

# CLIENT COMPLAINTS AND ARBITRATION PROCEDURE

The receipt of complaints enables KSE to identify trading violations, which could impact investor confidence or affect fairness in the stock market. Using complaint information KSE can identify the weak areas in relevant regulations or in their compliance and make necessary arrangements for fixing the same.

## 1. How does the client know if they have a case against a Stock Exchange Member?

Losing money through dealing in securities is not in itself reason enough for a client to have a case against a Member. However, it is the responsibility of the Member to invest money according to the client's instructions. There are certain malpractices against which a client can lodge a complaint such as:

- Unauthorized Trading (Sale/Purchase)
- Unauthorized Transfer / Movement of Shares
- Non-supply of Statements of Account
- Non-supply of Trade Confirmations within 24 hours
- Overcharged Commission
- Failure to Execute Investor's Instructions/orders
- Suspension of Payment
- Non-Delivery of Securities

## 2. What are the different streams through which a problem with a Stock Exchange Member can be settled?

There are three possible recourses for the client in regards to filing a complaint but prior to this it is strongly suggested that the complaint be taken up directly with the Member. This will not only save time but may help to preserve the trust and confidence between member and client.

- **KSE Arbitration Committee:** The client has the option of bringing their complaint to the management of the KSE. As a front line regulator KSE is empowered to take cognizance of complaints against the Members under the approved Rules and Regulations. After the careful review of all documents provided by the parties an Arbitration Award may be passed in accordance to the Rules and Regulations.
- **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 Member for compensation/damages.
- **Civil Court:** The client can also file their complaint with the Civil Courts.

## 3. What is Arbitration? Who are the persons who can act as Arbitrators?

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

The arbitrators are Members and management of the Exchange and Non-member directors of the Exchange. For further details please refer to Regulation 29 of the General Rules & Regulations of the KSE (Guarantee) Limited.

## 4. Who can avail the facility of Arbitration on the Exchange?

The facility of arbitration on the Exchange can be availed by:

- a. Investors who have dealt on the Exchange through their Members dealing in Securities
- b. Investors who have dealt on the Exchange through registered agents of the Member dealing in securities
- c. Trading Members who have a claim, dispute or difference with another trading Member or a constituent

## 5. What is the period for filing an application for Arbitration in the event of a claim, difference or dispute?

An application for arbitration has to be filed within 3 months from the date of the dispute. For further details please refer to

## 6. What is the Process for filing an application for Arbitration with KSE?

The procedure for arbitration is as follows:

- The client can file an application for Arbitration with the KSE.
- Copies of the following documents may be submitted along with the application to support the claim:
  - a. Copy of NIC (in case of companies NIC of the authorized representative)
  - b. Account opening form of the complainant
  - c. CDC sub-account opening form/Individual investor account
  - d. Relevant Share Deposit receipts.
  - e. Relevant Trade confirmations slips/sale-purchase bills
  - f. Relevant cash receipts and payments made
  - g. Relevant CDC reports and statements
  - h. Any other document signed by the complainant or Member during the course of business.
  - i. An undertaking to abide by the rules and regulations of the Exchange.
- The Exchange then appoints the arbitrator(s). The claims up to 0.5 million are referred for arbitration to the Managing Director of the Exchange who will either himself enter upon the reference or appoint a nominee for this purpose and the claims/disputes above 0.5 million are referred to the Advisory & Arbitration Committee for their resolution/decision.
- The Arbitrator conveys the date of hearing to the parties and grants hearing in this respect to provide the parties an opportunity of presenting their case. After hearing both sides the Arbitrator passes an Award accordingly.
- According to KSE General Rules and Regulations any party to a dispute dissatisfied with any award of the Managing Director/his appointed nominee may file an appeal to the Advisory and Arbitration Committee against such award within seven days of receipt of such award and any party to dispute dissatisfied with the award of the Panel of Arbitrators may appeal to the Board against such award within seven days of the receipt of such award.

## **Chapter 18: INVESTORS' CLAIMS, BROKERS' DISPUTES AND ARBITRATION REGULATIONS**

### **18.1. PERMANENT ARBITRATION PANEL:**

18.1.1. RAC shall form a permanent Arbitration Panel (referred to as "Panel" in this chapter) which shall consist of a minimum number of twenty members. The membership of the Panel shall include TRE Certificate Holders, senior management staff of the Exchange and industry experts. Provided TRE Certificate Holders should not be more than five and industry experts should not be less than ten. Provided further that the industry experts shall include 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., CDS, NCSS, etc. in accordance with procedures laid down by the Exchange from time to time and subject to concurrence from the Commission.

