



## **GUIDANCE NOTE FOR DISPUTE MANAGEMENT SYSTEMS**

This guidance note has been prepared by George Lim, Dispute Resolution Counsellor (DRC).<sup>1</sup>

### **1. About the DRC**

The DRC has been appointed by the EMC Board to perform the functions set out in section 3 of Chapter 3 of the Singapore Electricity Market Rules (the Market Rules).

The duties of the DRC include assisting Market Entities to develop their dispute management systems (DMS) (section 3.1.1 of Chapter 3). Each market entity has to implement a DMS which is consistent with guidance notes of the DRC on the DMS (section 3.6.1 of Chapter 3).

### **2. Market Entities' DMS**

There are two separate but related aspects of your DMS:

- Explaining your process to the other Market Entity; and
- Having an internal process to ensure that the system is operational within your organization.

I have tried to deal with each below.

I have also reproduced the requirements for a DMS as set out in the Market Rules and beneath each provided some thoughts for the user to consider.

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<sup>1</sup> I would like to acknowledge reference to the Guidance Notes for DMS prepared by Shirli Kirschner as National Electricity Market Dispute Resolution Adviser (Australia).

## **2.1 DMS Contact**

**The DMS shall nominate a DMS contact to be the first point of contact for the notification of disputes (section 3.6.1.1 of Chapter 3)**

### **2.1.2 Role of DMS Contact**

- The DMS contact is the first point of contact for the notification of disputes relating to the National Electricity Market of Singapore.

**2.2** In identifying the DMS contact, Market Entities should think about the following:

#### **2.2.1 Access to DMS Contact**

- Identifying a main DMS contact and an alternate DMS contact in your organization.
- Making it easy for any Market Entity to contact your DMS contact. This will mean:
  - providing the DRC with a phone, mobile, fax, email and postal address contact; and.
  - notifying the DRC of any changes to keep the records updated.

#### **2.2.2 Training of DMS Contact**

- Ensuring that the DMS contact is properly trained in interest based negotiation and conflict management. This includes familiarity with mediation and other alternative dispute resolution (ADR) processes and an understanding of the dispute resolution process in section 3 of Chapter 3.

#### **2.2.3 Authority of DMS Contact**

- Ensuring that the DMS contact has a high level of authority for the resolution of disputes or has quick and easy access to people with the requisite level of authority to assist at each stage of the process.

### 3. Notice of Dispute

**Parties to a dispute shall complete the following steps before taking any other action:**

- **serve a notice of dispute on the other parties and give a copy to the DRC; and**
- **attempt to resolve the dispute in good faith using their dispute management systems.**

**(section 3.7.1 of Chapter 3)**

**The steps in section 3.7.1 do not apply to:**

- **a dispute over a request for compensation referred to in section 3.3.1.5. Section 3.11 of Chapter 3 shall apply to that dispute instead; or**
- **a dispute over a final settlement statement referred to in section 5.6.6 of Chapter 7. Section 5.6.7 of Chapter 7 shall apply to that dispute instead.**

**(section 3.7.2 of Chapter 3)**

#### 3.1 Scope

- Please note that the procedures regarding the sending of a notice of dispute and attempting to resolve a dispute using the DMS do not apply to a dispute over a request for compensation or a dispute over a final settlement statement. Different procedures apply in such cases.

#### 3.2 Format

- For cases where a notice of dispute is applicable, it is recommended that Market Entities use the form of notice of dispute attached as Form 1.
- DMS contacts may contact the DRC if they need some help in completing the form.

#### 3.3 Time Limits for Serving Notice of Dispute

**A party shall serve a notice of dispute within 120 business days from the date when it knew or should have reasonably known of the events giving rise to the cause of action. However**

- **for a dispute in respect of a connection agreement, a party shall serve the notice of dispute within 750 business days from the date it knew or should have reasonably known of the events giving rise to the cause of action; and**
- **for a dispute in respect of a retailer UoS agreement, a party shall serve the notice of dispute within 370 business days from the date when the events giving rise to the cause of action occurred.**

**(section 3.7.3 of Chapter 3)**

**If a party fails to comply with the time limit set out in section 3.7.3, section 3.11, or in section 5.6.7 of Chapter 7, that party is deemed to waive its right:**

- **to use the dispute resolution process in the market rules to resolve the dispute; or**
- **to start any other proceeding about the subject matter of the dispute.**

**(section 3.7.5 of Chapter 3)**

- It is important that line managers be aware of the time frames and the consequences of not dealing with disputed conduct as quickly as possible.

### **3.4 Protocols on Sending a Notice of Dispute**

- Check the date of occurrence of the events giving rise to the dispute action (see section 3.7.3 of Chapter 3).
- Check who in the organization has the authority to prepare and sign a notice of dispute.
- Check which people/positions within the organization needs to be notified if a notice of dispute is sent. You may want to set up an email group in advance.
- Check who will monitor that there is a response received in time.
- Have a process for notifying additional parties – who are they? Do it after consultation with the party you are in dispute with.

### **3.5 Protocols on Receiving a Notice of Dispute**

- Check which people/positions within the organization need to be notified if a notice of dispute is received. You may want to set up an email group in advance.
- Check the date of occurrence of the events giving rise to the dispute action (see section 3.7.3 of Chapter 3).
- An acknowledgement of receipt should be sent.
- The acknowledgement should include the identity of the DMS contact(s) with contact details.

