



## Remedies Available To Investors And Procedures For Dispute Resolution And Arbitration In Case Of Non-Resolution Of Complaints

### ■ DIFFERENT WAYS TO HANDLE A PROBLEM WITH TRE CERTIFICATE HOLDERS OF THE EXCHANGE:

**Amicable Settlement:** Although the client has the recourse to approach the relevant Stock Exchange, SECP or the Courts for lodging complaint, it is strongly advised that the complaint/problem should first be taken up directly with the TRE Certificate Holder. This will not only save the time consumed in correspondence and procedures but will also preserve the trust and confidence.

**Arbitration Committees of Stock Exchanges:** The client also has the alternative of taking up his/her complaint with the management of the concerned stock exchange. All the stock exchanges have their own Arbitration Committees that look into the grievances/disputes between the Investor and the Members.

**SECP:** The client can also lodge his/her complaint with the Vigilance Cell which has been setup at SECP to ensure that grievances/complaints of the general public are heard and redressed, in a quick and efficient manner. All the complaints received by the Vigilance Cell against Stock Exchange Members are forwarded to the Investor Complaint Wing ("ICW") of the Securities Market Division ("SMD") for further processing. However, SECP is not empowered to force the TRE Certificate Holder for compensation/damages.

**Civil Courts:** The client can also file his/her complaint with the Civil Courts.

### ■ DIFFERENT FORUMS AVAILABLE FOR PURSUING A CLAIM AGAINST TRE CERTIFICATE HOLDERS OF THE EXCHANGE

There are three forums available for pursuing claims against TRE Certificate Holder of the Exchange:

**Arbitration Committees of Stock Exchanges:** The Stock Exchanges are Self-Regulatory Organizations (SROs) empowered to take cognizance of complaints against the TRE Certificate Holders under the approved Rules and Regulations. All the Stock Exchanges have their own Arbitration Committees that look into the grievances/disputes between investor and Members. Arbitration Committees after perusing the documents and providing the parties an opportunity of being heard pass an Arbitration Award in accordance with the relevant Rules and Regulations of the Exchange.

**SECP:** The SECP has established a Vigilance Cell which is responsible for ensuring that grievances/complaints of the general public are heard and redressed, in a quick and efficient manner. The client can file his/her complaint with the Vigilance Cell against Stock Exchange Members on the prescribed Complaint Registration Form ("CRF") which is available, free of cost in the offices of Stock Exchanges and the Commission including the Company Registration offices ("CROs"). CRF may be downloaded from the official website of SECP <http://www.secp.gov.pk/ComplaintForm1.htm>. The ICW after perusing the documents and giving the parties an opportunity of being heard passes an Order according to the relevant Rules and Regulations. Any party dissatisfied with the Order can



file an appeal before the Appellate Bench of the Commission within thirty days from the date of issue of such Order under Section 33 of the SECP Act, 1997.

**Civil Courts:** The client can also file his/her complaint with the Civil or Criminal Court. However this forum is more appropriate for claiming compensation or damages.

## ■ **ARBITRATION**

Arbitration is an alternative dispute resolution mechanism provided by the Exchanges for those persons who do not wish to go to Court. Through this method disputes between the TRE Certificate Holders and between TRE Certificate Holders & their constituents (i.e. clients of TRE Certificate Holders), may be addressed & resolved in respect of trades done on the Exchange. This process of resolving a dispute is comparatively faster than litigation.

## ■ **ADVISORY & ARBITRATION COMMITTEE:**

The Advisory & Arbitration Committee ("Committee") shall consist of a minimum number of ten and maximum number of fifteen members. The membership of the Committee shall include TRE Certificate Holders of the Exchange and Management staff of the Exchange. The KSE official dealing with complaints/disputes shall be the Secretary of the Committee.