The list of members of the Panel shall be displayed on the Exchange's website and updated on quarterly basis. The list shall also contain the details of the companies with which all members of the Panel have any association.

18.1.2. From the Panel, following will be the constitution of Arbitrators for arbitrations for the resolution of the disputes in accordance with their categorization mentioned below:

#### **Sub-Panel:**

From the Panel, a Sub Panel of Arbitrators shall consist of three members, out of which one shall be the TRE Certificate Holder, one industry expert and one senior member of PSX management as nominated by CRO in consultation with the Managing Director- PSX. The Chairman of the Panel will always be the industry expert. The TRE Certificate Holder and industry expert shall be selected by drawing lots.

#### **Sole Arbitrator:**

From the Panel, CRO in consultation with the Chairman or any other member of RAC shall appoint an industry expert as a Sole Arbitrator excluding TRE Certificate Holders on case to case basis.

18.1.3. The CRO shall also nominate any official(s) of the Exchange as the secretary(ies) of the Sub-Panel(s) who shall deal with complaints and Investors' and Brokers' disputes.

### **18.2. DISPUTES TO BE REFERRED TO ARBITRATION:**

Whenever any dispute arises between Brokers inter se, or between any of the Brokers and their clients, or between any of the Brokers and their Authorized Agents or between Authorized Agent(s) and their clients in connection with any 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 this chapter.

### **18.3. 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 CRO. The applicant shall be required to furnish the following:

(a) Claim Form duly filled and signed by Investor or Broker or the Authorized Agent(s), as the case may be, along with all supporting documents and annexure as mentioned in the Form.

(b) In case applicant is not a Broker of the Exchange, he shall give an undertaking to abide by all these Regulations in force for the arbitration, as well as the award of the Sole Arbitrator/Panel of Arbitrators appointed under this chapter of these Regulations.

### **18.4. ARBITRATION PROCEDURE:**

#### **18.4.1. SCRUTINY OF APPLICATION:**

An application received for arbitration shall be scrutinized in the manner prescribed in the procedures by any official(s) of the RAD designated by the CRO to check whether it is complete in all respects and acceptable for arbitration.

#### **18.4.2. REJECTION OR DISMISSAL OF APPLICATION:**

Any application may be rejected or dismissed, if:

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

(b) The applicant refuses, neglects or fails to carry out any direction issued by the CRO, RAC or the Board; or

(c) The application is not otherwise in order or in accordance with these Regulations or lacking the adequate documentary evidence after providing reasonable time for submission of requisite documents; or

(d) The subject matter in the dispute has arisen from a transaction not carried out through the Trading Systems/facilitation of the Exchange or not reported through the interface provided by the Exchange or the transaction is otherwise illegal or private deals between two Brokers.

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 15 days of receipt of application.

**18.4.3. CLAIMS/DISPUTES UP TO FIVE HUNDRED THOUSAND RUPEES:**

Claims/disputes of up to five hundred thousand rupees shall be referred for arbitration to the Sole Arbitrator, who may hear and decide the matter.

**18.4.4. CLAIMS OF OVER FIVE HUNDRED THOUSAND RUPEES:**

Claims of over five hundred thousand rupees shall be forwarded to the Sub-Panel for its action.

**18.4.5. LOTS TO BE DRAWN:**

(a) The drawing of lots shall be conducted by the Chairman of RAC or any other member of the RAC nominated by him. The names so selected shall be communicated to the parties to the arbitration within three working days from the appointment.

(b) In case any valid objection is raised within seven working days by any party to the dispute against appointing any person as an Arbitrator, CRO in consultation with Chairman of RAC may appoint via fresh balloting any person from the Panel as new member of Sub-Panel or appoint Sole Arbitrator in consultation with the Chairman of RAC as the case may be. Provided that such objection on any member of the Sub-Panel/Sole Arbitrator shall be entertained only once.

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 Sub Panel.

(c) **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 the RAC or any other member of the RAC 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 Panel along with the above notice of drawing and/or re-drawing lots.

(d) 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.

**18.4.6. MEMBER OF THE PANEL BOUND TO ACT AS AN ARBITRATOR:**

A member of the Panel whose name has been finalized by the CRO in consultation with Chairman or any other member of the RAC shall be bound to act as an Arbitrator till the announcement of award.

