



# **DISPUTE RESOLUTION, ARBITRATION AND DISCIPLINARY PROCEEDINGS MODULE**



<b>MODULE:</b>	<b>DRA: (Dispute Resolution, Arbitration and Disciplinary Proceedings)</b>
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<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-A: Introduction</b>

## DRA-A.1 Purpose

### *Executive Summary*

DRA-A.1.1 This Module sets out the CBB's regulatory framework governing dispute resolution, complaints handling and arbitration mechanism in the capital market, as well as the disciplinary mechanism at SROs.

### *Legal Basis*

DRA-A.1.2 Article 3 of the CBB Law specifies protection of the interests of the customers of financial institutions as one of the objectives of the CBB, and Article 4 of the CBB Law requires the CBB to, inter-alia, assume the responsibility for safeguarding the legitimate interests of licensees' customers.

DRA-A.1.3 Article 38 (a) mandates the Governor of the CBB to issue necessary directives to ensure the implementation of the CBB Law and regulations and the achievement of the objectives of the CBB. Article 38 (b) provides the CBB with the power to issue necessary directives to facilitate the understanding of CBB laws and regulations that aim to formulate the understanding and implementation of the CBB Law and regulations.

DRA-A.1.4 Article 48 (c) empowers the CBB to amend or revoke a license if the legitimate interests of the customers of a licensee required such amendment or cancellation.

DRA-A.1.5 Article 96 of the CBB Law that states: "Subject to the rules and laws of evidence and electronic transactions, any computer data, electronic files, recorded telephone calls, telex and facsimile correspondence may be used as evidence in disputes relating to securities".



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## **DRA-A.2 Module History**

### *Evolution of Module*

- DRA-A.2.1 This Module was first issued in March 2010. Any material changes that are subsequently made to this Module are annotated with the calendar quarter date in which the change is made; Chapter UG-3 provides further details on Rulebook maintenance and version control.
- DRA-A.2.2 Article 13 of the Bahrain Stock Exchange Law (BSE Law) provides for an arbitration mechanism and Chapter 7 (Articles 56 to 72) of the BSE Internal Regulation provides for a procedure for reference to an arbitration committee and settlement of disputes relating to transactions done on the BSE.
- DRA-A.2.3 Chapter 7 (Articles 56 to 72) of the BSE Internal Regulation specifies the procedures for the establishment of an Arbitration Committee, receiving and registering of arbitration petition, fixing of a date for the hearing, notification of a date of the hearing to both the parties in the dispute, attendance of parties in person, time limit for deciding on the disputes by the Arbitration Committee, execution of the decision of the Arbitration Committee, as per the deliberations of the Arbitration Committee, filing of the decision with the Court and mutual agreement for the settlement of disputes.
- DRA-A.2.4 Article 14 of the BSE Law requires the BSE to have a Disciplinary Board for deciding on violations of the provisions of the BSE Law, regulations and resolutions regulating the BSE, as well as any violation affecting the proper conduct of business and order in the BSE. Article 15 of the BSE Law provides for an appeal to the Disciplinary Board of Appeal against the decisions of the Disciplinary Board.
- DRA-A.2.5 Chapter 8 (Articles 73 to 92) of the BSE Internal Regulation specifies the procedures to be followed by the Disciplinary Board; registering complaints against members and listed companies of the BSE, investigations to be conducted by the Control and Investigation Unit of the BSE, decision-making process of the Disciplinary Board, and notification of the decision.

Module Ref.	Change Date	Description of Changes
DRA-4.1.6	01/2020	Amended Paragraphs on approval of the SRO's policies and procedures.



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## DRA-A.2 Module History Contd.

### *Superseded Requirements*

DRA-A.2.6 This Module supersedes the following provisions contained in circulars or other regulatory instruments:

Circular/ other references	Provision	Subject
BSE Internal Regulation	Chapter 7 (Articles 56 to 72)	Disputes and arbitration
	Chapter 8 (Articles 73 to 92)	Disciplinary Board



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### **DRA-A.3 Interaction with other Modules**

DRA-A.3.1 All market participants must comply with all the other Modules in Volume 6 in addition to other applicable laws, rules and regulations.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-B: Scope of Application

## DRA-B.1 Scope of Application

### *Scope*

#### DRA-B.1.1

This Module shall apply to complaints and disputes relating to:

- (a) Any conduct or behaviour occurring within Bahrain; or any transaction or expected transaction done by or on behalf of any person(s) within Bahrain in relation to securities offered, issued or listed in Bahrain or elsewhere;
- (b) Any conduct or behaviour occurring outside Bahrain or any transaction or expected transaction done by or on behalf of any person(s) outside Bahrain in relation to securities offered, listed or issued in Bahrain;
- (c) Any conduct or behaviour occurring within Bahrain, or any transaction or expected transaction done by or on behalf of any person(s) within Bahrain in relation to:
  - (i) Futures contracts, whether traded on a futures market in Bahrain or elsewhere; or
  - (ii) Leveraged foreign exchange trading contracts, whether in Bahrain or elsewhere; and
- (d) Any conduct or behaviour occurring outside Bahrain; or any transaction or expected transaction done by or on behalf of any person(s) outside Bahrain in relation to:
  - (i) Futures contracts traded on a futures market in Bahrain;
  - (ii) Leveraged foreign exchange trading contracts in Bahrain; or
  - (iii) Leveraged foreign exchange trading contracts that are accessible from Bahrain.

#### DRA-B.1.2

This Module contains the CBB's Directive relating to dispute resolution, investors' complaints handling and arbitration mechanism and is issued under the powers available to the CBB under Article 38 of the CBB Law. The Directive under this Module is applicable to all Capital Market Service Providers (CMSPs), market participants and relevant persons, including but not limited to issuers of securities or any person acting on their behalf, licensed exchanges, licensed market operators, licensed clearing houses, depositories, members of SROs, investment firms, collective investment undertakings, business trusts, listed companies, any person acting for or on behalf of listed companies, shareholders of listed companies, share registrars, lead managers, underwriters, professional advisors, listing agents, auditors, financial analysts and any other person who engages or encourages others to engage in any acts of commission or omission covered by the scope of this Module, irrespective of whether such person is a market participant or not. These rules are issued by way of a legally-binding Directive.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-B: Scope of Application</b>

## DRA-B.2 Definitions

For the purpose of this Module, the following definitions shall apply:

- DRA-B.2.1 “Arbitration Cell” means a division or employee(s) of an SRO designated and authorized to receive petitions, coordinate and assist in the administration of arbitrations in terms of Chapter 3 of this Module.
- DRA-B.2.2 “Capital Market Service Provider” (hereinafter referred to as CMSP) means any person licensed, or authorised or involved in providing any activity specified under Article 80 of the CBB Law and includes a member of an SRO.
- DRA-B.2.3 “CMSD” means the Capital Markets Supervision Directorate of the Central Bank of Bahrain.
- DRA-B.2.4 “Client Complaints” for the purposes of this Module, a client complaint includes: “any complaint in relation to the provision of services by a CMSP in which the client alleges that he has suffered, or is likely to suffer financial prejudice as a result of the member or CMSP:
- Contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;
  - Contravening or failing to comply with the rules and the directives;
  - Acting dishonestly, negligently or recklessly; or
  - Treating the client unreasonably, or unfairly”.
- DRA-B.2.5 “Disciplinary Action Cell” means a division or employee of an SRO designated and authorized to receive notification of a breach of rules of an SRO and to coordinate and assist in the administration of disciplinary proceedings in Chapter 4 of this Module.
- DRA-B.2.6 “Person” means unless the context requires otherwise, a natural or legal person.
- DRA-B.2.7 “Securities” means shares or bonds issued by shareholding companies, government debt instruments and the following financial instruments:
- Shares in companies and other securities equivalent to shares in companies or other entities, and depositary receipts in respect of shares;
  - Bonds or other forms of debt, including depositary receipts in respect of such securities;
  - Warrants;
  - Units, rights or interests (however described) of the participants in a collective investment scheme;
  - Options, futures and any other derivative contracts relating to commodities that must be settled in cash, or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
  - Options, futures and any other derivative contract relating to commodities that can be physically settled;



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-B: Scope of Application</b>

## DRA-B.2 Definitions (continued)

- (g) Units to Real Estate Investment Trusts (REITs);
- (h) Index tracking products including Islamic indices;
- (i) Any other financial instrument approved as a financial instrument by the CBB for the purpose of trading such instrument on an exchange; and
- (j) Islamic securities, being those financial instruments that are Shari'a compliant.