## ■ **DISPUTE TO BE REFERRED TO ARBITRATION:**

Whenever any dispute arises between TRE Certificate Holders interse, or between any of the TRE Certificate Holders and their constituents/clients, or between any of the TRE Certificate Holders and their authorized agents or between authorized agent(s) and their constituents/clients in connection with the trade or transaction and is not otherwise settled amicably, it shall be referred to arbitration and shall be dealt with according to the procedure laid down in these Regulations.

## ■ **APPLICATION FOR ARBITRATION:**

Where a dispute cannot be settled amicably, it must be referred to arbitration. Any party to the dispute may initiate arbitration, in accordance with these Regulations by making an application in writing to the Committee. The applicant shall be required to furnish the following:

- i) Claim Form duly filled and signed by investor or TRE Certificate Holder, as the case may be, along with all supporting documents and annexure as mentioned in the Form.
- ii) In case applicant is not a TRE Certificate Holder of the Exchange, he shall give an undertaking to abide by all the Regulations of the Exchange in force for the arbitration, as well as the award of the Sole Arbitrator/Panel of Arbitrators appointed under the said Regulations.

## ■ **CONSTITUTION OF PANEL OF EXPERTS:**

A panel of ten non-TRE Certificate Holder arbitrators shall be constituted, comprising of advocates, professional accountants or other persons having knowledge or experience in the field of law, trade, commerce, industry,



arbitration, securities market or the fields ancillary to the stock market, i.e., Central Depository System, National Clearing and Settlement System, etc. in accordance with procedures laid down by the Exchange from time to time.

#### ■ **CONSTITUTION OF PANEL OF ARBITRATORS:**

A panel of Arbitrators shall consist of three arbitrators, out of which two shall be appointed by drawing lots, one from the committee and the other from the Panel of Experts. The third arbitrator shall be the Managing Director of the Exchange or his appointed nominee. Provided, however, the Panel of Arbitrators constituted shall necessarily comprise two non-TRE Certificate Holders.

The updated list of members of the Committee and Panel of Experts shall be displayed on the KSE website. The list shall also contain the details of the companies with which the experts have any association.

#### ■ **ARBITRATION PROCEDURE:**

a) **Scrutiny of application.** - An application received for arbitration shall be scrutinized by the relevant Department of the Exchange as specified in the procedures, designated for the purpose by the Committee to check whether it is complete in all respects and acceptable for arbitration.

b) **Rejection or Dismissal of application.** - Any application may be rejected or dismissed if:

i) The applicant refuses, neglects or fails to comply with the provisions of any Regulations, or

ii) The applicant refuses, neglects or fails to carry out any direction issued by the Management, Committee or the Board, or

iii) The application is not otherwise in order or in accordance with the Regulations of the Exchange or lacking the adequate documentary evidence, or

iv) The subject in the dispute has arisen from a non-Stock Exchange transaction or the transaction is otherwise illegal.

In case of rejection of any application, the Exchange shall, under intimation to the Commission, communicate the reasons for any such rejection to the applicant within fifteen days.

c) **Claims up to five hundred thousand rupees.** - Claims/disputes of up to five hundred thousand rupees shall be referred for arbitration to the Managing Director of the Exchange ("Sole Arbitrator"), who may either enter upon the reference himself or appoint a nominee on his behalf who shall not be below the level of Deputy General Manager.

d) **Claims of over five hundred thousand rupees.** - Claims of over five hundred thousand rupees shall be forwarded to the Panel of Arbitrators for its action. Such claims/disputes shall be referred to the Panel of Arbitrators



appointed under Regulation 29 for arbitration proceedings.

e) **Lots to be drawn.** - i) Lots shall be drawn from amongst the names of the members of the Committee and the Panel of Experts, whose names have not been drawn in the lots previously. If, however, the names of all these members have been drawn in the lot once, then the names of all the members shall be included for drawing subsequent lots. The drawing of lots would be conducted by the Chairman of Advisory and Arbitration Committee or any other member of the committee nominated by him.

