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# Settling issues quickly, impartially

**INDEPENDENT PLATFORM:** The alternative dispute resolution initiative has been proven reliable in protecting minority investors



operators and insurers. According to Bursa Malaysia data, retail investors accounted for 26 per cent of local share trades last year. One of Sidrec's founding directors, Datuk Saiful Bahri Zainuddin, said dispute resolution that took place outside the court system could provide an easier, faster and less expensive way for investors to resolve their disputes equitably.

"These ADR mechanisms can often adequately and fairly compensate investors for monetary losses incurred through misconduct without incurring any of the punitive costs associated with the court system," he told Business Times recently.

Saiful, who is also Affin Hwang Investment Bank Bhd managing director and a board member of

Bursa Malaysia, said: "The mindset of most retail investors is that only the big players are protected, which is not true, as Sidrec was established to give fair protection to smaller investors."

"The importance of investor redress and the role of Sidrec goes beyond the investors directly affected by misconduct or other wrongful action."

Redress does not merely satisfy an individual interest, but also advocates market discipline, which benefits other market participants.

The fact that it was available contributed to investor confidence, added Saiful.

Sidrec chief executive officer Sujatha Sekhar Naik said Sidrec was a collaboration of the regulator and industry to provide an avenue for the smaller investor to be assured of an independent and impartial platform to resolve disputes.

She stressed that disputes did not only mean issues of misconduct. Often, they may be a result of miscommunication, a systems error or a mistake on the part of either party. Sidrec brings the parties to the table and facilitates constructive discussions to see if there is a way to come to a mutually acceptable resolution.

Investors can be assured that the mediator and adjudicator will ensure the right questions are asked and the relevant information is available to both parties in the process. When an amicable resolution is not possible, Sidrec has expert and experienced adjudicators to review the matter,

hear the parties out and come to an informed decision.

"Most importantly, this decision is binding on the member, providing the investor with finality. The investor may still seek legal recourse elsewhere. But if they accept the decision, then there is finality for both the investor and the member," said Sujatha.

She said Sidrec's decision in an adjudication might be in favour of the investor or the member, depending on the facts.

If there is an award in favour of the member, it may be a full award of the claim or a partial award, due to contributory factors on the part of the investor.

It also benefits the market, providing its members valuable market intelligence of issues that may otherwise not come to light, or highlighting areas where there may be gaps in processes, conduct issues or need for review dueto, for example, the developments in the market and use of technology in delivering products or information to investors, etc.

Sujatha said the majority of small investors were unaware of the existence of Sidrec and that it offered to help resolve disputes between investors and capital market services providers.

As such, she said Sidrec would focus on creating awareness of its services, targeting the investing public through various means.

This will be done together with its members, the SC, Bursa Malaysia and other stakeholders, including Private Pension Administrator, Federation of Investment Managers Malaysia, Minority Shareholders Watchdog Group and the media.

"We have, over the last year, worked

with Bursa and a number of participating broking houses through investor workshops as well as continuing education programmes conducted by Bursa for the broking community. But we will need to ramp up our efforts," she said.

Saiful emphasised that the need for greater awareness was imperative for Sidrec to effectively fulfil its role, so that investors who needed help could get it.

"The capital market services providers would benefit, too, by the quick resolution of disputes with their clients and gaining valuable information to feed into their own supervisory functions."

Elaborating on Sidrec's role, Sujatha said the firm provided smaller investors with an avenue to air their grievances or concerns where they felt they had suffered a loss due to the conduct or actions of the capital market providers, such as fund managers, brokers and unit trust management companies.

This contributes to building investor confidence in the system.

"We are a small but important cog in the investor protection framework. Knowing that when you invest, if something goes wrong and you feel the loss suffered was due to some act or omission on the part of your capital market services provider, there is a tremendous reassurance in that there is a place to go to for help that is not just free but independent and impartial, with the necessary capital market knowledge and expertise to give

you a fair hearing," she said.

Sidrec was established under the Capital Markets and Services Act (Dispute Resolution) Regulation 2010. It is a corporation limited by guarantee, with capital market licence holders dealing in securities, derivatives and fund managements being its registered members.

Sujatha said investors who were unable to resolve a dispute involving monetary loss from transactions related to capital market products or services offered by authorised capital market services providers, had the right to use Sidrec's services, provided they met the eligibility criteria.

There are some claims that would be excluded, including those above the claim limit or do not relate to a capital market product or service, or are against Sidrec's members, or are already the subject of court proceedings.

Claims related to market performance are also not eligible unless

they are related to misrepresentation or disclosure or sales practice issue.

"It is not eligible if the investment is a scam or a Ponzi scheme, an interest scheme that does not involve a capital market service or product and is unrelated to a

member of Sidrec," added Sujatha.

She said eligible cases were those involving a capital market product or service against a member of Sidrec with a monetary claim of up to RM100,000.

Those who have suffered a larger monetary loss can opt to reduce their claim if they want to be eligible for Sidrec's services.

Investors must have also previously brought their cases to the capital market intermediary before approaching Sidrec.

"A complainant could come to Sidrec

if a dispute has not been resolved to his satisfaction or has not been given a final reply by the capital market provider in regard to his claim within 90 days of receiving it," said Sujatha.

"If the complainant is not satisfied, he could file the dispute with Sidrec within 180 days of receiving the intermediary's final decision."

Sujatha said first, there would be a preliminary review to ascertain the eligibility of the case.

When a case has been verified, a confidential mediation process will begin, during which information, views and documentation are obtained from both parties.

"Lawyers are not allowed, although the capital market intermediary may bring its in-house counsel. Investors should provide all documents that substantiate their claims. "Of course there will be 'she says, he says' situations, but we will guide the parties in these situations and they may be surprised at how much documentation they actually have."

For complainants who are overseas or outside the Klang Valley, the mediation process could be done via email or any online telecommunication application that offers video calls,

such as Skype, subject to the route deemed secure by Sidrec.

If the case cannot be settled, it moves to adjudication, whereby a decision will be made by a panel of independent external capital market experts appointed by Sidrec.

As a specialised body with expertise and knowledge on how the capital market and its players function, Sujatha is confident that the decision made will be fair, impartial and informed.

It might involve a full or partial award of the monetary sum claimed, or the claim might be dismissed, she said.

"One party may be unhappy with the decision, but both sides will know the rationale behind the finding and walk away more informed."

Sidrec has been funded by SC since its inception but will be funded in the future by its members, the capital market.

Sujatha said the non-profit body is cognisant of the challenges of costs to business faced by members, and would work closely with SC to arrive at an equitable funding structure.

She highlighted that worldwide, the operation of an industry dispute resolution body was financed either wholly or substantially by its members. As such, she said the principle of industry contributing to the funding of Sidrec was in line with international practice.

Meanwhile, Saiful said one of Sidrec's immediate priorities was to educate the investing public on its functions and how it could help investors.

"The decision and award granted by Sidrec is binding on the capital market licence holder. However, the claimant is free to pursue his claim in court if he is dissatisfied with the mediator's decision."

"For the capital market intermediary, it is an opportunity to better manage its risks and identify gaps in its services or products. Investors also learn about their roles and responsibilities."



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Sidrec founding director

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## HOW SIDREC WORKS

