

# DO YOU HAVE A PROBLEM WITH YOUR BROKER?

SIDREC provides free resolution services for capital markets disputes.

By Helena Hon

The Securities Industry Dispute Resolution Center (SIDREC) is an expert, independent and impartial alternative dispute resolution (ADR) body established by the Securities Commission Malaysia (SC) as part of its investor protection framework. It was established in 2010 under the Capital Markets and Services (Dispute Resolution) Regulations 2010 (Regulations) as an ADR centre to help resolve disputes related to capital market products or services, involving monetary claims made by individuals or sole proprietors against market intermediaries licensed to deal in securities, or derivatives, or Private Retirement Schemes (PRS) or to carry out fund management activities under the Capital Markets and Services Act 2007 (CMSA).

Today, in its eighth year of establishment, and with SIDREC having moved into the digital era handling a wider array of investment products, the one-stop independent dispute resolution centre has incrementally expanded its scope and purview to include claims against commercial banks, Islamic banks and specified development financial institutions (its first members were Capital Markets and Services licence holders).

Additionally, it has also increased the claims limit of its Mandatory Scheme to RM250,000 (instead of the former amount of RM100,000) as well as introduce a new service under the Voluntary Scheme for disputes relating to claims exceeding RM250,000. SIDREC also now offers mediation for court-referred cases.

The new services under the Voluntary Scheme requires both parties to a dispute to agree to use SIDREC's alternative dispute resolution (ADR) services.

#### • MANDATORY SCHEME (FREE)

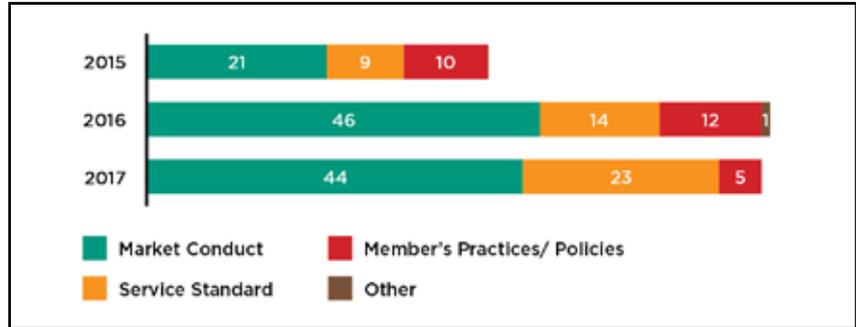
SIDREC's Mandatory Scheme obliges capital markets services providers to participate in SIDREC's ADR process, if an investor submits a claim to SIDREC, of up to RM250,000 and under. The mandatory scheme continues to be a key part of SIDREC's services and will remain a priority for SIDREC in ensuring that the smaller investor always has access to redress.

#### • VOLUNTARY SCHEME

There are two routes:  
(i) Route for claims exceeding RM250,000, where both parties agree



### Nature of Disputes Received, 2015 to 2017



Notes: Certain disputes involved more than one nature, hence the number of disputes received based on nature may not correspond with the total disputes received during the years.

91% (52 out of 57 eligible disputes) were resolved within the mandated timeline of 90 business days.

### Most Common Types of Claims Received

Market conduct continues to be the leading issue in 2017 (as it was in 2016), making up 61.1% (44 out of 72 eligible disputes) of total eligible disputes received in 2017.

Acceptance of cash for transactions was a continuing issue in 2017. Despite warnings to investors in prospectuses, application forms, and statements, not to pay cash to agents, many investors still give cash to agents of the intermediaries, thus there is still a need for focused awareness efforts by members and all stakeholders to educate the general public.

to seek SIDREC's help for mediation and/or adjudication; and

(ii) Route for court referred mediation, with no limit (minimum or maximum) on the claim amount, again where both parties agree to seek SIDREC's help.

SIDREC Chairman Dato' Ranita Mohd Hussein told the SIDREC 8th Annual General Meeting (AGM) held in April this year that "Under the voluntary scheme, both the claimant and member must agree to seek SIDREC's help; lawyers are permitted into the dispute resolution process, and both parties are charged a reasonable fee for the service."

### How Long Does It Take?

SIDREC resolves disputes promptly and as amicably as possible. Of the 57 disputes resolved in 2017,

## Nature of Disputes

The three main types of claims received by SIDREC, as well as examples of specific issues that fall under each category are:

#### Market Conduct (44 cases or 61.1% of eligible disputes) including

- Fraud/ defalcation/ misappropriation
- Sales practices (includes mis-selling, bad advice, product suitability, inadequate disclosures)
- Unauthorised transactions/ non-compliance with instructions

#### Service Standard (23 cases or 31.9% of eligible disputes)

- Delays/ errors/ glitches in online system
- Delays/ errors/ lapses in disclosure
- Other delays/ errors in process

#### Member's Practices/ Policies (5 cases or 6.9% of eligible disputes)

- Fees and charges
- Disclosure policy
- Product development and sales policy

# LENDING THEIR EAR, CALMING THE STORM

SIDREC's CEO Sujatha Sekhar Naik told *Smart Investor* that because all mediation happens in a confidential environment, the conversations during the process are often far more open and productive facilitating a successful resolution.