**18.4.7. 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 Panel shall be appointed by the CRO or any other person nominated by him. However, the Arbitrator(s) who refused, neglected or failed to consider the dispute or give an award shall communicate reasons thereof to the Panel, in writing, within ten days of referral of the dispute to him/them.

Upon receipt of information of non-availability of any such Arbitrator, the Exchange shall immediately inform the complainant of the new Arbitrator(s). 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 Arbitrators to be reheard;

(a) **Hearing Notice:** The secretary of the Sub Panel shall give both parties to the dispute not less than seven days' notice from the date of receipt of such notice by the parties regarding the date, time and the place appointed for Arbitration.

(b) **Both parties present:** If both parties to the dispute are present at the appointed date, time and place, the Sole Arbitrator/Sub Panel shall proceed to hear the matter and to give the award.

(c) **Ex Parte decision on the summary disposal:** If the defendant is not present or shows his inability to attend the hearing at the appointed date, time and place for two consecutive times, the Sole Arbitrator/ Sub Panel 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/Sub Panel may dismiss the complaint summarily.

(d) **Remedies at law:** The Sole Arbitrator/ Sub Panel 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.

(e) **Equal opportunity to both parties:** The parties shall be dealt with on an equal footing. Each of the parties shall be given an equal opportunity to present before the Sole Arbitrator/Sub Panel and explain its point of view verbally or in writing:

(i) the claimant will be given an opportunity to argue his case first;

(ii) the defendant will be given an opportunity to respond to the point of representations of the claimant;

(iii) the claimant will be given an opportunity to respond to the arguments of the defendant after defendant has finished his argument;

(iv) the Sole Arbitrator/ Sub Panel will not hear any party in the absence of the opposing party, unless the latter party has been given every reasonable opportunity to attend and it has failed to attend;

(v) the Sole Arbitrator/ Sub Panel will not discuss the case with the parties to the proceedings beyond the normal procedure;

(vi) the parties may appear at a session in person or through a representative to present and explain their respective claim or to defend verbally or, with the permission of the Sole Arbitrator/ Sub Panel, in writing.

(f) **Decision by majority in cases referred to Arbitrators:** All claims/disputes referred to the Sub Panel shall be decided by majority and such decision shall be deemed to be the award ('Award') in the arbitration.

(g) **Time for disposal of application:** An application received under above provision of this chapter and found acceptable after scrutiny shall be disposed-off within ninety days of its receipt including the award of Sole Arbitrator/ Sub Panel. 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 communicated in writing to both the parties to the dispute and the Commission. The time extension granted by the CRO or anyone nominated by CRO shall be indicated in the communication, which shall not exceed thirty working days from the expiry date of the prescribed ninety (90) days.

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

(i) Rs.2,000/- for dispute having value up to Rs.100,000/-

(ii) Rs.4,000/- for dispute having value more than Rs.100,000/- and up to Rs.300,000/-

(iii) Rs.6,000/- for dispute having value more than Rs.300,000/- and up to Rs.1,000,000/-

(iv) 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.

(i) **Entitlement of corporate benefits issued during the dispute:** The Award would include provision for any corporate benefits (right shares, dividends and 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.

(j) **Time period for retaining arbitration record:** Record of proceedings of all meetings, hearings and the evidences on the basis of which the Award was announced shall be retained for at least ten years.

(k) **Time period to comply with the Award:** The parties to the dispute shall implement/comply with the Award within fifteen days of announcement by the Sole Arbitrator/ Sub Panel.

#### **18.5. LATE CLAIMS BARRED:**

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

Provided that a claim may be admitted after the lapse of three years but not more than 10 years if the investor is able to demonstrate that the delay was due to reasons beyond his control.

#### **18.6. APPEAL TO RAC:**

18.6.1. A party to a dispute that is dissatisfied with any award of the Sole Arbitrator or the Sub Panels, as the case may be, may appeal to the RAC against such an Award within fifteen working days of receipt of the Award.

RAC may constitute one or more sub panels (hereinafter referred as "Appellate Panel") consisting of five members for hearing appeals against Awards of the Sole Arbitrator/Sub Panel. RAC may appoint any member of the Arbitration

Panel in the said Appellate Panel provided he has not been the Arbitrator of the Award against which appeal has been filed with the RAC. Provided further that Appellate Panel shall not include a TRE Certificate Holder.

18.6.2. A party appealing to the Appellate Panel shall state in writing the point wise objections to the Award of the Sole Arbitrator/ Sub Panel 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 Broker, 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 specially with respect to corporate benefits missed upto the date of order.