The names of Arbitrators drawn by Chairman of Advisory and Arbitration Committee or any other member of the committee nominated by him will be communicated to the parties at the arbitration within three working days.

ii) In case of valid objection within seven working days by any party to the dispute for appointing any person as an arbitrator, re-drawing of lots shall be undertaken. The Chairman of the Committee or his nominee shall be the sole judge to decide the validity of any objection. A party to dispute failing to raise objection as mentioned above shall not be entitled to raise such objection subsequently in the proceedings.

Provided that lots shall be drawn within thirty days from the date of receipt of any application for arbitration which is to be referred to the sole arbitrator or Panel of Arbitrators.

f) **Presence of parties at the time of drawing and/or re-drawing.** - The parties to the dispute shall be given a notice of a minimum five working days, to remain present personally or through an authorized representative at the time of drawing and/or re-drawing lots before the Chairman of Advisory and Arbitration Committee or any other member of the committee nominated by him. Provided, that the drawing of lots shall take place at the given time and date even if the party or parties are not present despite of the notice and that the party or parties shall have no objection to drawing of such lots.

Parties to the dispute shall be provided with a list of members of the Committee and arbitrators on the Panel of Experts, along with the above notice of drawing and/or re-drawing lots.

g) **Member bound to act as arbitrator.** - The member of the Committee whose name has been drawn in the lot shall be bound to act as an arbitrator till the announcement of award notwithstanding the lapse of term of the Committee of which he/she was a member.

h) **Fresh arbitrator.** - In case if one or more arbitrators refuse, neglect or fail to consider the dispute or give an award, fresh arbitrator from the Committee or the Panel of Experts, as the case may be, shall be appointed by the Chairman of Advisory and Arbitration Committee or any other member of the Committee nominated by him. However, the arbitrator(s) who refuse, neglect or fail to consider the dispute or give an award shall communicate reasons thereof to the Committee, in writing, within ten days of referral of the dispute to him/her/them.

Upon receipt of information of non-availability of any such arbitrator, the Exchange shall immediately inform the complainant of the new panel members. The Exchange while intimating name of any alternate arbitrator(s) to both parties to a dispute may also reconfirm or reschedule the earlier date of hearing or arrange for any re-hearing held



earlier by the previous Panel of Arbitrators to be reheard, in line with Clause 30(e)(i).

- i) **Hearing Notice.** - The Secretary of the Committee shall give both parties to the dispute not less than seven days' notice from the date of receipt of such notice regarding the date, time and the place appointed for Arbitration.
- j) **Both parties present.** - If both parties to the dispute are present at the appointed date, time and place, the Sole Arbitrator/Panel of Arbitrators shall proceed to hear the reference and to give the award.
- k) **Ex-Parte decision on the summary disposal.** - If the party against whom complaint is made has not been able to make himself present or shows his inability to attend the hearing at the appointed date, time and place for two consecutive times, the sole arbitrator/panel of arbitrators may hear and decide the dispute Ex Parte, and if the party making the complaint has shown his inability to attend or fails to make himself available for hearing at the appointed date, time and place for two consecutive times, the sole arbitrator/panel of arbitrators may dismiss the reference summarily.
- l) **Remedies at law.** - The Sole Arbitrator/Panel of Arbitrators may decline to hear the dispute or may dismiss any case and refer the parties to avail their remedies through a Court of Law by recording reasons for the decline or dismissal.
- m) **Equal opportunity to both parties.** - The parties will be dealt with on an equal footing. Each of the parties will be given the opportunity at a session of the Sole Arbitrator/Panel of Arbitrators to present and explain their point of view verbally or in writing:
  - i) the defendant will be given an opportunity to respond to the point of representations of the claimant;
  - ii) the Sole Arbitrator/Panel of Arbitrators will not hear any party in the absence of the opposing party, unless the latter party has been given every reasonable opportunity to attend;
  - iii) arbitrators will not discuss cases with the parties to the proceedings or their counsel beyond the normal procedure.
  - iv) parties may appear at a session in person or through a representative ad litem, to present and explain their respective claim or to defend verbally or, with the permission of the Sole Arbitrator/Panel of Arbitrators, in writing.
- n) **Decision by majority in cases referred to Panel of Arbitrators.** - All claims/disputes referred to the Panel of Arbitrators shall be decided by majority and such decision shall be deemed to be the award in the arbitration.
- o) **Time for disposal of application.** - An application received under Regulation 27 and found acceptable after scrutiny under clause 30(a) shall be disposed-off within ninety days of its receipt including the award of Sole Arbitrator/Panel of Arbitrators. However, if the application is not disposed-off within the prescribed time due to unavoidable circumstances or reasons beyond control, the specific reasons for the delay shall be communi-