"Parties in any event always leave the table with an understanding of what caused the dispute and steps that could have been taken to avoid a repeat of the same."

OFTEN WHERE THERE IS A GENUINE DESIRE TO UNDERSTAND THE ISSUE AND RESOLVE THE DISPUTE ON THE PART OF THE MEMBER, THE CLIENT RESPONDS IN KIND.

**Smart Investor (SI): How does confidentiality in case management or mediation benefit the member?**

**Sujatha Sekhar Naik (SSN):**

Confidentiality is integral in ensuring the conversation between the investor client and the intermediary

is open and constructive. If either party believes the other is on a fishing expedition for information for use outside the process, the whole process will fail. It is an imperative component to facilitate a free and frank discussion by parties who genuinely want to resolve their dispute. This is also something many investors appreciate as they do not necessarily want their personal business shared with third parties.

Often where there is a genuine desire to understand the issue and resolve the dispute on the part of the member, the client responds in kind. This allows for a constructive dialogue and often a resolution that is acceptable to both sides. Investor clients often appreciate the positive approach of the member, even where they don't necessarily get what they claim. These clients are likely to continue to be clients as they know that in the event they have a dispute, the member will participate in the process with a genuine willingness to hear their concerns and work with them, with SIDREC's help, to find a resolution.

Even if they do not remain as clients, the process also builds



Sujatha Sekhar Naik

confidence in the investor in participating in the market, knowing that if there is an issue involving monetary loss, there is an independent and impartial avenue for them to seek help and the intermediary will participate.

**SI: SIDREC's Annual Report 2017 says that the number of cases**

**received by SIDREC in 2017 is still relatively low, and points to a lack of awareness being a cause. Why do you think this is so?**

**SSN:** The improvement in awareness thus far, is very much related to the focussed effort and resources we have been able to put to awareness efforts with the help of the Capital Market Development Fund (CMDf) funding coupled with the help of our members, the Securities Commission Malaysia (SC) and Bursa Malaysia as well other stakeholders. We have found our initiatives via the radio and now the digital sphere, with our Facebook page to be particularly effective.

But it is handicapped because we are limited in resources to allocate enough to awareness through these channels for the adequate length of time to ensure greater sustainability of the messaging. Our resources, human and fiscal, have to be spread across the different avenues including digital and print media and our on-ground efforts via participation in investor-related road shows, exhibitions or workshops. So,

PAYMENT BY CASH IS A HUGE ISSUE. IT FACILITATES FRAUD. IT PROVIDES NO PROOF OF PAYMENT AND PUTS PARTIES INTO A "HE SAID, SHE SAID" SITUATION.

we need our efforts to be supported by other stakeholders.

Apart from the regulators, market intermediaries ensuring their clients are aware of SIDREC as an avenue for help if they are not happy with an outcome of a complaint or dispute they have with them, is very important. In fact, market intermediaries are required to inform clients in any final

response they make to a complaint about their ability to seek help from SIDREC. But it would be great if information is also included through their other marketing channels. It is my belief that this would only contribute to investor confidence in participating in the market.

**SI: Apart from payment by cash being one of the commonest causes of disputes, what are some of the other issues brought up?**

**SSN:** Well, payment by cash is a huge issue. It facilitates fraud. It also often is accompanied by no proof of payment and puts parties into a "he said, she said" situation, which is difficult to resolve. We need to all work to raise awareness on the need for investors to be more conscious of how they pay for their investments. Never pay by cash or pay by any means to a third party or to your agent's or remisier's account, even if you have known them for many years and trust them. This is not about trust. This is about being prudent and careful with your money.

Other recurrent issues include:

- Not reading and understanding a document or form before signing: Investors just need to be willing to take the time to read through and understand what they are signing. I know it's tedious, but don't be lazy. It's your money, so treat the investment with the respect it deserves. Ask questions when you don't understand. You must know what investment product you are investing in and how it works.
- Pre-signing forms: Never pre-sign forms. You may be told or you may yourself feel it is for your own convenience, to enable the agent or representative to effect a transaction quickly for you. But by doing this you are consenting to a transaction made on your behalf.
- With the digital space in investing growing, it has become a natural part of the market ecosystem. It is providing greater access to the market but as an investor, you must still undertake your own risk management when embarking on a new mode of investing.
- Paper trail: Ensure you keep proper record of your investments and all instructions provided. If something is really important to you, ensure you confirm it in writing. We find this is often an important factor in investors not being able to substantiate their case.
- Connect directly and stay connected with the Principal – eg. fund management company, bank or broker.

For more information, go to [sidrec.com.my](http://sidrec.com.my) 