

Guidance Notes to the Complaint Form (DC-1)

Please read these notes before filling in the *Complaint Form (DC-1)*. Please fill in the *Complaint Form (DC-1)* in black or dark blue ink because we (the Financial Dispute Resolution Centre ("FDRC") and the FDRC Disciplinary Committee) may have to photocopy it a number of times. Please also make sure that you/your company sign(s) and date(s) the *Complaint Form (DC-1)*. A complaint may be made in English or Chinese but we do not provide translation service for any party to the complaint. "You" or "your" in the *Complaint Form (DC-1)* and *Guidance Notes to the Complaint Form (DC-1)* may mean you as an individual and/or the company on behalf of whom you are complaining.

Here is a summary of what we do and do not do.

We:

- ✓ investigate complaints of misconduct against
 - (i) a mediator on the List of the FDRC Mediator for mediation conducted under the *Financial Dispute Resolution Scheme ("FDRS")*; or
 - (ii) an arbitrator on the List of the FDRC Arbitrator for arbitration conducted under the *FDRS*
- ✓ (if the Tribunal thinks fit) refer the complaint direct to the Board of FDRC Directors for sanction.

Examples of possible "misconduct" are:-

- acting in breach of the FDRC *Terms of Reference*, in particular the *Ethics Codes for FDRC Mediators and Arbitrators*;
- bringing into question the Respondent's professional abilities and/or suitability to remain on the FDRC List of Mediators/Arbitrators;
- bringing discredit upon and/or disrepute to the FDRC;
- dishonesty or fraud;
- acting in breach of impartiality;
- acting in a conflict of interest situation;
- acting in breach of confidentiality, such as, divulging confidential information without consent.

We do not:

- × investigate complaints against mediators/arbitrators who are not acting in their capacities as mediators/arbitrators in mediation/arbitration conducted under the *FDRS* ;
- × normally handle complaints which are not in writing or set out in the *Complaint Form (DC-1)*;
- × give legal advice;
- × take proceedings on your behalf for negligence cases.

Section 1: Personal/Company's Details

We need your name or the name of your company and the person-in-charge of your company and the address of you/your company before we process your or your company's complaint. All complaints must be lodged by the aggrieved party; we do not accept representative complaint. We do not usually contact you by phone, but a number (for use in normal office hours) can be useful.

Please tell us as soon as possible if your address or contact number (or that of the person/the company you are making the complaint for) changes.

We will acknowledge all letters we receive and will try to do so within 14 days of receiving them. You may phone us to find out whether we have received your complaint or correspondence at least 7 working days (or 3 working days if complaint was sent by e-mail) after you have sent your complaint by post.

Section 2: Details of the Mediator/Arbitrator you are complaining against

It is essential that you provide the correct name of the mediator or arbitrator who dealt with your FDRC case so that we can correctly identify him or her. We cannot look into any complaint unless we can find out the name of the mediator or arbitrator. If you are complaining about more than one mediator or arbitrator, you should fill in a separate *Complaint Form (DC-1)* for each mediator or arbitrator unless your complaint is exactly the same for all of them.

It would also help us to investigate into the matter you are complaining against by informing us the time and the date of the mediation or the time that the *Notice to Arbitrate* is filed to the FDRC.

Section 3: Details of the complaint

If your complaint involves issues the subject matter of which may involve other organisations or authorities (e.g. the Securities and Futures Commission, the Hong Kong Monetary Authority, the Hong Kong Police, the ICAC, the Equal Opportunities Commission, the Privacy Commissioner for Personal Data, etc.), we will normally not proceed with our investigation of your complaint pending conclusion of the investigation by other organisation or authority but we will reserve the right to report such matter to the other organisation or authority as we deem fit. You may refer the matter back to us upon conclusion of the investigation by other organisation or authority.

Please describe your complaint as clearly as possible. You are reminded that it must be something that a mediator or arbitrator has done or failed to do in your case under *FDRS*. It will help us deal with the complaint more expeditiously if you tell us:-

- what the complaint was about;
- when the event you are complaining about arose;
- what the mediator/arbitrator did or did not do; and
- why you believe there was a misconduct.