cated in writing to both the parties to the dispute and the Commission. The time extension granted by the Chairman of the Committee shall be indicated in the communication, which shall not exceed thirty working days from the expiry date of the prescribed ninety days.

p) **Fee for making an application for arbitration.** - The fee for filing an application for arbitration will be submitted by the applicant as follows:

- 1) Rs. 2,000 for dispute having value up to Rs. 100,000
- 2) Rs. 4,000 for dispute having value more than Rs. 100,000 and up to Rs.300,000/-
- 3) Rs. 6,000 for dispute having value more than Rs. 300,000 and up to Rs.1,000,000/-
- 4) Rs. 10,000 for dispute having value more than Rs.1,000,000/-

Fifty percent (50%) of initial deposited fee will be refunded to the applicant if Award is announced in his favor."

q) **Entitlement of corporate benefits issued during the dispute.** - The Award would include provision for any corporate benefits (right shares, dividends, bonuses) issued during the pendency of dispute for the securities for which the application for arbitration has been made. The disputed period would be up to the date on which an award is honored.

r) **Time period for retaining arbitration record.** - Record of proceedings of all meetings, hearings and the evidences on the basis of which the awards are announced shall be retained for at least five years.

s) **Time period to abide by arbitration.** - The arbitration award shall be executed within maximum of 15 days of its announcement by the Sole Arbitrator/Panel of Arbitrators."

#### ■ **LATE CLAIMS BARRED:**

The Sole Arbitrator/Panel of Arbitrators shall not take cognizance of any claim or dispute which is not referred to him/them within one year from the date it arose.

#### ■ **APPEAL TO THE APPELLATE BENCH:**

a) A party to a dispute that is dissatisfied with any award of the Sole Arbitrator or Panel of Arbitrators may appeal to the Appellate Bench against such an award within fifteen working days of receipt of the award. The Committee may constitute one or more Appellate Benches for hearing appeals.

b) The Appellate Bench shall consist of three Arbitrators out of which two shall be appointed by drawing lots, one each from the Committee and the Panel of Experts. The third Arbitrator shall be the Managing Director or his appointed nominee. The arbitrator from the Committee once appointed shall act as an arbitrator till the decision in the appeal notwithstanding the lapse of term of the Committee. Provided, however, that the Appellate Bench so constituted shall necessarily comprise two non-TRE Certificate Holder and none of the arbitrators



who have heard the reference or passed the award shall be a member of the Appellate Bench hearing an appeal against that award.

c) A party appealing to the Appellate Bench shall state in writing the objections to the award of the Sole Arbitrator/Panel of Arbitrators and shall pay a fee of two thousand five hundred rupees being institution fee through cheque in favor of the Exchange in its designated bank account. Further, if the Appellant is a TRE Certificate Holder of the Exchange, he shall deposit the full amount of award and deliver the securities or the value thereof at the ruling market price of the securities with the Exchange. If the Appellant fails in his appeal, he shall satisfy the award within seven days of its announcement. In case of his failure to do so, the Exchange shall have the authority to pay the amount of the award and securities to the Respondent on the Appellant's behalf. However, the Appellant shall still be liable to pay the balance securities/amounts, if any, payable under the award in appeal. An Appeal shall not be entertained if the required fee/award money or securities, if any, is not deposited with the Exchange.

