

Focus Malaysia
April 22-28, 2017

In pursuit of alternative dispute resolution

Sidrec sees high potential for out-of-court settlement to resolve disputes between retail investors and financial market intermediaries



by Cheah Chor Sui

THE Securities Industry Dispute Resolution Centre (Sidrec) encourages alternative dispute resolution (ADR) as an avenue to resolve monetary disputes between investors

and its members who are made up of banks, brokers, fund/unit trust management companies as well as providers and distributors of private retirement schemes.

The informality of such dispute avenue - as opposed to courts - makes the former a more comfortable and less intimidating venue for most people, while the confidentiality of the process encourages more open and constructive discussions.

"ADR can also be much less time-consuming and cost-effective," Sidrec chairman Datuk Ranita Mohd Hussein tells *FocusM*. "Indeed, investors with claims of up to RM250,000 pay nothing to use Sidrec's services."

In fact, Sidrec does not lack the required expertise to settle claims. Its case managers, mediators and adjudicators are adequately-trained professionals who possess a strong knowledge and understanding of the regulatory and market framework as well as a practical understanding of market processes and products.

This results in both informed questions and informed assessment of the case. Being subject to regulations under the Capital Markets and Services Act 2007, Sidrec's governance processes reflect independence and impartiality.

"Our focus is entirely based on the case at hand, the facts, evidence and conduct of the parties, as well as the applicable laws and best practices," Ranita points out. "The overarching principle that guides us is always what is fair and reasonable in all the circumstances of the case," says Ranita who was a former Judicial Commissioner in the High Court.

Extending outreach

As for Sidrec's members who are market intermediaries, every case settled through the ADR channel not only prevents adverse publicity, but their quick settlement ensures business continuity.

"Cases settled through case management and mediation have also seen continuation of business relationship between company and client," asserts Ranita.

While Sidrec's key priority remains to ensure that the smaller investor always



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has access to redress through its services, Sidrec feels that this should not prevent it from making available its expert service to a wider market.

As such, its terms of reference were amended to include two components to its service - namely the mandatory component and the voluntary component - with the differentiator being the claim amount. The mandatory component relates to claims of up to RM250,000, while the voluntary component deals with claims of above RM250,000.

Overcoming challenges

The mandatory component in Sidrec's terms of reference obliges its members to participate in the ADR process if an investor submits an eligible claim for up to RM250,000. Should a claimant be not happy with Sidrec's adjudication award, he may reject the award and pursue other remedies outside Sidrec.

But should the claimant accept the award, it is final and binding on the member. This service is free of charge to the investor.

In the voluntary component, Sidrec's expert services for mediation and adjudication are made available to claims above RM250,000 on the basis that both parties agree to submit themselves to the process. In this case, both parties are required to pay for the service.

Ranita deems recognising the benefit of mediation and perception of investor or member bias as two key challenges

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Protection assured for clients

IN 2013, two individual investors with financial claims against PM Securities Sdn Bhd submitted their claims under the Securities Industry Dispute Resolution Centre's (Sidrec) alternative dispute resolution (ADR) process. In both cases, mediation failed, and the matters proceeded to adjudication. One claimant was given an award for the full claim while the other was awarded part of the claim.

PM Securities challenged both awards via judicial review (JR) applications in the High Court, arguing that it was not responsible for the losses caused by its representative's misconduct, and questioned Sidrec's due process.

As the challenge on the "principal-agent" relationship impacted the capital market framework and investor protection, the Securities Commission (SC) Malaysia applied to the High Court to intervene in the JR proceedings in order to highlight the importance of the agency relationship between the stockbroking company and its representative in the context of the capital market.

In the JR proceedings on Aug 17, 2015, the High Court held that Sidrec had followed due process in the mediation and adjudication of the matters, and had also correctly applied the "principal-agent" relationship in the two cases, thus holding PM Securities liable for losses caused by the misconduct of its remisier, Yew Ting Hong, as their agent.

Judge Datuk Asmabi Mohamad said that the language in the clauses of the Standard Remisiers' Agreement (SRA) as a whole, unambiguously and unequivocally evidenced the fact that the SRA

creates an agency relationship between Yew and PM Securities.

Asmabi also emphasised that "this agency relationship is essential to the SC's role as the regulator in the capital markets and services industry with the ultimate aim to protect the investing public for losses arising from defalcated trades by the remisiers.

Otherwise, the client of the stockbroking company will never be assured of recovering compensation for losses suffered due to defalcation trades by the remisier".

On the issue of Sidrec's compliance with due process, Asmabi stated that the adjudicator "had assiduously followed the steps stipulated" by Sidrec's terms of reference and "adopted a fair handling of the dispute resolution".

PM Securities appealed against the High Court's decisions. Its appeals were dismissed by the Court of Appeal, following which, it applied for leave to appeal to the Federal Court. The Federal Court dismissed the applications for leave, thereby affirming the Court of Appeal and the High Court's decisions in favour of Sidrec.

The main significance of the court's decision is that it highlights an issue of public importance concerning investor protection in the capital market, namely that market intermediaries are responsible for the actions of their representatives.

Furthermore, credence was given to Sidrec's rules on dispute resolution under its terms of reference when the High Court commented on the fairness of the adjudicator's handling of the dispute resolution on the basis of Sidrec's terms of reference.

encountered by Sidrec in its quest to resolve disputes between investors and capital market intermediaries.

"Generally, most parties start off being a bit sceptical about the efficacy of the process as they are used to the more adversarial approach of the court system," she opines. "The point of mediation is for parties to try to resolve a matter without needing to litigate it in court."

Under a process comprising mediation and adjudication, Sidrec encourages the disputing parties to be more constructive in approach and less combative.

Given the invariable emotional tension between the parties and sometimes the lack of trust - and perhaps, arising communication issues - it takes a good mediator to help parties navigate through the issues while softening any hostilities and mistrust sufficiently to allow for a constructive dialogue and to facilitate resolution.

To allay misperception over it being biased to either investor or member, Ranita reiterates that Sidrec does not favour either party. The investor protection that Sidrec provides is that of independent and impartial help.

"The outcome of a case would depend

on the strength of the case, the facts, the laws, the evidence, the conduct of parties or in short, all the circumstances of the case," she justifies. "The process is facilitative. And the determination - if it goes to adjudication - is premised on what is fair and reasonable in all the circumstances of the case."

Very broadly, Sidrec is tasked to ensure that the smaller investor who cannot afford to seek legal recourse will not be left high and dry (apart from the service that is rendered free to investors with claims of up to RM250,000).

As for the market intermediary members, they are obliged to submit to Sidrec's process upon a claim being submitted against them. On the same note, investors and market intermediaries can now pursue "high-level" litigation with Sidrec's recent extension of its ADR to exceed RM250,000 provided there is mutual agreement and willingness by both parties to pay a fee.

"The result is that every investor and all our members alike have the option to seek expert and efficient assistance in resolving their monetary disputes from an independent and impartial third party," adds Ranita. *FocusM*