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

18.6.4. The decision of the Appellate Panel shall be final and deemed binding on the parties to the dispute and upon their constituents.

The decision of the Appellate Panel shall be implemented /complied with by the parties in dispute within seven (07) days of its announcement.

#### **18.7. MEMBERS INVOLVED NOT TO HEAR THE CASE/APEAL:**

A member of the Sub Panel or the Appellate Panel, as the case maybe, shall not be appointed as an Arbitrator or a member of the Appellate Panel, as the case maybe, in a dispute in which he is a party and/or has association with either party, whatsoever. Before arbitration or hearing of appeal, the selected member will give a declaration in writing that he has no conflict of interest in dispute under discussion.

#### **18.8. MISCELLANEOUS:**

18.8.1. There shall be no objection to an Award of the Sole Arbitrator/ Sub Panel or the decision of the Appellate Panel on the ground that the hearing 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 that the Sole Arbitrator/ Sub Panel/ Appellate Panel as the case maybe, shall record reasons for every adjournment, non-completion and non-hearing of appeal.

18.8.2. There shall be no objection to an Award of the Arbitrators or the decision of the Appellate Panel on the ground of substitution of an Arbitrator or any member of the Appellate Panel during the enquiry or appeal. Provided that on any substitution of an Arbitrator or any member of the Appellate Panel, the matter shall be heard afresh by the Arbitrators or the Appellate Panel, as the case may be.

18.8.3. Three members of the Sub Panel of Arbitrators or the Appellate Panel shall be necessary to constitute a quorum for the purpose of the enquiry or appeal.

18.8.4. In case the Arbitrators or the Appellate Panel fail to reach a unanimous decision, the decision of the majority will prevail.

#### **18.9. SUMMARY DISMISSAL AND EX-PARTE DECISION:**

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

#### **18.10. SETTING ASIDE EX-PARTE AWARD:**

The RAC may, on sufficient cause being shown by any party against whom any ex-parte decision has been announced, set aside such decision and direct the reference or the appeal to be reheard. Sufficient cause for the purpose of this Regulation shall mean and include non-receipt of notice/absence of party from the city/country etc.

#### **18.11. EXTENSION OF TIME:**

The Sole Arbitrator/Sub Panel / Appellate Panel, as the case maybe, 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 Sub Panel may be made whether or not the time for making the same has expired.

**18.12. PLACEMENT OF NAME OF DELINQUENT CLIENTS ON THE EXCHANGE WEBSITE:**

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

In case:

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

(b) In case such client of a Broker had filed an appeal in accordance with these Regulations and the Appellate Panel dismissed such appeal; and

(c) In both cases the client of a Broker failed or refused to abide by or carry out such Award/decision; then the name and other particulars of that client of the Broker shall be placed on the website of the Exchange accessible to Broker by following a procedure. Placement of name of such delinquent client of a Broker on the web interface of the Exchange shall be without prejudice to the right of the Broker concerned 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.

Further, the UIN of such client will be black-listed and such person will not be allowed to trade for three years.

**18.13. ADMINISTRATION OF OATHS TO THE PARTIES TO THE DISPUTE:**

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

**18.14. UNDERTAKING BY BOTH PARTIES TO THE DISPUTE/CLAIM:**

Both the parties appearing before Sole Arbitrator/ Sub Panel/Appellate Panel shall be required to sign the following undertaking:

(a) I will say the truth, nothing but the truth and will not try to mislead the Sole Arbitrator/Sub Panel /Appellate Panel;

(b) I will provide all information asked by the Sole Arbitrator/Panel of Arbitrators/Appellate Panel within such time as may be specified by the Sole Arbitrator/Panel of Arbitrators/Appellate Panel and in case of failure the Sole Arbitrator/Panel of Arbitrators/Appellate Panel may decide the case on available facts;

(c) I hereby declare that I shall abide by the award of Sole Arbitrator / Panel of Arbitrators/Appellate Panel, as the case may be, within stipulated time.

**18.15. VERIFICATION OF INVESTORS' CLAIMS, INSPECTION OF BOOKS & RECORDS AND CONDUCTING OF ENQUIRY:**

The Exchange may verify genuineness of investors' claims against a Broker and may inspect books and records of any Broker and/or conduct enquiry into his dealings and business affairs and for this purpose may also appoint an auditor selected from the panel of auditors prescribed under the chapter 23 of these Regulations. The cost of audit shall be borne by the concerned Broker/TRE Certificate Holder.