

SEBI circular on Arbitration Mechanism in Stock Exchanges

CIR/MRD/DSA/24/2010 August 11, 2010

1. In consultation with the stock exchanges, it has been decided to streamline the arbitration mechanism available at stock exchanges for arbitration of disputes (claims, complaints, differences, etc.) arising between a client and a member (Stock Broker, Trading Member and Clearing Member) across various market segments.

2. A stock exchange shall provide an arbitration mechanism for settlement of disputes between a client and a member through arbitration proceedings in accordance with the provisions of this Circular read with Section 2(4) of the Arbitration and Conciliation, Act, 1996.

3. Maintenance of a Panel of Arbitrators

3.1 A stock exchange shall maintain a panel of arbitrators. The number of arbitrators in the panel shall be commensurate to the number of disputes so that an arbitrator handles a reasonable number of references simultaneously and all arbitration references are disposed of within the prescribed time.

3.2 The stock exchange shall have a set of fair and transparent criteria for inclusion of names in the panel of arbitrators.

3.3 While deciding to include a particular person in the panel of arbitrators, the stock exchange shall take into account the following factors:

- i. age,
- ii. qualification in the area of law, finance, accounts, economics, management, or administration, and
- iii. experience in financial services, including securities market.

3.4 The name of a person shall be included in the panel after obtaining:

- i. a declaration that he has not been involved in any act of fraud, dishonesty or moral turpitude, or found guilty of any economic offence,
- ii. disclosure of the nature of his association with securities market,
- iii. disclosure of the names of his dependents associated with the securities market as member, sub-broker or authorized person, and
- iv. an undertaking that he shall abide by the code of conduct prescribed in this circular.

3.5 The stock exchange shall provide at least seven days of continuing education to every arbitrator each year.

3.6 The stock exchange shall have a mechanism to appraise the performance of arbitrators and reconstitute the panel based on such appraisal atleast once a year.

4. Code of Conduct for Arbitrators

An arbitrator shall –

- i. act in a fair, unbiased, independent and objective manner;
- ii. maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of his duties;
- iii. disclose his interest or conflict in a particular case, i.e., whether any party to the proceeding had any dealings with or is related to the arbitrator;
- iv. not engage in acts discreditable to his responsibilities;
- v. avoid any interest or activity which is in conflict with the conduct of his duties as an arbitrator;
- vi. avoid any activity that may impair, or may appear to impair, his independence or objectivity;
- vii. conduct arbitration proceedings in compliance with the principles of natural justice and the relevant provisions of the Arbitration and Conciliation Act, 1996, the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Rules, Regulations and Bye-laws framed thereunder and the circulars, directions issued by the Government / SEBI;
- viii. endeavour to pass arbitral award expeditiously and in any case not later than the time prescribed in this circular; and
- ix. pass reasoned and speaking arbitral awards.

5. Arbitration

5.1 The limitation period for filing an arbitration reference shall be governed by the law of limitation, i.e., The Limitation Act, 1963.

5.2 An arbitration reference for a claim / counter claim up to Rs.25 lakh shall be dealt with by a sole arbitrator while that above Rs.25 lakh shall be dealt with by a panel of three arbitrators.

5.3 The stock exchange shall ensure that the process of appointment of arbitrator(s) is completed within 30 days from the date of receipt of application from the applicant.

5.4 The arbitration reference shall be concluded by way of issue of an arbitral award within four months from the date of appointment of arbitrator(s).

5.5 The Managing Director/ Executive Director of the stock exchange may for sufficient cause extend the time for issue of arbitral award by not more than two months on a case to case basis after recording the reasons for the same.

6. Appellate Arbitration

6.1 A party aggrieved by an arbitral award may appeal to the appellate panel of arbitrators of the stock exchange against such award.

6.2 An appeal before the appellate panel of arbitrators may be filed within one month from the date of receipt of arbitral award.

6.3 The appellate panel shall consist of three arbitrators who shall be different from the ones who passed the arbitral award appealed against.

