consigning Approved Supplier**”), the following default settlement arrangements to close out the position shall apply:
- (a) in respect of a Contract for the sale of one or more Diamond Baskets from a particular Pool by a Consigning Approved Supplier:
 - (i) the Consigning Approved Supplier may elect by written notice to the Book Depository to effect a re-delivery into the Singapore Vault, provided that such re-delivery shall be effected by such time as may be prescribed by the Book Depository on the Settlement Date. Any election made by the Consigning Approved Supplier is final and irrevocable. Where a re-delivery is successful, the Book Depository may automatically effect cash settlement and physical settlement on the relevant Settlement Date in accordance with Rule 805.3 and Rule 806.1(d);
 - (ii) where the Consigning Approved Supplier in paragraph (i) above has failed to make an election for re-delivery or where such re-delivery has failed by the prescribed time on the Settlement Date, the Book Depository shall be entitled to settle the position on the Settlement Date in the manner set out in paragraph (c) below;
 - (b) in respect of a Contract for the sale of Single Stones or specific Diamond Baskets by a Consigning Approved Supplier, the Book Depository shall settle the position on the Settlement Date in the manner set out in (c) below;
 - (c) the Book Depository shall on Settlement Date refund the Purchaser the full purchase consideration of the Contract, provided that the Purchaser has itself paid the full purchase consideration of the Contract for purposes of settlement. The Book Depository shall calculate a settlement sum (the “**Settlement Sum**”) to be paid by the Consigning Approved Supplier to the Purchaser, in accordance with the formula or methodology determined and/or prescribed by the Exchange and/or the Book Depository at its discretion from time to time. Where the Settlement Sum is a sum greater than the purchase consideration of the Contract, the Consigning Approved Supplier shall pay the difference between Settlement Sum and the purchase consideration of the Contract (“**Difference**”) to the Purchaser by such time as may be prescribed by the Book Depository. The Consigning Approved Supplier and the Purchaser agree that the Book Depository shall have no obligation or liability to make payment of the Settlement Sum or the Difference. The Consigning Approved Supplier and the Purchaser agree that any determination by the Book Depository as to the Settlement Sum and the Difference payable by the Consigning Approved Supplier in respect of the Contract shall be conclusive and binding on the Consigning Approved

Supplier and the Purchaser save in cases involving manifest error. The Consigning Approved Supplier agrees that (i) the obligation to comply with any notification or direction made by the Book Depository is a duty owed by the Consigning Approved Supplier to the Purchaser who may be affected by a contravention of it, and (ii) where a duty is owed by virtue of sub-paragraph (i) to the Purchaser, any breach of the duty which causes such Purchaser to sustain loss or damage shall be actionable at the suit or instance of that Purchaser as against the Consigning Approved Supplier. The Consigning Approved Supplier and the Purchaser acknowledge and agree that (A) any Settlement Sum has been determined by the Book Depository pursuant to this Rule in good faith and represent genuine pre-estimates of the anticipated or actual loss the Purchaser will or may suffer in connection with the Delivery Default of the Consigning Approved Supplier; (B) the Consigning Approved Supplier and the Purchaser wish to avoid the difficulties of proof of damages in connection with the Delivery Default by the Consigning Approved Supplier; and (C) the Settlement Sum determined by the Book Depository is reasonable and not intended as a penalty.

- (d) The Book Depository may (but shall not be obliged to) call on such bank guarantee provided by the Approved Supplier under Rule 401.6 and/or may exercise its power of sale arising from the Pledge over the Approved Supplier's Member Specific Diamonds and to sell the Approved Supplier's Member Specific Diamonds that are standing to the credit of the Approved Supplier's House Depository Account on such Market as the Book Depository may choose in its sole and absolute discretion, and to apply the payment proceeds from such sale to pay to the Purchaser the difference between the Settlement Sum and the purchase consideration of the Contract.

902.3 In the event of a Delivery Default by a Member (other than in the circumstances set out in Rule 902.2 above), provided that the Purchaser has itself paid the full purchase consideration of the Contract for purposes of settlement, the Book Depository shall notify the defaulting Member that it shall be obliged to pay, and the defaulting Member shall pay, the full purchase consideration of the Contract to refund the Purchaser by such time as may be prescribed by the Book Depository. The defaulting Member agrees that:

- (a) the obligation to comply with any notification or direction made by the Book Depository is a duty owed by the defaulting Member to any Member who may be affected by a contravention of it; and
- (b) where a duty is owed by virtue of sub-paragraph (a) to any such Member, any breach of the duty which causes such Member to sustain loss or damage shall be actionable at the suit or instance of that Member as against the defaulting Member.