d) The award of the Appellate Bench shall be announced within forty five days of the receipt of the appeal. However, in case the Appellate Bench is unable to announce the award within the forty five day period due to unavoidable circumstances or reasons beyond control, the Appellate Bench will seek further time from the Chairman of the Committee, by indicating specific reasons for its inability to announce the award and the Chairman of the Committee may extend the time but not more than thirty days. However, such extension of time should be forthwith intimated to the Commission.

e) The award of the Appellate Bench shall be final and shall be deemed binding on the parties to the dispute and upon their constituents.

The above award shall be honored within 15 days of its announcement.

■ **MEMBERS INVOLVED NOT TO HEAR THE CASE/APPEAL:**

A member of the Committee shall not be appointed as a Member of the Panel of Arbitrators or Appellate Bench, as the case may be, in a dispute in which he is a party and/or has association with either party, whatsoever.

■ **ADJOURNED MEETINGS:**

a) There shall be no objection to an award of the Sole Arbitrator/Panel of Arbitrators or the Appellate Bench that the meeting at which a dispute was enquired into or an appeal was heard was adjourned or that the enquiry was not completed or that the appeal was not finally heard at one meeting. Provided the reasons for adjournment, non-completion and non-hearing of appeal are recorded.

b) There shall be no objection to an award of the Panel of Arbitrators or the Appellate Bench regarding any change(s) in the composition of the Panel of Arbitrators or the Appellate Bench during the enquiry or appeal. Provided, however, that on re-composition of the Panel of Arbitrators or the Appellate Bench, fresh hearing of



the reference/appeal shall take place.

c) Three Members of the Panel of Arbitrators or the Appellate Bench shall be necessary to constitute a quorum for the purpose of the enquiry or appeal.

d) In case the members of the Panel of Arbitrators or the Appellate Bench fail to reach a unanimous decision, the decision of the majority will prevail.

■ **SUMMARY DISMISSAL AND EX-PARTE DECISION:**

If any party to a dispute who has appealed against any award to the Appellate Bench is not present at the time fixed for hearing the appeal or any adjournment thereof, the Appellate Bench, may dismiss the appeal summarily. However, in case the appellant is present but the respondent is absent, the Appellate Bench may proceed with the appeal ex-parte.

■ **SETTING ASIDE EX-PARTE AWARD:**

The Committee may, on sufficient cause, including non-receipt of notice/absence of party from the city/country, being shown by a party within thirty days of receipt of the ex-parte award, set aside the award made by the Sole Arbitrator/Panel of Arbitrators or the Appellate Bench and direct the reference or the appeal to be re-heard.

■ **EXTENSION OF TIME:**

The Committee may for special reasons extend the time for which a reference for Arbitration or an appeal against any award of the Sole Arbitrator or the Panel of Arbitrators may be made whether or not the time for making the same has expired.

■ **PLACEMENT OF NAME OF DELINQUENT CLIENT/CONSTITUENT OF A TRE CERTIFICATE HOLDER ON DATABASE DEVELOPED AND MAINTAINED BY THE EXCHANGE:**

In case an application is filed for arbitration by a TRE Certificate Holder against his client and the Award goes in favor of the TRE Certificate Holder, the client shall be liable to pay an amount (debit/margin) to the TRE Certificate Holder and the same would be explicitly mentioned in the Award.

The name and other relevant particulars of a client/constituent of a TRE Certificate Holder against whom:

(a) An award of the Sole Arbitrator/Panel of Arbitrators has been passed and the maximum time to file an appeal against the award has elapsed; or

(b) In case such client/constituent of a TRE Certificate Holder files an appeal in accordance with these Regulations and the Appellate Bench has also decided against such client/constituent of a TRE Certificate Holder; and

(c) In both cases the client/constituent of a TRE Certificate Holder fails or refuses to abide by or carry out such award/decision;





his name shall be placed on the Exchange's database accessible by TRE Certificate Holders of the Exchange by following a procedure. Placement of name of such client/constituent of a TRE Certificate Holder shall be without prejudice to the right of the concerned TRE Certificate Holder to apply to the court of competent jurisdiction for making the award a rule of the court and enforce the same through a decree of the court.