DRA-B.2.8 “Self-Regulatory Organizations (SROs)” means any organization licensed by the CBB under the Markets and Exchanges (MAE) Module, or the Clearing, Settlement and Central Depository (CSD) Module, or any other organization recognized as an SRO by the CBB.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-1: Internal Dispute Resolution and Complaints</b>

## **DRA-1.1 Internal Dispute Resolution and Redress of Complaints**

### **DRA-1.1.1**

All CMSPs must have appropriate internal dispute resolution procedures and systems for effective handling of complaints made by clients and investors (IDR procedures and systems).

#### *Internal Dispute Resolution Requirements*

**DRA-1.1.2** All CMSPs must have in place internal dispute resolution systems and procedures that are documented appropriately; and the clients and users of the services of the CMSPs are informed about its availability.

#### *Documenting Internal Dispute Resolution Procedures*

**DRA-1.1.3** In order to make internal dispute resolution procedures as transparent and accessible as possible and to assist with staff training and awareness, all CMSPs must document their internal dispute resolution procedures. This includes setting out in writing:

- (a) The procedures and policies for:
    - (i) Receiving complaints;
    - (ii) Investigating complaints;
    - (iii) Responding to complaints within appropriate time limits;
    - (iv) Referring unresolved complaints to arbitration or other appropriate external dispute resolution mechanisms;
    - (v) Recording information about complaints;
    - (vi) Identifying and recording systemic issues;
  - (b) The types of remedies available for resolving complaints; and
  - (c) Internal structures and reporting requirements for complaint handling.
- CMSPs should provide a copy of the procedures to all relevant staff, so that they may be able to inform clients and users. A simple and easy-to-use guide to the procedures should also be made available to all clients and users of the services of CMSPs, either on request, or when they want to make a complaint.

#### *Guiding Principles*

### **DRA-1.1.4**

Adherence to the following guiding principles is required for effective handling of complaints:

- (a) **Visibility:**
  - (i) How and where to complain should be well publicized to customers and other interests parties;



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<b>CHAPTER</b>	<b>DRA-1: Internal Dispute Resolution and Complaints</b>

## DRA-1.1 Internal Dispute Resolution and Redress of Complaints (continued)

- (b) **Accessibility:**
  - (i) A complaints handling process should be easily accessible to all clients;
  - (ii) Process information should be readily accessible;
  - (iii) Should include flexibility in the method of making complaints;
  - (iv) Low cost telephone access should be available where possible;
  - (v) Support for customers with special needs should be provided, such as interpreters;
  - (vi) Information and assistance should be available on details of making and resolving a complaint;
  - (vii) Supporting information should be easy to understand and use;
  - (viii) Information and assistance in making a complaint should be made available;
- (c) **Responsiveness:**
  - (i) Receipt of complaints should be acknowledged immediately;
  - (ii) Complaints should be addressed promptly in accordance with its urgency;
  - (iii) Customers should be treated with courtesy;
  - (iv) Customers should be kept informed of the progress of their complaint;
- (d) **Objectivity:**
  1. Complaints should be addressed in an equitable objective and unbiased manner;
  2. General principles for objectivity in the complaints handling process include:
    - (a) **Openness:**
      - (i) Process should be clear and well publicized so that both staff and clients can understand;
    - (b) **Impartiality:**
      - (i) Avoiding bias to a customer, personnel or the CMSP;
      - (ii) Protect the person the complaint is made against from bias;
      - (iii) Emphasis should be placed on resolution not blame;



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### DRA-1.1 Internal Dispute Resolution and Redress of Complaints (continued)

- (iv) Investigation should be carried out independently of the person complained about;
- (c) Accessibility:
  - (i) Should allow customer access to the process at any reasonable point in time;
  - (ii) A joint response should be made when the complaint affects different supply chain participants;
- (d) Completeness:
  - (i) Finding relevant facts, talking to both sides, establishing common ground and verifying explanations should occur wherever possible;
- (e) Equitability:
  - (i) Give equal treatment to all people;
- (f) Sensitivity:
  - (i) Each complaint treated on its merits and paying due care to individual circumstances;
- (g) Objectivity for personnel – complaints handling procedures should ensure those complained about are treated fairly which implies:
  - (i) Informing them immediately and completely on complaints about performance;
  - (ii) Giving them an opportunity to explain and providing appropriate support;
  - (iii) Keeping them informed of the progress and result of the complaint investigation;
  - (iv) Full details of the complaint are given to those the complaint is made against prior to interview;
  - (v) Personnel should be assured they are supported by the process and should be encouraged to learn from the experience and develop a better understanding of the complaints process;
- (h) Separating complaints handling procedures from disciplinary procedures:
  - (i) Complaints process should be separate to disciplinary process;



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<b>CHAPTER</b>	<b>DRA-1: Internal Dispute Resolution and Complaints</b>

### DRA-1.1 Internal Dispute Resolution and Redress of Complaints (continued)

- (i) Confidentiality:
  - (i) In addition to customer confidentiality the process should ensure confidentiality for staff who have a complaint made against them and the details should only be known to those directly concerned;
  - (ii) Personal information should only be available for the purposes of addressing the complaints within the CMSP;
  - (iii) Should be actively protected for the discloser unless the customer consents otherwise;
  - (iv) Protect the customer and customer's identity as far as is reasonable to avoid deterring complaints due to fear of inconvenience or discrimination;
- (j) Objectivity monitoring:
  - (i) CMSPs should monitor responses to customers to ensure objectivity which could include random monitoring of resolved complaints;
- (k) Charges:
  - (i) Process should be free of charge to customers;
- (l) Customer Focused Approach:
  - (i) CMSPs should have a customer focused approach;
  - (ii) Should be open to feedback including complaints;
  - (iii) Should show commitment to resolving complaints;
- (m) Accountability:
  - (i) CMSPs should ensure accountability for reporting on actions and decisions with respect to complaints handling is clearly established;
- (n) Continual improvement:
  - (i) Continual improvement of the complaints handling process and the quality of products should be a permanent objective of the CMSP.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-1: Internal Dispute Resolution and Complaints

## DRA-1.1 Internal Dispute Resolution and Redress of Complaints (continued)

### *Internal Complaint Handling Procedures*

#### DRA-1.1.5

A CMSP's internal complaint handling procedures must provide for:

- (a) The receipt of written complaints;
- (b) The appropriate investigation of complaints;
- (c) An appropriate decision-making process in relation to the response to a client complaint;
- (d) Notification of the decision to the client; and
- (e) The recording of complaints.

#### DRA-1.1.6

A CMSP's internal complaint handling procedures must be designed to ensure that:

- (a) All complaints are handled fairly, effectively and promptly;
- (b) Recurring or systemic problems are identified, investigated and remedied;
- (c) The number of unresolved complaints referred to the SRO and/or the CBB are minimized;
- (d) Complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;
- (e) The employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and
- (f) Relevant employees are aware of the CMSP's internal complaint handling procedures and comply with them.

