

## 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 Com-plaint 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 interest, 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:

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.

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.

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

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.

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

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

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.

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.