■ **ADMINISTRATION OF OATHS TO THE PARTIES TO THE DISPUTE:**

The arbitrator shall administer oath to the parties and witnesses before examining them.

■ **UNDERTAKING TO BE SIGNED BY TRE CERTIFICATE HOLDER AND COMPLAINANT APPEARING BEFORE AN ARBITRATOR/PANEL OF ARBITRATORS:**

Both the parties appearing before an arbitration panel shall be required to sign the following undertaking:

i. I will say the truth, nothing but the truth and will not try to mislead the Arbitrator(s).

ii. I will provide all information asked by the Arbitrator(s) within such time as may be specified by the arbitrator and in case of failure the Arbitrator(s) may decide the case on available facts.

iii. I hereby declare that I shall abide by the award of Sole Arbitrator / Panel of Arbitrators/Appellate Bench, as the case may be.

■ **LIABILITIES OF PAST TRE CERTIFICATE HOLDERS:**

A TRE Certificate Holder who shall for any reason have ceased to be a TRE Certificate Holder of the Exchange shall nevertheless remain liable for and shall pay to the Exchange all monies which at the time of his ceasing to be a TRE Certificate Holder shall have been due by him to the Exchange.

■ **FAILURE TO PAY DUES:**

a) If a TRE Certificate Holder fails to pay his annual subscription or any other money which may be due by him to the Exchange within a period of two months after the same have been become due the Chief Regulatory Officer of the Exchange may by notice in writing request payment of the same. The notice shall appoint the day and place for payment.

■ **SUSPENSION:**

b) If the requisitions of such notice be not complied with, the Board may by a notice on the notice board of the Exchange, suspend the TRE Certificate of such TRE Certificate Holder until he shall have paid his dues and such TRE Certificate Holder shall remain suspended and debarred from exercising any of the rights and privilege of a TRE Certificate until by a further notice upon the notice board of the Exchange the suspension shall have been revoked.

■ **FURTHER NOTICE:**

c) If such TRE Certificate Holder shall not within two months of his suspension pay his dues, the Board shall



direct a further notice to be served upon him requesting him to pay his dues within one month of the service at the time and place therein prescribed.

■ **CANCELLATION/FORFEITURE:**

d) If the requisition in such further notice are not complied with the Board may by a Resolution passed by a majority of three-fourths of the members of the said Board present at the meeting issue directions for cancellation/forfeiture of the TRE Certificate of such TRE Certificate Holder. Notice of such Resolution shall be posted forthwith on the Notice Board of the Exchange.

Provided that in case where a TRE Certificate Holder has a subsisting right to transfer its TRE Certificate and such TRE Certificate is a component of the Base Minimum Capital maintained by such TRE Certificate Holder under the Regulations Governing Risk Management such TRE Certificate will not be cancelled and instead shall be forfeited and transferred by the Exchange and proceeds shall be utilized under these Regulations. However, all the provisions of these regulations applicable consequent upon cancellation of TRE Certificate shall remain so applicable on the TRE Certificate holder considering as if its TRE Certificate has been cancelled.

■ **RE-ADMISSION:**

e) The said Board may on an application of a TRE Certificate Holder whose TRE Certificate has been cancelled/forfeited under the provisions of these Regulations within one year of such cancellation/forfeiture and on cause being shown to the satisfaction of the said Board rescind its Resolution by a like majority, provided all dues of such TRE Certificate Holder to the Exchange up-to date are fully paid up.

Provided that in case the TRE Certificate has been forfeited, the Board may rescind its resolution only if the TRE Certificate has not yet been disposed-off.