### *Timely Response to Complaints*

#### DRA-1.1.7

A CMSP must respond to a client complaint within 4 weeks of receiving the complaint, or provide the complainant with an appropriate explanation as to why the CMSP is not, at that time, in a position to respond and must indicate by when the CMSP will respond.

If a CMSP fails to respond to a client complaint as above, the CMSP will be liable for appropriate enforcement actions as per the Market Surveillance, Investigation and Enforcement (MIE) Module, including financial penalties.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-1: Internal Dispute Resolution and Complaints</b>

## DRA-1.1 Internal Dispute Resolution and Redress of Complaints (continued)

### *Redress*

**DRA-1.1.8** Where a CMSP decides that redress in the form of compensation is appropriate in resolving a complaint, the CMSP must provide the complainant with fair compensation and must comply with any offer of compensation made by it which the complainant accepts.

**DRA-1.1.9** Where a CMSP decides that redress in a form other than compensation is appropriate in resolving a complaint, it must provide the redress as soon as practicable.

### *Recording of Complaints*

**DRA-1.1.10** A CMSP must maintain a record of all client complaints. The record of each complaint must include:

- (a) The identity of the complainant;
- (b) The substance of the complaint;
- (c) The status of the complaint, including whether resolved or not, and whether redress was provided, and whether referred to arbitration; and
- (d) All correspondence in relation to the complaint.

Such records must be retained by the CMSP for a period of 10 years from the date of receipt of the complaint.

### *Unresolved Client Complaints*

- DRA-1.1.11
- (a) A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the CMSP; and
  - (b) Where a complaint relates to a member of an SRO, the complainant may lodge an unresolved complaint, in writing, with the SRO giving full particulars of the matter concerned.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-1: Internal Dispute Resolution and Complaints</b>

## DRA-1.2 Complaint against Listed Companies and Issuers of Securities

**DRA-1.2.1** All listed companies and issuers of securities must have internal procedures and systems for effective handling of investor complaints and their resolution.

- DRA-1.2.2 Investor complaints against issuers may, for example, relate to:
- (a) Public/Further Offerings: Complaint regarding non-receipt of:
    - (i) Allotment advice;
    - (ii) Securities purchased through an Initial Public Offer;
    - (iii) Refund order;
    - (iv) Interest on delay redemption/refund amount;
    - (v) Sales proceeds of fractional entitlement;
    - (vi) Securities purchased through a rights offer.
  - (b) Corporate Actions: Complaint regarding non-receipt of:
    - (i) Dividend;
    - (ii) Interest on Debentures, Bonds or other debt instruments;
    - (iii) Securities on account of a bonus, de-merger, merger, stock split;
    - (iv) Redemption amount.
  - (c) Transfer of Securities: Complaint regarding non-receipt of:
    - (i) Securities after dematerialization;
    - (ii) Securities after transfer/transmission;
    - (iii) Duplicate certificate relating to securities.
  - (d) Miscellaneous: Complaint regarding non-receipt of copy of the Annual report or AGM/EGM notice.

### *Unresolved Complaints*

- DRA-1.2.3
- (a) An investor complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the listed company/issuer of securities; and
  - (b) A complainant may lodge an unresolved complaint, in writing, with the relevant SRO as per section DRA-2.1 giving full particulars of the matter concerned.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-2: Complaints to and Disciplinary Action at SRO</b>

## DRA-2.1 Complaints to Self-Regulatory Organizations

**DRA-2.1.1** All SROs shall have an appropriate mechanism to review complaints received against member firms and issuers of securities and shall endeavour to facilitate resolution of the complaints.

DRA-2.1.2 In order for an unresolved complaint to be considered by the SRO, the complaint must be lodged with the SRO within 6 months of the receipt by the complainant of the CMSP's response referred to in rule DRA-1.1.7 or section DRA-1.2 and within 12 months of the conduct by the CMSP giving rise to the complaint.

DRA-2.1.3 An unresolved complaint which is lodged subsequent to the period referred to in rule DRA-1.1.7 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the customer.

DRA-2.1.4 The SRO may request the CMSP and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint. The SRO shall also send a copy of the complaint to the CMSD for information and also send a report on the final resolution of the complaint.

DRA-2.1.5 The SRO shall endeavour to facilitate a resolution of the complaint between the member and the complainant.

DRA-2.1.6 If the SRO is unable to facilitate a resolution of the complaint within 4 weeks of lodgement of the complaint with it, the SRO shall refer the unresolved complaint to the Arbitration Committee of the SRO.

### *Disputes that can be Brought before an SRO*

**DRA-2.1.7** All types of disputes with a CMSP may be brought before and dealt with by an SRO (known as 'eligible disputes') subject to the following conditions:

- (a) The CMSP involved in the dispute must be one which is subject to the jurisdiction of an SRO by reason of it being a member of an SRO, or an issuer whose securities are offered for trading (listed) on the SRO;
- (b) The activity or dispute arises out of matters relevant to the CMSP complainant being or having been a client or shareholder of the CMSP;
- (c) The activity to which the complaint relates must be subject to the jurisdiction of the SRO;
- (d) The CMSP has failed to resolve the complaint to the satisfaction of the complainant within 4 weeks of receiving it; and



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-2: Complaints to and Disciplinary Action at SRO

## DRA-2.1 Complaints to Self-Regulatory Organizations (continued)

- (e) The CMSP about which the complaint is made must be a member or listed at the time of the act or omission to which the complaint relates and must continue to be a member or listed at the time when the complaint is referred to the SRO.

### DRA-2.1.8

All disputes which have not first been raised by a complainant with the CMSP, so as to provide the CMSP with an opportunity to resolve the dispute, will be deemed a complaint and if lodged or attempted to be lodged with the SRO shall be referred back to the CMSP for its due consideration.

### DRA-2.1.9

The following complaints cannot be brought before an SRO:

- (a) Commercial decisions not related to market transactions;
- (b) Pricing policies and other policies such as interest rates and fees;
- (c) Cases under investigation by any law enforcement agency, including cases where allegations of fraud or criminal activity have been made, and where the matter has been referred to the police for investigation;
- (d) Complaints that are more than 6 months old after the CMSP's final reply;
- (e) Complaints that have been settled privately or otherwise between the complainant and the CMSP; and
- (f) Cases which have been subject to a court hearing and for which a court judgment and/or order has been passed.

#### *Dispute Submission to an SRO*

### DRA-2.1.10

To initiate an investigation of a dispute and to require an SRO to resolve the dispute, a complainant must complete and submit the dispute to the SRO, along with the facts of the case and evidence in support of the claims made by the complainant.

#### *Time Limits for Making an Application*

### DRA-2.1.11

An application for initiating an investigation can only be made by the complainant:

- (a) Upon showing that an attempt has been made to resolve the matter by the CMSP's internal dispute resolution procedure, but the matter has not been resolved to the satisfaction of both parties or after at least 4 weeks from the date the matter was referred to the CMSP, whichever is earlier; and
- (b) No later than a period of 6 months after the CMSP has provided its final reply to the complainant.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-2: Complaints to and Disciplinary Action at SRO</b>

## **DRA-2.1 Complaints to Self-Regulatory Organizations (continued)**

DRA-2.1.12 In rule DRA-2.1.11, a final reply is a letter or other written document issued by the CMSP to the complainant, which expressly states that it is the CMSP's final reply and which expressly informs the complainant that if he/she disagrees with the CMSP, he/she can contact the SRO for assistance within 6 months from the date of the said letter or other written document.

