

Resend

Strictly private and confidential
By fax (2565 8662) and by hand

9 December 2016

Financial Dispute Resolution Centre
Unit 3701-04, 37th Floor
Sunlight Tower
248 Queen's Road East
Wanchai
Hong Kong

Attention: Proposals to Enhance the FDRS

Dear Sirs,

**Proposals to Enhance the Financial Dispute Resolution Scheme
Consultation Paper in October 2016
Reply for the questions of the Consultation Paper**

I refer to your consultation paper dated October 2016 (the "Consultation Paper") in relation to your consultation on, and proposal to, the captioned matter and set out as follows our suggestions to your Consultation Paper for your consideration. Unless defined otherwise, terms used in this letter shall have the same meanings as those defined in the Consultation Paper. The following suggestions are in the same numerical sequence as used in the Consultation Paper:-

Question number	Suggestions
1.	
1.1	I do not agree with the proposed amendment to raise the upper claimable limit to HK\$3,000,000, because which may be too high for an individual case and well above the maximum claimable amount in average at around HK\$1,875,000 among the overseas jurisdictions relatively more comparable to those of Hong Kong.
1.2	I suggest the upper claimable limit to be more suitably fixed at around HK\$2,000,000 which shall be more comparable with those among the overseas jurisdictions relatively more comparable to those of Hong Kong.
2.	
2.1	Yes, I agree that a single maximum claimable amount continues to be applicable for the banking and securities industries, as I consider those possible Claims made by them would generally be similar in nature, such as mis-representations or mis-selling so they need not be dealt with separately.

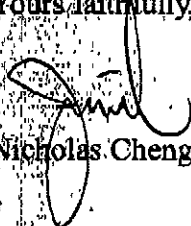
Question number	Suggestions
2.2	Not applicable. I agree to your proposal in 2.1 above.
3.	
3.1	Yes, I agree to extend the limitation period for lodging Claims to 36 months as it would be more realistic and practicable for general cases, as I consider that memory usually deteriorates with the lapse of time, the information or evidence within 3 years could be more easily located and/or identified by both parties for submission to the FDRC, where necessary, for mediation or arbitration.
3.2	Not applicable. I consider that the limitation period for lodging Claims to the FDRC within 36 months shall be reasonable, realistic and practicable.
4.	
4.1	Yes, I agree with the proposal to extend the service scope to cover Claims from SEs, because it would be very cost burdensome for most of the SEs to initiate and present formal legal proceedings to the District Courts or the Court of First Instance.
4.2	I basically agree to your proposal as set out in paragraph 2.33 of the Consultation Paper.
4.3	Yes, I totally agree that an FI qualifying as an SE could file a Claim as an EC against another FI, on the grounds that it would be fair and equitable for every qualified claimant (i.e. in terms of qualifications in financial background) to make an EC to the FDRC regardless of its original legal identity and/or industry position.
5.	
5.1	Yes, I agree that the FDRC should deal with cases under the current court proceedings without the claimant withdrawing the case from the Court, because I consider that it would be cost burdensome and time-consuming for a claimant to re-submit its/his/her withdrawn legal claims to the Court again once no satisfactory mediation or arbitration results can be reached for either party.
5.2	Yes, I agree that the maximum claimable amount be set at an amount in tandem with future monetary jurisdiction of the District Court, because any possible compensation as a result of a mediation/arbitration action must be capped at a pre-specified maximum level for an individual case.

Question number	Suggestions
5.3	Yes, I agree that parties to the mediation in PD31 cases at the FDRC can be legally represented as elaborated in paragraph 2.43 of the Consultation Paper, as it is in line with the general market practice.
6	Yes, I agree that, subject to a prior mutual agreement between an FI and a claimant, the PDRC could consider handling disputes which exceed its certain amended Intake Criteria, as specified in paragraphs 3.1(a) and (b) of the Consultation Paper, because I consider that if both the FI and the claimant so wish and compromise for an extension, it would fairer to allow sufficient time for them in seeking satisfactory mediation results and shall not be limited by any time bar.
7	
7.1	Yes, I agree that when there is a financial dispute between an EC and an FI, the FI may refer the financial dispute to the PDRC, subject to the consent of the EC, as I consider that it would be fairer and more equitable for either party to initiate a request for mediation/arbitration, not only limited to the privilege of the EC. However, I consider prior consent of the EC shall not be required.
7.2	Yes, I 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, as I consider that it would be fairer and more equitable for either party to initiate a request for mediation/arbitration, not only limited to the privilege of the EC. However, I consider that prior consent of the EC shall not be required.
7.3	Yes, I agree with the arrangement that the FI can pay for the mediation and/or arbitration fees for their customers if the FI so wish, as an FI generally has much more financial resources than that of an EC.
8	
8.1	Yes, I agree that options of "mediation only" and "arbitration only" in addition to the original "mediation first, arbitration next" be offered to the parties with mutual agreement, as such arrangement would allow both parties additional way(s) to compromise their EC, if they so wish.
8.2	I do not have concern on either situation.
9	Yes, I agree with the proposed revised fee scale for dispute resolution services of the FDRC, as the pay scale shall be affordable for either party.

Question number	Suggestions
10	<p>I do not agree that the FDRC could re-consider the rejected applications if they now fall within the amended Intake Criteria, because which, as a usual legal practice, shall only be enforceable for those applications initiated for arbitration after the date of the amended Intake Criteria becoming effective.</p> <p>However, we would otherwise agree that the FDRC may re-consider a valid application, irrespective of whether this application was previously rejected or not, provided that the re-submitted application is made within the prescribed timeframe for a valid application.</p>

Should you have any questions, please contact the undersigned on

Yours faithfully,


Nicholas Cheng