902.4 Upon the Book Depository paying the Member the full purchase consideration of the Contract under Rule 902.2(c) or upon notifying the defaulting Member under Rule 902.3, each of the relevant Novated Contracts shall be discharged in its entirety. The Members acknowledge and agree that upon the Book Depository paying the Member the full purchase consideration of the Contract under Rule 902.2(c) or upon notifying the defaulting Member under Rule 902.3, the Indemnitees shall not have, and shall be discharged and released from, any obligations, duties, claims or liabilities (including any obligations, duties, claims or liabilities that arose or accrued prior to the occurrence of the discharge of the affected Novated Contracts) arising out of or in connection with the affected Novated Contracts.

902.5 A Consigning Approved Supplier who is in default of its obligations under Rule 806.1(b) shall not be entitled to payment of the purchase consideration under the Contract unless the Consigning Approved Supplier has effected re-delivery successfully and the Book Depository

has managed to effect cash settlement and physical settlement on the relevant Settlement Date under Rule 902.2.

902.6 Where exceptionally the Exchange and the Book Depository are of view that it is necessary in the interest of maintaining a fair, orderly and transparent market, and solely for the purposes of settlement:

- (a) The Exchange and the Book Depository shall be entitled (but not obliged) at their discretion to:
 - (i) suspend the settlement on the Settlement Date for all Members (the “**Suspension Upon Delivery Default**”) and (for the relevant settlement for that Settlement Date) to exclude the defaulting Member’s Contracts and/or any Affected Contracts from the settlement figures and to issue new settlement figures (which exclude the settlement figures of the defaulting Member, the defaulting Member’s Contracts and/or any Affected Contracts) in new Settlement Statements to all Members (other than the defaulting Member and/or in respect of Affected Contracts) and to carry out settlement at such time and on such date as specified in the new Settlement Statements, where settlement will take place in accordance with Rules 805 to 807; or
 - (ii) exclude the defaulting Member’s Contracts and/or any Affected Contracts from settlement on the Settlement Date where the Exchange and the Book Depository are of the view such exclusion will not affect the settlement figures of the other Members and to carry out settlement of such other Members’ Contracts based on their existing Settlement Statements in accordance with Rules 805 to 807.

The Exchange and Book Depository shall be entitled to take such action as is necessary to exclude the defaulting Member’s Contracts and/or any Affected Contracts from settlement and/or re-cast settlement figures for that Settlement Date, and to make such determinations in the interests of a fair, orderly and transparent market, on whether action taken under this paragraph (a) will apply to Affected Contracts.

- (b) Separately and independently from the powers set out in Rule 902.6(a) above, the Book Depository shall calculate the relevant settlement sum to be paid by and/or received by each defaulting Member and/or Affected Member in respect of the defaulting Member’s Contracts and/or any Affected Contracts, in accordance with the formula or methodology determined and/or prescribed by the Exchange and/or the Book Depository at its discretion from time to time and notify each Relevant Member that it shall be obliged to make payment of such settlement sum to such other Member as may be directed by the Book Depository and by such time as may be prescribed by the Book Depository.
- (c) Upon notifying the Relevant Members in accordance with Rule 902.6(b), the defaulting Member’s Contracts and the relevant Affected Contracts that have been Novated to the Book Depository shall be discharged in its entirety. The Members acknowledge and agree that upon the notification to the Relevant Members in accordance with Rule 902.6(b), the Indemnitees shall not have, and shall be discharged and released from, any obligations, duties, claims or liabilities (including any obligations, duties, claims or

liabilities that arose or accrued prior to the occurrence of the discharge of the affected Novated Contracts) arising out of or in connection with the affected Novated Contracts.

- (d) The Members acknowledge and agree that any determination by the Book Depository as to the settlement sum payable by a Relevant Member in respect of the defaulting Member's Contracts and/or any Affected Contracts shall be conclusive and binding on the Relevant Member and Affected Member save in cases involving manifest error. Each of the Relevant Member and Affected Member agrees that:
 - (i) the obligation to comply with any notification or direction made by the Book Depository is a duty owed by it to any Member who may be affected by a contravention of it; and
 - (ii) where a duty is owed by virtue of sub-paragraph (i) to any such Member, any breach of the duty which causes such Member to sustain loss or damage shall be actionable at the suit or instance of that Member against the Relevant Member.

