



香港財經分析師學會

THE HONG KONG SOCIETY OF FINANCIAL ANALYSTS

30th November 2016

Sent by Email and by Post

Financial Dispute Resolution Centre
Unit 3701-4, 37/F
Sunlight Tower
248 Queen's Road East
Wan Chai

Dear Sirs / Madams,

Re: Proposals to Enhance the Financial Dispute Resolution Scheme

The Hong Kong Society of Financial Analysts (HK SFA) is pleased to comment on the captioned. We state our comments to the specific questions set out on the captioned as follows;

Question 1.1: Do you agree with the proposed amendment to raise the upper claimable limit to HK\$3,000,000? Please state your reasons.

- Agree, so that it can cater up to 85% of the average cases according to its statistics.

Question 2.1: Do you agree that a single maximum claimable amount continues to be applicable for the banking and the securities industries? If not, why?

- A single limit is preferred to avoid confusion.

Question 2.2: If there are two different maximum claimable amounts, what would be your suggestion of suitable upper claimable limits for the banking and securities industries respectively?

Please state the reasons for your suggestion.

- Under HKD8,000,000, which is the threshold for more sophisticated private banking clients.

Question 3.1: Do you agree to extend the limitation period for lodging Claims to 36 months? Why or why not?

- No, as it is better to be in line with other developed markets standard i.e. 6 years.

Question 3.2: Do you have other suggestions?

12 months; 24 months; 48 months; 60 months; 72 months; Others (please specify) _____

Please explain your choice.

- 6 years.

Question 4.1: Do you agree with the proposal to extend the service scope to cover Claims from SEs (as defined in paragraph 2.33 of this Consultation Paper)? Why or why not?

- Agree, as SEs may not have enough financial resources for legal proceedings.

Question 4.2: Besides the proposed definition of SEs in paragraph 2.33 of this Consultation Paper, do you have any other suggestions to define the size of a small business? Please provide elaborations on your suggestions.

- It can make reference to Companies Ordinance, HKTID and CCRA definition of small enterprises.

Question 4.3: Do you agree that an FI qualifying as an SE could file a Claim as an EC against another FI? Please explain.

- Agree, as small FI may not have financial and human resources for legal proceedings with other banks.

Question 5.1: Do you agree that the FDRC should deal with cases under current court proceedings without the claimant withdrawing the case from the Court? Why or why not??

- Agree, as this is in line with the PD31 Civil Justice Reform.

Question 5.2: For PD31 cases, do you agree that the maximum claimable amount be set at an amount in tandem with the future monetary jurisdiction of the District Court? Please give your reasons.

- Agree, so that this will be in line with the future District Court limit.

Question 5.3: Do you agree that parties to the mediation in PD31 cases at the FDRC can be legally represented as elaborated in paragraph 2.43 of this Consultation Paper? Please explain.

- Agree, as legal representatives are already involved in PD31 cases.

Question 6: Do you agree that, subject to a prior mutual agreement between an FI and a claimant, the FDRC could consider handling disputes which exceed its certain amended Intake Criteria as specified in paragraph 3.1(a) and (b) of this Consultation Paper? Why or why not?

- Yes, to allow more flexibility for mediation for the FDRC as both sides have already mutually agreed to this arrangement.

Question 7.1: Do you agree that when there is a financial dispute between an EC and an FI, the FI may refer the financial dispute to the FDRC, subject to the consent of the EC? Why or why not?

- Agree, so as to save time and resources for both sides to go for the longer legal proceedings.

Question 7.2: Do you 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? Why or why not?

- FI can lodge a counterclaim without the consent of the EC. The 2 cases can be aggregated to give a full picture of the case.

Question 7.3: Do you agree with the arrangement that the FI can pay for the mediation and/or arbitration fees for their customers if the FI so wishes? Why or why not?

- Agree, as small investors may not have the resources to deal with mediation cases with big FIs.



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Question 8.1: Do you 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? Please state your reasons.

- Agree, as this is common practice in overseas jurisdiction and allows flexibility.

Question 8.2: Do you agree that such “mediation only” or “arbitration only” option should not be available for “normal” cases under the FDRS? Why or why not?

- It should be available for normal cases as well as for flexibility reason.

Question 9: Do you agree with the proposed revised fee scale for dispute resolution services of the FDRC? Please provide your comments and/or suggestions.

- Why is the F.I. fee schedule significantly higher than the EC?

Question 10: Do you agree that the FDRC could re-consider the rejected applications if they now fall within the amended Intake Criteria? Why or why not? Please give your reasons.

- Agree, so that more cases can be settled via the FDRC in a fast and efficient manner.

We appreciate the opportunity to comment on the subject proposals. We trust you find our comments constructive and useful.

Yours sincerely,
For and on behalf of
The Hong Kong Society of Financial Analysts

Frederick Tsang, CFA
President and Chair, Advocacy Committee

Jimmy Jim, CFA
Chair, Advocacy Committee