6.4 The stock exchange shall ensure that the process of appointment of appellate panel of arbitrators is completed within 30 days from the date of receipt of application for appellate arbitration.

6.5 The appeal shall be disposed of within three months from the date of appointment of appellate panel of such appeal by way of issue of an appellate arbitral award.

6.6 The Managing Director/ Executive Director of the stock exchange may for sufficient cause extend the time for issue of appellate arbitral award by not more than two months on a case to case basis after recording the reasons for the same.

6.7 A party aggrieved by the appellate arbitral award may file an application to the Court of competent jurisdiction in accordance with Section 34 of the Arbitration and Conciliation Act, 1996.

7. Arbitration Fees

7.1 Each of the parties to arbitration [as mentioned under item (5) above], shall deposit an amount, as may be prescribed by the stock exchange, at the time of making arbitration reference. The deposits (exclusive of statutory dues – stamp duty, service tax, etc.) shall not exceed the amount as indicated under:

Amount of Claim	/If claim is filed within	If claim is filed after six
Counter	Claim, six months	months
whichever is higher		

(Rs.)

10,00,000		1.3% subject to a minimum of Rs.10,000	3.9% subject to a minimum of Rs.30,000
> 10,00,000	- ?	Rs. 13,000 plus 0.3% amount above Rs. 10 lakh	Rs. 39,000 plus 0.9% amount above Rs. 10 lakh
> 25,00,000		Rs. 17,500 plus 0.2 % amount above Rs. 25 lakh subject to maximum of Rs. 30,000	Rs. 52,500 plus 0.6 % amount above Rs. 25 lakh subject to maximum of Rs. 90,000

Note: six months shall be computed from the end of the quarter during which the disputed transaction(s) were executed/ settled, whichever is relevant for the dispute.

7.2 A client, who is a party to the arbitration for a claim/counter claim upto Rs. 10 lakh, shall be exempt from the deposit provided the arbitration reference for the same is filed within six months from the end of the quarter during which the disputed transaction(s) were executed/ settled.

7.3 On issue of the arbitral award, the stock exchange shall refund the deposit, if any, to the party in whose favor the award has been passed and appropriate the deposit, if any, made by the party, against whom the award has been passed, towards arbitration fees.

7.4 A party filing an appeal before the appellate panel [as mentioned under item 6 above] shall pay a fee not exceeding Rs. 30,000, as may be prescribed by the stock exchange, in addition to statutory dues (stamp duty, service tax, etc) along with the appeal.

8. Place of Arbitration

8.1 The Stock Exchanges having nationwide terminals, such as National Stock Exchange of India Ltd., Bombay Stock Exchange Ltd., MCX Stock Exchange Ltd., and United Stock Exchange of India Ltd., shall provide arbitration facility (arbitration as well as appellate arbitration) at all four regional centres (Delhi, Mumbai, Kolkata and Chennai). The arbitration and appellate arbitration shall be conducted at the regional centre nearest to the client. The application under Section 34 of the Arbitration and Conciliation Act, 1996, if any, against the decision of the appellate panel shall be filed in the competent Court nearest to such regional centre.

8.2 Other stock exchanges shall provide the arbitration facility, including appellate arbitration, at the place where it is located.

9. Implementation of Arbitral Award in favour of Clients

9.1 In case the arbitral / appellate arbitral award is in favour of the client, the stock exchange shall, on receipt of the same, debit the amount of the award from the security

deposit or any other monies of the member (against whom an award has been passed) and keep it in a separate escrow account.

9.2 The stock exchange shall implement the arbitral award, by making payment to the client, along with interest earned on the amount that has been set aside, as soon as the time for preferring an appeal before the appellate panel of arbitrators has expired and no appeal has been preferred.

9.3 The stock exchange shall implement the appellate arbitral award, by making payment to the client, along with interest earned on the amount that has been set aside, as soon as

a. the time for making an application to a Court to set aside such appellate arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 has expired, and no application has been made, or

b. when an application to a Court to set aside such appellate arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, having been made, it has been refused by such Court, or

c. an application to a Court to set aside such appellate arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, having been made, but where no stay has been granted by such Court within a period of three months from the date on which the party making that application had received the appellate arbitral award.