There must be no outstanding issues between the CMSP and the complainant and the contact particulars of the SRO must be provided in the said letter or other written document. For the avoidance of doubt, any dispute as to whether any letter or other written document constitutes the final reply from the CMSP would be solely determined by the SRO. The SRO's determination would be binding on the CMSP and the complainant.

### ***Investigation of a Dispute***

DRA-2.1.13 The SRO shall be entitled to request all relevant data and materials relevant to the dispute from the CMSP and the complainant, and the CMSP and complainant shall provide to the SRO all such information and materials as are relevant to the dispute. Specifically, the SRO shall write to the CMSP, advising it of the dispute referred to it by the complainant and request all relevant data and information.

DRA-2.1.14 The CMSP shall respond to the request referred to in paragraph DRA-2.1.13 and provide a report compiled by the CMSP upon conclusion of its investigation into the dispute first raised to it by the complainant in full, the grounds of its decision and any other relevant information and documents relevant to the dispute.

DRA-2.1.15 The SRO shall conduct any interviews, if deemed necessary, in the sole discretion of the SRO, either via the telephone or in person.

DRA-2.1.16 The SRO shall then consider whether to dismiss the dispute in accordance with paragraph DRA-2.1.18. If the dispute is not dismissed in accordance with paragraph DRA-2.1.18, the case shall be classified as an 'investigated dispute' and the SRO shall refer the investigated dispute to mediation.

DRA-2.1.17 While the SRO is conducting an investigation of a dispute, the SRO may nevertheless seek to promote a resolution of the dispute by agreement between the complainant and the CMSP.

At all times while the dispute is being investigated by the SRO, the CMSP and the complainant may seek an amicable resolution of the dispute.

### ***Dismissing Dispute without Mediation***

DRA-2.1.18 The SRO may, subject to the approval of the SRO's Chief Executive Officer, dismiss a dispute where:

- (a) The dispute is in the opinion of the SRO frivolous or vexatious;



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-2: Complaints to and Disciplinary Action at SRO</b>

## DRA-2.1 Complaints to Self-Regulatory Organizations (continued)

- (b) The matter has previously been considered or excluded by a former scheme, but has not been adjudicated upon under paragraph DRA-2.1.22 and an award made under Chapter 3 (unless material new evidence likely to affect the outcome has subsequently become available).  
For the avoidance of doubt, all cases which have been settled as set out in rule DRA-2.1.9 (f) or for which an award has been made by the adjudicators must be dismissed;
- (c) There are other compelling reasons why it is inappropriate for the dispute to be dealt with by the SRO; or
- (d) The complainant is not cooperating.  
For the avoidance of doubt, all decisions made by the SRO under this rule shall be final and conclusive and cannot be challenged by the complainant or the CMSP.

### *Cooperation from Parties*

#### DRA-2.1.19

The SRO:

- (a) Shall receive the full cooperation and assistance of the CMSP and any representative of the CMSP in the investigation of the dispute;
- (b) May require from the CMSP and any representative of the CMSP all information relating to the subject matter of the dispute in its possession or control, or agreed to by parties in writing to be disclosed or which parties are compelled by law to disclose; and
- (c) Shall have the power to request the CMSP and/or such of the CMSP's representatives as it deems necessary to attend interviews or to provide written statements.

The CMSP shall provide the SRO with all relevant data, information and materials as are relevant to the dispute to enable the SRO to comprehensively mediate the dispute, and shall attend or ensure that its representative attends all such interviews as the SRO has requested the CMSP and/or its representative to attend. The CMSP shall at all times comply, and shall ensure that all its officers, representatives and/or agents comply with all instructions and determinations made by the SRO and such officers and employees of the SRO are duly authorised.

#### DRA-2.1.20

The SRO shall endeavour to complete the deliberation within a reasonable time, taking into account the complexity of the dispute.



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<b>CHAPTER</b>	<b>DRA-2: Complaints to and Disciplinary Action at SRO</b>

## DRA-2.1 Complaints to Self-Regulatory Organizations (continued)

### *Referring Dispute to Arbitration*

**DRA-2.1.21** Where the dispute is resolved by mediation, the SRO shall record in writing the terms of the resolution reached by both parties. Where the dispute is not resolved by mediation, the CMSP or the complainant can opt to have the dispute proceed to Arbitration in the manner set out in Chapter 3.

DRA-2.1.22 Where a dispute is not resolved by the SRO through mediation, the CMSP will be informed and afforded a final opportunity to resolve the dispute. If the CMSP does not resolve the dispute, the SRO shall refer the matter to the Arbitration Committee and initiate Arbitration proceedings, as per Chapter 3 of this Module.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-2: Complaints to and Disciplinary Action at SRO</b>

## DRA-2.2 Disciplinary Action at SRO Pursuant to Complaints

### DRA-2.2.1

In addition to facilitating the resolution of complaints and providing an arbitration mechanism, all SROs shall analyse complaints received together with all the relevant information, records and data available with the SROs, in order to detect potential cases of contraventions of the CBB Law and regulations, SRO's business rules and other applicable laws, rules and regulations by any person.

### DRA-2.2.2

If the analysis of the known facts and potential evidence indicates contraventions, the SRO shall consider whether a sufficient, credible source of facts and evidence suggests contravention of the CBB Law, rules and regulations or business rules of the SRO. Some of the factors that could be considered by the SRO include, but are not limited to:

- (a) The laws or rules or regulations that could potentially be considered as having been contravened or violated;
- (b) The severity and/or seriousness of such contravention or violation;
- (c) The potential magnitude of such contravention or violation;
- (d) The potential losses involved or harm to an investor or investors;
- (e) Whether the affected group is particularly vulnerable or at risk; and
- (f) Whether the conduct is ongoing.

### DRA-2.2.3

After conducting an analysis referred to in rule DRA-2.2.2, the SRO shall, based on the evidence and facts available, undertake an investigation for imposing disciplinary action as per Chapter 4 of this Module and simultaneously report the matter to the CMSD of the CBB.

### DRA-2.2.4

The SRO shall conduct its own investigations and initiate disciplinary proceedings as per its business rules. This is without prejudice to any enforcement measures by the CBB or criminal prosecution.

### DRA-2.2.5

The SRO's report to the CMSD shall include:

- (a) Facts of the case;
- (b) Laws, rules and regulations, or business rules of the SRO that could potentially have been contravened or violated;
- (c) Prima-facie conclusions and evidence available; and
- (d) Scope and nature of the investigation undertaken by the SRO.



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## DRA-2.2 Disciplinary Action at SRO Pursuant to Complaints (continued)

### DRA-2.2.6

SROs shall complete the investigation referred to in rule DRA-2.2.4 and paragraph DRA-2.2.5 promptly and shall determine whether a reference to the disciplinary committee is required. The findings of the investigations and the conclusions arrived at after the investigation along with supporting facts and evidence shall be submitted to the CMSD within a period of 30 days from the date on which the matter was reported to the CBB, as per rule DRA-2.2.3.

DRA-2.2.7 The CMSD will consider any report referred to in rules DRA-2.2.3 and DRA-2.2.6 from the SRO, along with the information, records and data available with the CMSD for the purposes of market surveillance, investigation and enforcement functions, as per the Market Surveillance, Investigation and Enforcement Module (MIE Module).



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

## DRA-3.1 Arbitration Proceedings

**DRA-3.1.1** An Arbitration Committee shall be established and constituted by a Directive of the Governor.

**DRA-3.1.2** The Arbitration Committee shall be responsible for settling all disputes between CMSPs and, between CMSPs and their customers relating to transactions executed through the SROs or regulated activities undertaken by the CMSPs.

