

Joint Mediation Helpline Office
**Reply to Consultation on “Proposals to Enhance the Financial Dispute
Resolution Scheme”**

Question 1

1.1 We agree with the proposed amendment of the upper claimable limit to HK\$3,000,000, reasons:-

- The amendment aligns with the financial limit for the civil jurisdiction of the District Court which is under review and likely to be increased from \$1,000,000 to HK\$3,000,000.
- In addition, we can see that over 25% of enquiries received by FDRC yearly with the claim amount over HK\$500,000. Thus, if the amount is adjusted, more claimants could benefit from FDRS.

1.2 N/A

Question 2

We agree with the single maximum claimable amount continues to be applicable for the banking and securities industries in order to avoid claimants' and FIs' confusions.

Question 3

3.1 We agree to extend the limitation period for lodging Claims to 36 months, since according to FDRC's enquires data, a yearly average of about 140 enquirers suffered from financial losses for more than 1 year in which 65% of them suffered from the financial losses for over 2 years. Thus, in order to assist more claimants to resolve disputes through mediation, it is necessary to extend the limitation period for logging claims to 36 months.

3.2 We suggest that FDRC could set the limitation period of 36 months and review constantly.

Question 4

- 4.1 We agree to extend the service scope to cover claims from SEs, reasons:-
- Small-sized companies lack financial capability to resolve their disputes. FDRC could help the SEs to resolve the disputes in a less costly way by use of mediation.
- 4.2 We do not have further suggestion.
- 4.3 We agree that an FI qualifying as an SE could file a claim as an EC against another FI, as FI has also needs to resolve their business/ financial disputes.

Question 5

- 5.1 We agree that the FDRC should deal with cases under current court proceedings and claimant doesn't need to withdraw the case from court, reason:-
- This can support the Practice Direction 31 that the court encourages the disputants to engage mediation.
- 5.2 We agree that the maximum claimable amount of PD31 cases be set at an amount in tandem with the future monetary jurisdiction of the District Court, reason:-
- This can support the PD31 and disputants could have more choices to engage mediation services.
- 5.3 We agree that legal representative of both parties of PD31 cases be allowed to participate in the FDRC mediation, reason:-
- Legal representatives are commonly involved in court proceedings under PD31. The presence of legal representatives may benefit the mediation as legal advices could be provided to parties during the mediation.
 - The FDRC may also consider to allow the legal representatives of cases other than those referred under PD31 to participate in FDRC mediation.
 - The JMHO highly encourages this proposed amendment as parties of PD31 cases have more choices of engaging mediation services including JMHO and FDRC and the JMHO can refer those eligible cases to FDRC, where appropriate. For the benefits of the overall development of mediation, the parties' choice of mediation forum should be encouraged and supported.

Question 6

We suggest further consideration should be given for the handling of disputes exceeding the amended Intake Criteria as specified in paragraph 3.1(a) and (b) by the FDRC. Our concern is as follows:-

- The objective of the FDRS is to provide consumers with an alternative avenue which is independent and affordable for resolving monetary disputes with the financial institute amicably. We believe that the resources of FDRS should be reserved for claimants who have relatively limited financial means. Setting Intake Criteria for all cases are required in order to maintain the fairness and transparency.
- Having said these, we take the view that separate fee schedule can be set of those cases outside the amended Intake Criteria.

Question 7

7.1 Mediation is a voluntary process and FDRS aims at assisting the FI and the EC to engage mediation to resolve their financial disputes. Thus, we agree that with the consent of the EC, FI may refer the financial dispute to the FDRC.

7.2 It is common that court proceedings involve claims and counter-claims. Thus, we agree that when there is a claim by an EC against an FI, the FI with a counterclaim may lodge the counterclaim to the FDRC, subject to the consent of the EC. Having said that, if using the standard fee schedule, the amount of claims and counter-claims cannot exceed upper claimable limit (i.e. \$3,000,000).

7.3 We agree that FI can pay for the mediation and/ or arbitration fees for their customers with the consent of both the FI and EC, same as JMHO mediation services, either parties can pay fees for the other parties, subject to their consents.

Question 8

8.1 We agree with adding the “mediation only” and “arbitration only” options in addition to “mediation first, arbitration next” for cases that involving contract with

arbitration clauses.

- 8.2 We agree that the “mediation only” and “arbitration only” options should not be available for “normal” cases under FDRS, reason:-
- It could encourage settlement in the mediation in order to promote mediation in Hong Kong.

Question 9

- 9 We agree with the proposed revised fee scale.

Question 10

- 10 We agree that FDRC could re-consider the rejected applications if they fall within the amended intake criteria because it should be fair to all the claimants.

Prepared by
Joint Mediation Helpline Office
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