



30 December 2016

Professor Teresa Cheng Yeuk-wah GBS, SC, JP
Chairman of the Board
Financial Dispute Resolution Centre
Unit 3701-4,
31/F, Sunlight Tower,
248 Queen's Road East,
Wan Chai, Hong Kong

Dear Professor Teresa Cheng Yeuk-wah GBS, SC, JP,

Reply to Consultation on "Proposal to Enhance the Financial Dispute Resolution Scheme"

Thank you for your invitation to respond to the consultation of your Centre. We are supportive towards your Centre's refinement on the Financial Dispute Resolution Scheme in order to open the doors of ADR to more people. Our responses to the questions are as follows:

Question 1

- 1.1. We agree that the upper claimable limit should be increased to HK\$3,000,000. Reason being that this can reduce the number of cases rejected by FDRC due to the excess claimable amount of the case, which might be common because of the nature of disputes handled by FDRC.
- 1.2. N/A

Question 2

- 2.1 We agree that a single maximum claimable amount continues to be applicable for the banking and the securities industries so that the unnecessary confusion of the potential claimants could be minimised.
- 2.2 N/A

Question 3

- 3.1 We agree to extend the limitation period for lodging Claims to 36 months as shown by the complaint enquiry data of which 65% were from losses occurred over 2 years. This is to include more people who could then benefit from FDRS, promoting the use of ADR.
- 3.2 N/A

Question 4

- 4.1 We agree that the service scope of FDRS could be extended to cover claims from SEs, which lack financial resources to undergo legal proceedings to resolve disputes. FDRS can offer them with more efficient and cost-effective ways to deal with disputes.



- 4.2 We believe that the proposed definition of SEs aligns with that of some recognised organisations and the purpose of reserving resources to the needy. Therefore, we have no more suggestions on the proposed definition.
- 4.3 We agree that FI being qualified as an SE could file a Claim as an EC against another FI, reason being that an SE would need assistance for dispute resolution when faced with disputes with business partners, regardless of the nature of such enterprise. Moreover, we believe this could also help ADR develop.

Question 5

- 5.1 We firmly believe that it is possible for FDRC to consider cases that were involved in court proceedings, without asking claimant to withdraw from the Court. This can be shown by the common practice of mediation that could be initiated at any stage during legal proceeding.
- 5.2 We disagree with the proposal that PD31 cases should have a maximum claimable amount aligning with the future monetary jurisdiction of the District Court. We believe that FDRC should focus on catering for the needs of target service users for the consideration of amending the maximum claimable amount. Having said that, we believe the target service users of FDRC are with relatively fewer financial resources and thus maybe a smaller claimable amount.
- 5.3 We agree that parties to mediation in PD31 cases at FDRC can be legally represented as legal representatives are welcomed in general mediation process.

Question 6

We disagree with the proposal of handling disputes which exceed the Intake Criteria as specified in paragraph 3.1(a) and (b) in the Consultation Paper. Since the objective of establishing FDRC is to provide consumers with affordable services for resolving monetary disputes with FIs, such service and resources should then be reserved for ECs with limited financial resources. We are also concerned about the possible abuse of such service by more financially able parties, who can then afford other ADR services provided elsewhere.

Question 7

- 7.1 We agree that FI should be able to refer financial disputes to FDRC, subject to the consent of EC. As mediation and all other dispute resolution methods should be equal and should involve concerns of both parties, FI should be allowed to refer financial disputes to FDRC, to ensure equality and fairness.
- 7.2 We believe that Claim and Counterclaim are equal rights for all parties. As mentioned above, we agree to fairness and equality. Therefore, we agree that an FI may lodge Counterclaim against the EC to FDRC.



7.3 We are inclined to mutual agreement on the mediation/arbitration fee paid by both parties, as in mediation fee payment arrangement of HKMC. Parties concerned can negotiate the portion of payment they are respectively responsible for, as long as a consensus has been reached and the payment is fully made.

Question 8

8.1 We disagree with the proposal of making “mediation only” and “arbitration only” available as optional services provided by FDRC in all circumstances. Our concerns are as follows:

- The original purpose of FDRC is to cater for the needs, if any, that in case the parties failed to reach settlement in mediation process, arbitration will be utilised to settle the dispute. It was expected that around 80% of the cases could reach settlement in mediation process. However, FDRC should also cater for the needs of the remaining 20% that could experience failure in mediation.
- For the nature of the disputes handled by FDRS, claimants may not have enough professional ADR knowledge to critically judge which service they are most suitable for, thus making uninformed decisions, which may lead to complications.

8.2 N/A

Question 9

We agree with the proposed revised fee scale for dispute resolution services of FDRC.

Question 10

We agree that FDRC could reconsider the rejected applications if they fall within the amended Intake Criteria as more people in need can benefit from the ADR services and help ADR to expand and grow.

It is sincerely hoped that the above answers contribute to the consultation and the refinement of the Financial Dispute Resolution Scheme of your Centre. We look forward to future cooperating opportunities.

Yours sincerely,

Francis Law Wai-hung
President
Hong Kong Mediation Centre