**DRA-3.1.3** Trading on an exchange or transacting on an SRO shall be deemed as an acceptance of arbitration and this fact shall be recorded in the documents of the transactions and customer agreement. The awards passed by the panel shall be binding upon both parties of a dispute.

**DRA-3.1.4** During the course of an arbitration under this Module, neither party may pursue any suit, action or proceedings against the other in respect of the dispute referred to arbitration under this Module.

**DRA-3.1.5** All SROs shall have an Arbitration Cell and the Arbitration Cell of the SRO shall receive the arbitration petition submitted to the Arbitration Committee by one of the parties to the dispute, subject to arbitration committee jurisdiction, after payment of the prescribed fee in full.

**DRA-3.1.6** The arbitration petition referred to in rule DRA-3.1.5 shall be registered upon receipt in a special register with serial numbers, commencing on the first day of the Gregorian year and ending on the last day thereof. The original petition must be filed with the fee receipt in a special record.

**DRA-3.1.7** The petition shall contain the name, profession, domicile, place of residence, name of principals if the parties are employed by other persons, the relief claimed, and items of evidence establishing the claim. A copy of all supporting documents must be attached and accompanied by a memorandum explaining the dispute.

**DRA-3.1.8** The Arbitration Cell shall submit the arbitration petition, upon receipt, to the Chairman of the Arbitration Committee, in order to fix a date for hearing the dispute. The Arbitration Cell shall notify all parties of the date of the hearing, along with a copy of the arbitration petition.

**DRA-3.1.9** All documents relating to the arbitration and notices affected by the Arbitration Cell shall be sent by registered mail.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

### DRA-3.1 Arbitration Proceedings (continued)

**DRA-3.1.10** On the day the dispute is heard, the parties shall be in attendance in person, or be represented by their respective representatives. In the event of non-appearance of one of the parties, the committee shall, if notice was duly served, proceed to issue the decision in his absence.

#### *Representation*

- DRA-3.1.11**
- (a) A party may attend arbitration proceedings in person or be represented by any other person:
  - (b) Where a party is a body corporate or a partnership, it may be represented by a director or a partner (as the case may be) or any other person authorised by it;
  - (c) A party shall send the name and address of its representative (if any) or other person (if any) authorised by it under (a) or (b) (as the case may be) to the other party, with a copy sent to the Arbitration Cell for filing, as soon as reasonably practicable after they have been decided on; and
  - (d) A party shall notify the Arbitration Cell and the other party immediately of any change of its representative or person authorised by it, or any change in the name or address of the representative or person authorised by it.

#### *Oath and Affirmation*

**DRA-3.1.12** All evidence shall be given under oath or affirmation.

**DRA-3.1.13** The members of the Arbitration Committee are to be paid such remuneration and allowances by the SRO, as per the Directive of the Governor.

#### *Rules Relating to Arbitration Proceedings*

- DRA-3.1.14**
- (a) Despite other provisions of this Module, the Arbitration Committee:
    - (i) May conduct the arbitration in such manner as the chairman of the Arbitration Committee considers appropriate and has the power to adopt, whenever possible, a simplified or expedited procedure (including interim relief) and to conduct proceedings to ensure the just, expeditious, economical and final determination of the dispute; and
    - (ii) Shall ensure that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity to present that party's case.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

### DRA-3.1 Arbitration Proceedings (continued)

- (b) The Arbitration Committee may decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument, or to conduct proceedings only on the basis of documents and other materials;
- (c) All documents or information to be supplied to an Arbitration Committee shall be sent to the Arbitration Cell for transmission to the Arbitration Committee, save where documents or information are submitted during a hearing;
- (d) All documents and information to be supplied to an Arbitration Committee shall be sent to the Arbitration Cell as follows:
  - (i) Where a party submits documents or information during a hearing, one copy shall be sent to the Arbitration Cell by that party immediately after the hearing; and
  - (ii) In all other cases, a party shall supply 2 sets of all documents or information to the Arbitration Cell; and
- (e) The Arbitration Committee may appoint any legally qualified person to advise the Arbitration Committee on any matter relating to the arbitration.

#### *Record of Proceedings*

**DRA-3.1.15** Record of proceedings before an Arbitration Committee shall be taken by a staff member of the Arbitration Cell.

#### *Statement of Claim*

- DRA-3.1.16**
- (a) Unless a statement of claim was contained in or attached to the arbitration petition, the claimant shall send his statement of claim to the respondent and to the Arbitration Committee within 14 days from the date of the arbitration petition;
  - (b) A copy of the relevant customer contract shall be annexed or otherwise attached to the statement of claim;
  - (c) The statement of claim shall include the following particulars:
    - (i) The names and addresses of the parties;
    - (ii) A statement of the facts supporting the claim;
    - (iii) The points at issue;
    - (iv) The remedy sought; and
    - (v) Acknowledgement of receipt by the respondent.
  - (d) The claimant may:
    - (i) Annex or otherwise attach to the statement of claim all documents that the claimant considers relevant; or
    - (ii) Add a reference to the documents or other evidence that the claimant intends to submit.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-3: Arbitration</b>

## DRA-3.1 Arbitration Proceedings (continued)

### *Statement of Claim or Counter Claim*

- DRA-3.1.17**
- (a) The respondent shall send a statement of defence to the claimant and to the Arbitration Committee within 14 days from the date on which the statement of claim is sent to the respondent;
  - (b) The statement of defence shall reply to the particulars of the statement of claim;
  - (c) The respondent may:
    - (i) Annex or otherwise attach to the statement of defence documents on which the respondent relies in defence; or
    - (ii) Add a reference to the documents or other evidence that the respondent intends to submit.
  - (d) In the statement of defence, or at a later stage in the arbitration proceedings if the Arbitration Committee decides that the delay is justified under the circumstances, the respondent may:
    - (i) Make a counterclaim arising out of the same dispute; or
    - (ii) Rely on a claim arising out of that dispute for the purpose of a set-off.
  - (e) Rule DRA-3.1.16 applies to a counterclaim and a claim relied on for the purpose of a set-off in the same manner as it applies to a statement of claim.

### *Amendments and Further Statements*

- DRA-3.1.18**
- (a) During the course of an arbitration, a party may amend or supplement that party's claim, defence or counterclaim except where the Arbitration Committee considers it inappropriate to allow this, having regard to:
    - (i) Any delay involved;
    - (ii) The likelihood of prejudice to the other party; or
    - (iii) Any other relevant circumstances.
  - (b) The Arbitration Committee may require or accept amendment to or supplement of a party's claim, defence or counterclaim, and shall fix the period for the sending of such amendment or supplement.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

## DRA-3.1 Arbitration Proceedings (continued)

### *Time Period for Sending Further Statements*

**DRA-3.1.19** The period fixed by an Arbitration Committee for the sending of any amendments or supplements under rule DRA-3.1.18 may not exceed 21 days from the date of such amendments or supplements, unless an extension is requested by a party and the Arbitration Committee is satisfied that such an extension is justified in the circumstances.

### *Evidence*

**DRA-3.1.20** Each party has the burden of proving the facts relied on to support that party's claim, defence or counterclaim.

**DRA-3.1.21** The Arbitration Committee:

- (a) Shall determine the admissibility, materiality, relevance and weight of any evidence; and
- (b) May admit evidence irrespective of the rules governing the admissibility of evidence in court if, in his opinion, the interest of justice is served by so doing.

**DRA-3.1.22** If the Arbitration Committee considers it appropriate, he may require a party to send to him and to the other party, within a period stipulated by him, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in that party's statements.