- (e) The Members acknowledge and agree that:
 - (i) any settlement sum has been determined by the Book Depository pursuant to Rule 902.6(b) in good faith and represent genuine pre-estimates of the anticipated or actual loss the Members who are entitled to receive payment of a settlement sum will or may suffer in connection with the Delivery Default;
 - (ii) the Members wishes to avoid the difficulties of proof of damages in connection with any Delivery Default; and
 - (iii) the settlement sums determined by the Book Depository are reasonable and not intended as a penalty.

902.7 The Exchange and the Book Depository shall be entitled to impose a compensation sum on a Vendor who is in default of its obligations under Rule 806.1(a) or Rule 806.1(b) (as the case may be), regardless of whether the Book Depository was able to effect cash settlement and physical settlement eventually in accordance with this Rule 902.

902.8 A Delivery Default shall constitute an Adverse Event for which the Exchange and the Book Depository are entitled (but not obliged) to suspend the relevant Vendor or to terminate such Vendor's Membership under Rules 309 and 310.

902.9 No cause of action shall accrue to anyone (and if accrued is hereby waived) against the Exchange or the Book Depository in respect of any Contract and/or settlement sum and/or for exercising its rights and/or any action or inaction taken under this Rule.

902.10 Each Member agrees that the Book Depository shall have recourse pursuant to the provisions of these Rules against moneys held on trust by the Book Depository for such Member with the Settlement Bank.

902.11 For the avoidance of doubt, the Book Depository shall have the right to exercise all or any or each of the powers in this Rule 902 separately and/or in combination with one another.

903. Emergency Powers

903.1 Without prejudice to Rule 901 and Rule 902 above, where there is more than one Contract affected by Payment Default and/or Delivery Default on the Settlement Date or where an Adverse Event has occurred and is continuing in respect of one or more Members, the Exchange and the Book Depository may take such steps and may exercise such emergency powers as they deem fit to deal with any circumstances calling for emergency action in the interest of maintaining a fair, orderly and transparent market. Such steps and such powers include (but shall not be limited to):

- (a) the power to exercise any, or all and/or a combination of all or any of the rights and powers set out in these Rules, including but not limited to any of the rights and powers in Rule 807.3, Rule 901, Rule 902 and Rule 906;
- (b) the power to declare a Contract as void; and
- (c) suspend trading in any or all Markets.

904. Non-Conformity to Product Specifications / Defects in Title

904.1 Any Member who discovers the non-conformity of a Physical Diamond purchased by the Member on the Exchange Trading System with the Product Specifications or a defect in title of a Physical Diamond purchased by the Member on the Exchange Trading System shall notify the Exchange and the Book Depository in writing and provide such details as the Exchange and the Book Depository may require.

904.2 The Exchange and/or the Book Depository shall, upon becoming aware of any alleged non-conformity or defect in title, have the power to conduct an investigation and may issue any directions it considers appropriate to any Member, and the Member shall comply with such directions.

905. Missing Product

905.1 In the event a Product that is reflected in the register of the Book Depository as being held by a Member in a Depository Account is missing from the Physical Depository, the Exchange and/or the Book Depository shall, upon becoming aware of any missing Product, have the power to conduct an investigation and may issue any directions as it considers appropriate to any Member, and the Member shall comply with such directions.

906 Rights of the Exchange and the Book Depository

906.1 The provisions of this Chapter are without prejudice to and do not affect the rights of the Exchange and the Book Depository under these Rules to suspend or terminate a defaulting Member.

906.2 Each obligation of the Book Depository under these Rules to credit any amount to a relevant Member is subject to the condition precedent that no Adverse Event has occurred and is continuing in respect of the Member. Without prejudice to the foregoing, the Book Depository shall, where any Adverse Event has occurred in respect of the Member, further have the right and be entitled to set off all or any amounts which are due and payable by such Member to the Book Depository.

906.3 Each Member agrees that the Book Depository shall have recourse pursuant to the provisions of these Rules against moneys held on trust by the Book Depository for such Member with the Settlement Bank.