We DO NOT normally take in complaint that is over 2 years from the date the *Mediation Certificate* or the *Arbitral Award* was issued. It may be difficult to investigate your complaint if significant time has passed since the event that led to your complaint.

If the *Complaint Form (DC-1)* does not have enough space for you to give details of your complaint, please write on extra sheets of paper and send them to us. You should tell us how many you have enclosed so that we can be sure we have received them all. Please write on only one side of each sheet and include a page number so that it is easier to photocopy them.

If there were any witnesses who can support your complaint or who might be able to help us in other ways, please let us know their names and addresses and the part they played. It would also be helpful if you may send us a statement from each witness. We will not necessarily contact every witness you name.

Please provide all documents to support your complaint (if any). You are responsible for giving us the evidence in support of your complaint. Please do not send original documents, only photocopies, as we cannot be held responsible if they are lost. We cannot copy materials for you. Please only include documents that are relevant and that deal with the conduct or services of the mediator/arbitrator whom you are complaining about. It helps if you list out the documents you are enclosing so that we can check that they arrive safely. Documents must stay on our files so we cannot return them. It is helpful to know if you have contacted us regarding complaint matters before.

Section 4: Your agreement

You should be aware that we will pass a copy of the *Complaint Form (DC-1)* together with copies of any document you have provided in relation to your complaint to the mediator or arbitrator you have complained against, the FDRC Disciplinary Committee, the FDRC Disciplinary Tribunal, the prosecutor in relation to the complaint, any person appointed by the FDRC to conduct investigation, a mediator or potential mediators whom FDRC may approach for resolving any dispute in connection with the complaint, court, relevant government departments, related authorities and organisations as well as agencies which are authorised to receive information relating to law enforcement, prosecution or review of our decision. Please let us know in advance if you have any problem with this. Please ensure that you have read these guidance notes carefully before filling in the *Complaint Form (DC-1)*.

You agree that the FDRC and its Disciplinary Committee has the ultimate discretion to conduct or NOT to conduct investigation into your complaint; and the decision of the FDRC and its Disciplinary Committee is final. You agree to provide any relevant information within your power necessary for the FDRC Disciplinary Committee's disciplinary process in respect of this complaint and you understand that failure to provide relevant information within your power may render your complaint being rejected by the FDRC.

It is essential that before we look into the complaint, you agree to provide your assistance by acting as our witness in the event that we decide to refer the complaint to the FDRC Disciplinary Tribunal for disciplinary proceedings against the mediator or arbitrator for misconduct. You agree to provide any further relevant information within your power necessary for the FDRC Disciplinary Committee's disciplinary process in respect of the complaint.

The FDRC, its Disciplinary Committee and its Disciplinary Tribunal have no obligation to give reasons for any decision it makes in respect of a complaint against the Mediator/Arbitrator.

We will use the information you give us to investigate your complaint. We will not use that information for any unconnected purpose without your consent. To help us maintain a record of the complaint, we will have to keep your complaint information after we have dealt with the complaint. If any information you have given us is sensitive or personal under the Personal Data (Privacy) Ordinance (Cap. 486), you agree to us holding that information if you wish to go ahead with your complaint. You have a right of access including a right to obtain a copy of your personal data and correction with respect to personal data provided in the *Complaint Form (DC-1)* under the Personal Data (Privacy) Ordinance (Cap. 486).

Finally, please sign and date the *Complaint Form (DC-1)*.

(Acknowledgement: The *Guidance Notes to the Complaint Form (DC-1)* (“Notes”) are formulated with reference to the similar notes from the Law Society of Hong Kong (“LSHK”). The LSHK has consented to the FDRC adopting the *Notes* for its own complaint handling procedures. The LSHK gives no warranty representation or assurance that the *Notes* are suitable for use or adoption by the FDRC for the above purpose.)