### *Hearing of Witnesses*

**DRA-3.1.23**

- (a) If any witness is to be heard, each party shall send a notice to the Arbitration Committee and to the other party at least 14 days before the hearing specifying:
  - (i) The name and address of the witness;
  - (ii) The subject matter of the witness's testimony or, if the Arbitration Committee so requires, a transcript of the witness's statement or expert report; or
  - (iii) The language in which the witness will give his testimony; and
- (b) The Arbitration Committee may arrange for translations or recordings to be made at a hearing as he considers appropriate;



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### DRA-3.1 Arbitration Proceedings (continued)

- (c) The Arbitration Committee may require the retirement of any witness during the testimony of any other witness;
- (d) Evidence of a witness may also be presented in the form of a written statement signed by him; and
- (e) The Arbitration Committee is free to determine the manner in which a witness is examined.

#### *Default*

DRA-3.1.24

- (a) If, within the period fixed by the Arbitration Committee, the claimant fails to file a statement of claim without showing sufficient cause for such failure, the Arbitration Committee may make an order for the termination of the arbitration proceedings;
- (b) If, within the period fixed by the Arbitration Committee, the respondent fails to file a statement of defence without showing sufficient cause for such failure, the Arbitration Committee may make an order of favour of the claimant or make an order for the termination of the arbitration proceedings; and
- (c) If one of the parties, duly notified under these rules, fails to appear at a hearing or fails to produce any document in that party's possession when required to do so, without valid excuse, the Arbitration Committee may proceed with the arbitration and such proceedings are deemed to have been conducted in accordance with rule DRA-3.1.14.

#### *Consolidation of Proceedings*

DRA-3.1.25

- Where in relation to 2 or more arbitration proceedings it appears to the Chairman of the Arbitration Committee:
- (a) That a common question of law or fact arises in both or all of them;
  - (b) That the claims arise out of the same transaction or series of transactions; or
  - (c) That it is desirable to make an order under this section for any other reason, the Chairman may order those arbitration proceedings;
    - (i) To be consolidated on such terms as he thinks just; or
    - (ii) To be heard immediately after one another; or
  - (d) Order any of those arbitration proceedings to be stayed until after the determination of any other of them.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

## DRA-3.1 Arbitration Proceedings (continued)

### *Jurisdiction*

DRA-3.1.26

- (a) The Arbitration Committee has the power to rule on any objection by either party to its jurisdiction to hear the dispute;
- (b) No objection to the Arbitration Committee's jurisdiction may be raised after the sending of the statement of defence or, with respect to a counterclaim, after the sending of the reply to the counterclaim;
- (c) The Arbitration Committee may rule on an objection to its jurisdiction as a preliminary question or may proceed with the arbitration and rule on such an objection in his final award; and
- (d) Where applicable, an arbitration clause is treated as being independent of the other terms of a customer contract and any decision made by the Arbitration Committee or a court of law declaring that the customer contract is void does not of itself invalidate the arbitration clause.

### *Rules Relating to Termination of Arbitration Proceedings*

DRA-3.1.27

- (a) If, before the award is made, the parties agree on a settlement of the dispute, the Arbitration Committee shall record the settlement in the form of an arbitration award on agreed terms;
- (b) The Arbitration Committee is not obliged to give reasons for an award made under (a);
- (c) An award made under (a) shall be signed by the Arbitration Committee, sent to the parties and lodged with the Arbitration Cell for filing; and
- (d) An award made under (a) is final and binding on the parties.

### *Termination of Proceedings*

DRA-3.1.28

- (a) If, before the award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason other than by way of an agreement to settle between the parties, the Arbitration Committee may, either on its own initiative or at the request of a party, make an order for the termination of the arbitration proceedings;
- (b) The Arbitration Committee shall state in the order the reasons for the termination;
- (c) An order made under (a) shall be signed by the Arbitration Committee, sent to the parties and lodged with the Arbitration Cell for filing; and
- (d) An order made under (a) is final and binding on the parties.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-3: Arbitration</b>

## DRA-3.1 Arbitration Proceedings (continued)

### *Form and Effect of Awards*

#### DRA-3.1.29

- (a) An award shall:
  - (i) Give reasons for the decision;
  - (ii) Be signed by the Arbitration Committee; and
  - (iii) Contain the date on which and the place where it was made;
- (b) In addition to making a final award, the Arbitration Committee has the power to make interim, interlocutory or partial awards during the course of an arbitration;
- (c) An award made by the Arbitration Committee under this section shall be sent to the parties and lodged with the Arbitration Cell for filing;
- (d) The CBB:
  - (i) Shall be notified by the Arbitration Cell of any award made in respect of a CMSP; and
  - (ii) May make use of any findings made by an Arbitration Committee for the purposes of performing its functions under the CBB Law including, but without limitation, assessing whether the CMSP is a fit and proper person to be so licensed; and
- (f) An award made by the Arbitration Committee is final and binding on the parties.

### *Correction of Awards*

#### DRA-3.1.30

- (a) Within 14 days after the receipt of the award, either party may, with notice to the other party, request the Arbitration Committee to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature;
- (b) If the Arbitration Committee considers the request made under (a) to be justified, he shall make the correction within 14 days after the receipt of the request;
- (c) The Arbitration Committee may, on its own initiative, correct any error of the type referred to in (a) within 28 days after the date of the award; and
- (d) Rule DRA-3.1.27 applies in relation to such corrections.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

## DRA-3.1 Arbitration Proceedings (continued)

### *Additional Awards*

- DRA-3.1.31**
- (a) Within 14 days after the receipt of an award, either party may, with notice to the other party, request the Arbitration Committee to make an additional award as to claims presented during the course of the arbitration but omitted from the award;
  - (b) If the Arbitration Committee considers the request for an additional award to be justified and considers that the omission can be rectified without any further evidence, he may make the additional award within 14 days after the receipt of the request; and
  - (c) Rule DRA-3.1.27 applies in relation to such additional award.

### *Costs*

- DRA-3.1.32**
- (a) The Arbitration Committee shall make an order for costs whenever he makes an arbitration award, including an award on agreed terms, and an order for the termination of the arbitration proceedings;
  - (b) Subject to (c), the costs of an arbitration are to be borne by the unsuccessful party;
  - (c) The Arbitration Committee may apportion costs between the parties if it considers that apportionment is reasonable in the circumstances;
  - (d) The order for costs shall specify:
    - (i) The sum to be paid, which shall include:
      1. The amount of fees of the Arbitration Committee;
      2. Costs for legal advice or for other assistance such as translation, oral interpretation and note-taking required by the Arbitration Committee;
      3. Travel and other expenses or witnesses to the extent allowed by the Arbitration Committee; and
      4. The amount of administrative or other costs incurred by the Arbitration Committee and the arbitration panel;
    - (ii) The parties to and by whom payment shall be made; and
    - (iii) The time limit for making payment; and
  - (e) A party against whom such an order is made shall make payment in accordance with the order.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

## DRA-3.1 Arbitration Proceedings (continued)

### *Deposits of Costs*

- DRA-3.1.33**
- (a) At any time during the arbitration proceedings, the Arbitration Committee may require any party to deposit with the Arbitration Cell such sum or sums to defray the expenses of the arbitration if the Arbitration Committee considers it expedient to do so in the circumstances;
  - (b) In determining the amount of any deposit, the Arbitration Committee shall take into account the amount in dispute, the complexity of the subject matter, the costs incurred or to be incurred by the Arbitration Committee, and other relevant circumstances of the case;
  - (c) If payment of the required deposit is not made by the relevant party within 14 days after the receipt of the requirement, the Arbitration Committee may make an order for the termination of the arbitration proceedings; and
  - (d) After the termination of proceedings, with the approval of the Arbitration Committee, the Arbitration Cell:
    - (i) Shall render an account to the parties of the total deposits received under these rules; and
    - (ii) After all the costs required to be borne by a party have been paid, shall return any unexpended balance of the party's portion of the deposits to that party.