10. Record and Disclosures

10.1 The stock exchange shall preserve the following documents related to arbitration:

i. the arbitral and appellate arbitral award with acknowledgements, confirming receipt of award by the disputing parties, permanently;

ii. other records pertaining to arbitration for five years from the date of arbitral award, appellate arbitral award or Order of the Court, as the case may be; and

iii. register of destruction of records relating to (ii) above, permanently.

10.2 The stock exchange shall disclose on its website, details of disposal of arbitration proceedings as per format A and details of arbitrator-wise disposal of arbitration proceedings as per format B.

10.3 The stock exchange shall continue to disclose on their website the arbitration awards (issued since April 1, 2007), as advised vide circular dated April 01, 2010, in format C.

11. The recognized stock exchanges are advised to:-

- i. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately;
- ii. bring the provisions of this circular to the notice of the members of the stock exchange and also to disseminate the same through their website; and
- iii. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Reports to SEBI.

12. SEBI inspection of stock exchange shall cover implementation of this circular.

13. This Circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect from September 1, 2010.

14. This circular supersedes the following SEBI Circulars:-

1. SMDRP/POLICY /CIR – 22 /99 dated July 09, 1999
2. SMD/Policy/Cir-06/2002 dated March 27, 2002
3. MRD/ Policy/Cir-18/2002 dated August 28, 2002
4. MRD/ Policy/Cir-26/2002 dated October 30, 2002
5. SEBI/SMD/SE/13 /2003/10/04 dated April 10, 2003
6. MRD/DSA/Arb/4623/2004 dated March 05, 2004 vii. MRD/DSA/SE/CIR-18/2009 dated December 2, 2009

15. This circular modifies provisions relevant to arbitration, contained in the following SEBI Circulars:-

1. SMD/POLICY/CIRCULAR/3-97, dated March 31, 1997
2. MRD/DoP/SE/Cir-10/2009 dated September 3, 2009
3. SEBI/MRD/DSA-OIAE/Cir-09/2010 dated April 1, 2010
4. CIR/MRD/DSA/10/2010 dated April 6, 2010

16. This Circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

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CC: All SEBI recognized Investor Associations

Formats Enclosed

SEBI circular on Updation of investor related documents

Cir / IMD / DF / 9 / 2010 , August 12, 2010

1. SEBI vide circular No. SEBI/IMD/CIR No.12 /1 86868 /2009 dated December 11, 2009 has inter alia advised mutual funds to confirm whether all the investor related documents are maintained/ available with them. Further in case the investor related documentation was incomplete, the trustees of the mutual funds were advised not to make further payment to such distributors till full compliance/ completion of the steps enumerated in the said circular and to send a status to SEBI as and when process is completed to satisfaction.

2. SEBI has not received any confirmation from the trustees of the mutual funds on the completion of the process as mandated in the said circular. Thus it appears that all the investor related documentation is not available with the AMCs. It has been observed that due to such incomplete documentation investors' rights to approach the AMCs directly are restricted and investors are forced to depend on the distributors for executing any financial or non-financial transactions.

3. In order to ensure that investors have unrestricted access to AMCs and to enable AMCs to provide prompt investor service including execution of investors' financial or non-financial transactions, all mutual funds/ AMCs are directed that:

All new folios/ accounts shall be opened only after ensuring that all investor related documents including account opening documents, PAN, KYC, PoA (if applicable), specimen signature are available with AMCs/RTAs and not just with the distributor.

For existing folios, AMCs shall be responsible for updation of the investor related documents including account opening documents, PAN, KYC, PoA (if applicable), specimen signature by November 15, 2010.

4. The trustees shall submit a confirmation after they receive certification from an Independent auditor on completion of the said process latest by November 22, 2010.

5. Mutual Funds/Asset Management Companies shall comply with the above requirements in letter and spirit.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,

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