## 4. Information Requests

**The DMS shall set out a Market Entity's procedures for responding to requests for information from another Market Entity in relation to a dispute (section 3.6.1.2 of Chapter 3)**

### 4.1 Documents for Information Request

- This requires a number of documents to be in place within the Market Entity's organization, in particular:
  - Having an easy to use consistent format for requesting information. This should be readily available. The form should include a question asking what information is needed and why it is relevant.
  - You may want to include a form of response and a form of confidentiality agreement dealing with a request where you consider the information to be confidential.

### 4.2 Skills for DMS Contact – Information Request

- The DMS contact needs to have the skills to negotiate with the requesting participant to ensure that the information request can be dealt with sensibly and quickly, particularly if there is no agreement on what is relevant.

### 4.3 Time Period for Information Request

- It is necessary to ensure that there is a mechanism for recording the dates that the request was received and the date that the request is responded to. This will enable the request to be tracked. There should be a response to the request within 10 business days of receipt of the request.
- Think about sending out an acknowledgement when the request is received. The acknowledgement should flag if there are documents which are likely to be confidential.
- Attach a confidentiality agreement if appropriate.
- Provide a date for production of the document.
- Identify areas where there is a dispute on the information being requested.

#### **4.4 Dispute on Information Request**

- In the event that the information request is something that cannot be easily responded to for whichever reason, the DMS contact should have a range of options available to him / her to respond quickly to the requesting participant to identify the aspects of the request which are problematic.
- The DMS contact can contact the DRC to ask for assistance in the event it seems that the document request is likely to be contentious.

### **5. DMS Meeting**

#### **5.1 Requirement for DMS Meeting**

Within 10 business days after the receipt of a notice of dispute, representatives of:

- the Market Entity that served the notice of dispute;
- every Market Entity on whom the notice of dispute was served

must meet by agreement to determine the further conduct of the dispute.

#### **5.2 Aim of Meeting**

The intention behind the requirement for a meeting is to ensure that Market Entities use every endeavour possible to resolve the dispute as quickly and to the extent possible by commercial rather than legal means. (This may not always be possible). In heated disputes, or disputes which include many parties, it is often useful to have a facilitator to assist with these meetings. The role of the facilitator can be to try and resolve the dispute or act as a logistics coordinator and ensure that the parties gain maximum benefit from the meeting.

#### **5.3 Things to Think About In Respect of a Facilitated Meeting**

There needs to be a process for deciding whether to get a facilitator. This should be discussed with the other party(ies).

- Discuss who pays before going ahead with a facilitator.
- A facilitator can be sourced either through the party's DMS if you have such a resource available or by contacting the DRC either to ask him to act as facilitator or to ask him for a recommendation.

#### **5.4 Checklist for Useful Meeting**

- Consider exchanging written summaries of the issues in dispute to allow the parties to check that they have their facts straight.
- Establish a process for attempting to resolve the dispute.
- Consider whether to keep confidential, the fact that a dispute exists, and/or any information exchanged for the purpose of attempting to resolve the dispute.

#### **6. Notice of Mediation**

**Once a notice of dispute has been served under section 3.7.1, the parties have 40 business days to resolve the dispute by themselves. After that, either of them may submit the matter to the DRC for mediation. They do this by serving a notice of mediation. The parties may agree in writing to extend this 40-business day period.**

**(section 3.8.1 of Chapter 3)**

- It is recommended that Market Entities use the form of notice of mediation attached as Form 2.

#### **7. Notice of Arbitration**

**Either party may submit the matter to the DRC for arbitration if:**

- **the DRC informs the parties in writing that mediation is not an appropriate means of resolving their dispute;**
- **the parties fail to resolve their dispute after attending a mediation session;**
- **the dispute is not resolved within 40 business days after the mediator is appointed (or longer if the parties agree in writing);**
- **the dispute is over a request for compensation in section 3.3.1.5 that is not resolved under section 3.11; or**
- **the dispute is over a final settlement statement in section 5.6.6 that is not resolved under section 5.6.7 of Chapter 7.**

**(section 3.9.1 of Chapter 3)**

**An arbitration complainant submits a dispute to the DRC for arbitration by filing a**

**notice of arbitration.**

**(section 3.9.2 of Chapter 3)**

- It is recommended that Market Entities use the form of notice of arbitration attached as Form 3.

## **8. Commercial Channel of Communication**

It is usual for lawyers and counsel to be involved in the dispute resolution process. It is not unusual for the lawyers to handle the legal and procedural matters. The purpose of section 3 of Chapter 3 is to ensure the process stays efficient and effective. To ensure this, the DMS must make provision for a commercial channel of communication with the DRC to assist in resolving any procedural or other difficulties that may arise.

## **9. Checklist of items to include for your Organisation's DMS**

- DMS contacts nominated
- DMS contacts' details notified
- Time period for serving notice of dispute
- Time period for responding to requests for information
- Time period for DMS meeting
- Guideline on when a facilitator will be used
- A protocol for choosing a facilitator
- A short agreement on payment of facilitator
- Checklist for useful meetings (what is required) in terms of swapping statements, documenting it

## **10. Model DMS (Annexure)**

## **11. Document Control Details**

- Please direct comments and questions to the DRC:

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- Current as at 14 February 2006

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## **History of Amendments**