### *Notice Period*

- DRA-3.1.34**
- (a) For the purposes of calculating a period of time under this Module:
    - (i) The period begins to run on the day following the day when the document is sent or lodged;
    - (ii) If the last day of the period is a public holiday or a day on which banks are not generally open for business, the period is extended until the first business day that follows; and
    - (iii) Public holidays or days on which banks are not generally open for business occurring during the running of the period of time are included in calculating the period.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

## DRA-3.1 Arbitration Proceedings (continued)

### *Interest*

**DRA-3.1.35** The Arbitration Committee may order the payment of interest on any damages or costs, including the payment of compound interest if appropriate in the circumstances.

### *Destruction of Documents*

**DRA-3.1.36** The Arbitration Cell and the Arbitration Committee may destroy any document relating to an arbitration sent to them under this Module after the expiry of a period of ten years after the following, whichever is the later:

- (a) The last correspondence relating to the arbitration received by the Arbitration Cell;
- (b) The making of an arbitration award by the Arbitration Committee; and
- (c) The making of an order for the termination of the arbitration proceedings.

### *Confidentiality*

**DRA-3.1.37** (a) The Arbitration Committee may in its discretion determine that certain information relating to the arbitration is to be kept confidential: and

(b) Such confidential information may not be disclosed by any person, other than the CBB, without the written consent of the Arbitration Committee.

### *Applicable Law*

**DRA-3.1.38** (a) Kingdom of Bahrain Law applies to the arbitration proceedings:

(b) The Arbitration Committee shall take into account the trade practice applicable to the transaction: and

(c) Laws relating to arbitration in the Kingdom of Bahrain shall apply to an arbitration conducted under this Module, save for those matters that have been specifically provided for in this Module.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-3: Arbitration

### DRA-3.1 Arbitration Proceedings (continued)

DRA-3.1.39

- (a) The Arbitration Committee, or if the arbitration proceedings have not commenced, the Chairman may modify the requirements of this Module in relation to the sending of documents or the length of time periods in particular cases where, in his opinion, it is expedient to do so in the interest of justice; and
- (b) A party who knows or reasonably ought to know that any provision of, or requirement under, this Module has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance is deemed to have waived his right to object.

DRA-3.1.40

The Arbitration Committee shall decide on the dispute heard by it within a period not exceeding three months.

DRA-3.1.41

The Arbitration Committee shall, if required, undertake investigation in disputes heard by it, or may authorise one of its members, or one of the members of the Arbitration Cell of the SRO to carry out the investigation.

DRA-3.1.42

The Arbitration Committee shall make its decision on disputes heard before it, based on the evidence produced by the parties, and subject to the rules applicable at the SRO. The decision shall be executed in accordance with the provisions of the Civil Procedure Law, as amended.

DRA-3.1.43

Disputes shall cease before the Arbitration Committee, for the same reasons provided in the Civil Procedure Law, as amended, and shall have the same effect legally resulting from the cessation of the dispute.

DRA-3.1.44

Where in any hearing by the Arbitration Committee any question arises which is not within the jurisdiction of the Arbitration Committee, or a claim of forgery of any document is raised, or any criminal proceedings have been taken due to such forgery, the Arbitration Committee shall suspend its work pending the issue of final judgement thereon.

DRA-3.1.45

Deliberations on the decision shall be confidential, and no person besides the member of the Arbitration Committee who attended the session hearings shall be entitled to participate. Decisions shall be adopted by majority vote. The decision shall be valid if signed by the majority of the members.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-3: Arbitration</b>

### DRA-3.1 Arbitration Proceedings (continued)

**DRA-3.1.46** The decision passed by the Arbitration Committee shall be in writing, and shall contain in particular, statements and documents of the parties, the reasons for the decision, and date and place of the decision. The decision shall be signed by the Arbitration Committee. However, the decision shall be valid if signed by the majority of the Arbitration Committee.

**DRA-3.1.47** The Arbitration Cell shall file the original decision of the Arbitration Committee and its attachments with the Court Clerks Section, within three days from the date of the announcement. The parties shall be notified of such filing.

**DRA-3.1.48** The concerned party may apply to the Chairman of the competent court to obtain a copy of the Arbitration Committee's decision, accompanied by an execution order.

**DRA-3.1.49** The parties may, regardless of the situation of their dispute, apply to the Arbitration Committee to enter on the record any agreed settlement or other mutual agreement reached by them, to be signed by them or by their representatives. The written agreement shall, in this case, be attached to the Arbitration Committee record and the contents of the agreement shall be entered on the record.



MODULE	DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings
CHAPTER	DRA-4: Disciplinary Committees

## DRA-4.1 Disciplinary Action

**DRA-4.1.1** All SROs shall ensure compliance by the members of the SRO and issuers of securities with its business rules and listing rules respectively.

**DRA-4.1.2** SROs shall seek to detect rule breaches quickly, to take action to minimise the impact of the rule breach, and where possible to alert investors and other market participants of the breach. Potential rule breaches shall be uncovered through a range of activities, including the SROs surveillance and investigation functions, and research and data analysis, and from many sources including tip-offs and complaints received from the public and media commentary.

- DRA-4.1.3
- (a) Disciplinary action is an important activity for the SROs as the frontline regulators of members and listed companies, but it is not an end in itself. Its principal purpose is to change future behaviour by demonstrating that breaches of the business rules and listing rules will be identified and the sanction imposed will have a cost or adverse impact on the companies and individuals concerned; and
  - (b) Through disciplinary actions, the SRO shall seek to:
    - (i) Deter future breaches conveying clear messages that certain conduct is unacceptable and will not be tolerated by the SRO and that there are consequences to follow from a rule breach;
    - (ii) Educate the market; and
    - (iii) Ultimately influence and bring about change of attitude and behaviour towards an enhanced compliance culture and improved corporate governance.

### *Disciplinary Committee*

**DRA-4.1.4** All SROs shall constitute a Disciplinary Committee, which shall be responsible for adjudicating on any alleged violation of the rules and regulations of the SRO and determine penalties to be imposed against the members of the SRO and issuers of securities.

### *Constitution of a Disciplinary Committee*

**DRA-4.1.5** The Disciplinary Committee shall be constituted by a resolution of the Board of the SRO. The constitution and membership of the Disciplinary Committee shall be approved by the CBB as a part of the SRO's business rules. The Disciplinary Committee shall be independent and separate from the SRO's executive management structure.



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## DRA-4.1 Disciplinary Action (continued)

### *Terms of Reference of the Disciplinary Committee*

#### DRA-4.1.6

The powers and functions and limitations thereon of the Disciplinary Committee shall be as follows:

- (a) To exercise all the powers and functions of the SRO on all disciplinary matters relating to the members and issuers of securities;
- (b) Without prejudice to the generality of the foregoing:
  - (i) To exercise all the powers and functions reserved to the Disciplinary Committee in the “Disciplinary Procedures” approved by the SRO’s senior management from time-to-time;
  - (ii) To convene and conduct hearings of charges against member(s) of an SRO or an issuer(s) of a security and to decide whether those charges are proven or not;
  - (iii) To impose such penalty as the Disciplinary Committee may think fit on a member(s) of an SRO or an issuer(s) of a security, against whom charges are so proven, provided that such penalty shall be within the range of penalties set out in the rules of the SRO and the “Disciplinary Procedures” approved by the SRO’s senior management from time-to-time;
  - (iv) To summon member(s) of an SRO or an issuer(s) of a security and their employees to attend and make representations before the Disciplinary Committee;
  - (v) To review the operation of the “Disciplinary Procedures” approved by the senior management from time-to-time on a regular basis and to report with recommendations to the board of an SRO on any proposals for the improvement of those procedures which the Disciplinary Committee considers necessary; and
  - (vi) To request a member(s) of an SRO or an issuer(s) of a security or their employees to produce their books and records for inspection by the Disciplinary Committee;
- (c) To liaise with the CMSD as necessary in relation to its powers and duties, or as the CMSD may require;



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#### DRA-4.1 Disciplinary Action (continued)

- (d) To review the provisions of the rules of the SRO relating to the disciplinary matters of a member(s) of an SRO or an issuer(s) of a security from time-to-time and to consider and advise on any amendments to those provisions and to recommend such amendments as it sees fit for the approval of the board of the SRO and the CBB;
- (e) To submit written and/or oral reports to the board of the SRO or to the CMSD regarding its activities and proceedings as and when requested; and
- (f) To conform to any written and/or oral advice (which shall include any direction) that may from time-to-time be prescribed by the board of the SRO or CMSD.

##### *Penalties*

#### DRA-4.1.7

The Disciplinary Committee may impose the following penalties:

- (a) Reminder;
- (b) Warning;
- (c) Confiscation of all or part of the CMSP's guarantee;
- (d) Suspension of trading by violating companies for a period not exceeding four months;
- (e) Striking off the listed companies and unlisted companies, or the transfer of a listed company into an unlisted company whose securities are admitted for trading;
- (f) Suspension of a CMSP's membership for a period not exceeding four months;
- (g) Cancellation of membership of a CMSP, and any other person with a similar status membership; or
- (h) Any other penalty available, as per the rules of the SRO.

#### DRA-4.1.8

Deliberations of the Disciplinary Committee shall be confidential. Resolutions shall be adopted by majority vote and the concerned parties shall be notified by registered mail, accompanied by an acknowledgement.

#### DRA-4.1.9

The chief executive officer of the SRO shall refer the violation record to the Disciplinary Committee if an investigation has been carried out by the SRO, or he shall, where the application has been referred by the CMSD for investigation, submit the matter to the CMSD and also refer the matter to the Disciplinary Committee.



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#### DRA-4.1 Disciplinary Action (continued)

##### DRA-4.1.10

Violations referred to disciplinary proceedings shall be raised in the form of a statement, which shall contain the name and place of residence of the defendant, date of the violation and a summarised description of the violation and the available evidence. The Disciplinary Committee shall not consider any violation unless it is submitted in accordance with this method.

##### DRA-4.1.11

The record of the violation referred to in the Disciplinary Committee shall be submitted to the Chairman of the Disciplinary Committee for fixing a date for the hearing by issuing an order to that effect. The Disciplinary Action Cell shall serve summons on the defendant, requiring him to appear on the date fixed for the hearing.

##### DRA-4.1.12

A staff member of the Disciplinary Action Cell shall attend the hearing of the Disciplinary Committee, in order to keep the record under the supervision of the Chairman thereof. The record shall contain names of members of the Disciplinary Committee, date, time and place of the hearing, names of parties who appear, or their representatives, all proceedings carried out in the hearing, and any statements and applications made by the parties. The Chairman and the staff of the Disciplinary Action Cell shall sign the record.

##### DRA-4.1.13

The defendant shall appear on the date fixed for hearing the violation, and the committee should enable him to state his defence in respect thereof, after notifying him of the violation and of the supporting evidence.

##### DRA-4.1.14

If the defendant does not appear at the sitting fixed for hearing the violation, the committee shall, if it is proved that the summons was duly served, proceed to hear and decide on the violations in his absence.

##### DRA-4.1.15

Records of investigations carried out prior to the disciplinary proceedings shall be attached to the violation record. The Disciplinary Committee, if not satisfied with the investigation, may carry out its own investigation or order further investigations by the SRO or by an independent professional firm.



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#### DRA-4.1 Disciplinary Action (continued)

**DRA-4.1.16** The Disciplinary Committee shall, for the proof of any facts, rely on the evidence obtained from the investigations carried out in respect of the facts which constitute the violation, and shall, at its absolute discretion, prefer one item of evidence to the other. The Disciplinary Committee shall formulate its valuation according to its own satisfaction. The Disciplinary Committee must not base its decision on the personal knowledge of its members.

**DRA-4.1.17** The members of the Disciplinary Committee shall deliberate on the decision before issuing it. Every member shall express his opinion in secret, and the decision shall be taken by majority vote.

**DRA-4.1.18** The decision passed by the Disciplinary Committee must be in writing. It shall contain a review of the violation, statements and defence of the offender, proceedings carried out, reasons for the decision and the decree thereof, and date and place of issue of the decision. The draft decision shall be signed by the Chairman and members of the Disciplinary Committee.

**DRA-4.1.19** The Chairman of the Disciplinary Committee shall pronounce the decision in a public hearing. The draft decision shall be filed in the violation record, after pronouncement thereof.

**DRA-4.1.20** Copies of the decision shall not be delivered to the concerned parties, however any party may, at his request, peruse the draft award.

**DRA-4.1.21** Any concerned party may obtain a copy of the disciplinary decision after the signing thereof by the Chairman of the Disciplinary Committee and the clerk, provided that it shall be delivered to such person personally, or to an attorney duly appointed by a specific power of attorney, and subject to the approval of the Chairman of the Disciplinary Committee and payment of the prescribed fee.

**DRA-4.1.22** The Disciplinary Action Cell shall, in the case of the defendant's non-appearance in the hearing, notify him of the decision within five days from the date of issue thereof.

**DRA-4.1.23** Service of all documents, decisions and notices relating to the disciplinary proceedings shall be effected by registered mail.



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## DRA-4.2 Disciplinary Appeals Committee

**DRA-4.2.1** The decisions passed by the Disciplinary Committee of an SRO referred to in section DRA-4.1 may be appealed to the Disciplinary Appeals Committee (DAC).

**DRA-4.2.2** The Disciplinary Appeals Committee shall be established and constituted by a Directive of the Governor.

### *Terms of Reference of the Disciplinary Appeals Committee*

**DRA-4.2.3** The powers, functions and limitations thereon of the Disciplinary Appeals Committee shall be as follows:

- (a) To exercise all the powers and functions relating to the referrals against the decisions of the Disciplinary Committee of the SROs; and
- (b) Without prejudice to the generality of the foregoing:
  - (i) To convene and conduct hearings of cases referred to it and to decide whether those referrals have been made on satisfactory grounds;
  - (ii) To summon members of SROs and issuers of securities and their representatives or employees to attend and make representations before the Disciplinary Appeals Committee;
  - (iii) To request members of SROs and issuers of securities or their representatives or employees to produce their books and records for inspection by the Disciplinary Appeals Committee;
  - (iv) To remit the case back to the Disciplinary Committee for reconsideration where fresh evidence put up on referral is allowed; and
  - (v) To dismiss the charges referred to it or to uphold the verdict of the Disciplinary Committee and, as the case may be, to impose the same or substitute a lesser or a greater penalty to that imposed by the Disciplinary Committee.

**DRA-4.2.4** Decisions of the Disciplinary Appeals Committee must be notified to the CBB as soon as possible after the conclusion of the proceeding.



<b>MODULE</b>	<b>DRA: Dispute Resolution, Arbitration and Disciplinary Proceedings</b>
<b>CHAPTER</b>	<b>DRA-5: Complaints to CBB</b>

## **DRA-5.1 Complaints to CBB**

DRA-5.1.1 Complaints from the public and customers of the CBB licensees are received by the CBB in the complaint forms available on the CBB's official website and such complaints which relate to potential cases of contravention of the CBB Law, rules and regulations, or SROs' business rules are also used by the CBB for the purpose of the CBB's market surveillance function.