

## FDRS Mediation and Arbitration Rules

### Financial Dispute Resolution Scheme (FDRS) Mediation and Arbitration Rules

#### 1. Definitions

Unless otherwise stated, these Rules adopt the definitions used in the Terms of Reference of the FDRC.

#### 2. Mediation

(Rule 2 applies to both “Mediation First, Arbitration Next” and “Mediation Only”.)

##### 2.1 *Appointment of Mediator*

2.1.1 Upon acceptance of an Eligible Dispute, if the amount of claims involved –

(a) is within the prescribed level of HK\$200,000 as stated in *Schedule of Fees* set out in Annex I, the FDRC shall assign the case to an in-house Mediator or a Mediator from the List of Mediators; or

(b) is beyond the prescribed level of HK\$200,000 as stated in *Schedule of Fees* set out in Annex I, the Parties may agree on the appointment of the Mediator from the List of Mediators. If the Parties fail to agree on the appointment of the Mediator, the FDRC will be required to appoint the Mediator. The FDRC shall appoint a Mediator from the List of Mediators as soon as practicable, taking into account the Parties’ preference so far as practicable.

2.1.2 The appointment of the Mediator takes effect upon confirmation in writing by the FDRC, notwithstanding the Parties and the Mediator have not yet entered into an *Agreement to Mediate* pursuant to Paragraph 19.3 of the Terms of Reference. The FDRC shall transfer all relevant data, information and materials relating to and necessary for the Mediation from the Parties to the Mediator,

##### 2.2 *Roles of Mediator and the Parties*

- 2.2.1 The Mediator appointed under Rule 2.1 above will conduct the Mediation with due care and skill and in such manner, as he considers appropriate, taking into account the circumstances of the case, the wishes of the Parties and the need for a speedy settlement of the dispute.
- 2.2.2 The Mediator may communicate with the Parties together or with any Party separately, including private meetings and each Party shall cooperate with the Mediator. A Party may request a private meeting with the Mediator at any reasonable time. The Parties shall give the Mediator full assistance to enable the Mediation to proceed and be concluded within the time specified in Rule 2.3.2 below.
- 2.2.3 The Mediator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Mediation. The Mediator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Mediator to the Eligible Dispute.

### **2.3 *The Mediation Procedures***

- 2.3.1 The Mediator shall ensure that the Parties sign an *Agreement to Mediate* prior to the substantive mediation session between the Parties.
- 2.3.2 The Mediator shall commence and conduct the Mediation as soon as possible after his appointment. The Mediator shall commence the Mediation session within 21 days of his appointment, unless otherwise directed by the FDRC in writing. Subject to Paragraph 19.9 of the Terms of Reference which provides for the Extended Mediation Time, Mediation under FDRS shall not exceed the Specified Mediation Time.
- 2.3.3 Unless it is an Extended Eligible Dispute or it is a claim under court proceedings, no legal representative, including in-house lawyer, is allowed to act on behalf of either Party in the Mediation. However, each Party may seek legal advice or expert opinion or be accompanied by one or more persons who are not their legal representative, in-house or otherwise, to assist and advise them during Mediation. Any such legal advisors, experts or any persons attending Mediation who are not a Party shall sign a separate *Confidentiality Agreement* in a form prescribed by the FDRC in Annex VII of the Terms of Reference.

2.3.4 The Mediator shall file the *Mediation Certificate* set out in Annex IX of the Terms of Reference with the FDRC at the conclusion of the Mediation regardless of whether a settlement was reached or the Mediation terminated.

## **2.4 Termination of the Mediation**

2.4.1 The Mediation shall come to an end:

- (a) upon the signing of a *Mediated Settlement Agreement* in the form set out in Annex VIII of the Terms of Reference by the Parties settling all or part of an Eligible Dispute; or
- (b) upon the written advice of the Mediator after consultation with the Parties that in the Mediator's opinion further attempts to resolve the dispute by Mediation are no longer practicable according to the *Ethics Code for FDRC Mediators* set out in Annex V of the Terms of Reference; or
- (c) upon written notification by the EC at any time to the Mediator and the other Party that the Mediation is terminated.

2.4.2 In the event the Mediation is terminated, the Mediator shall report the termination to FDRC in the form of a *Mediation Certificate* set out in Annex IX of the Terms of Reference.

## **2.5 Confidentiality**

2.5.1 The *FDRS Application Form* shall be kept by the FDRC.

2.5.2 A copy of the following documents shall be kept by the FDRC:-

- (a) the *Agreement to Mediate* set out in Annex VI;
- (b) the *Mediated Settlement Agreement* (if any) in the form set out in Annex VIII; and
- (c) the *Mediation Certificate* in the form set out in Annex IX.

2.5.3 A copy of the *Confidentiality Agreement* (if any) set out in Annex VII shall be kept by the FDRC.

- 2.5.4 Subject to Rules 2.5.1, 2.5.2 and 2.5.3 and save as shall be required under any written law, regulation or an order of court, or as necessary to implement and enforce any *Mediated Settlement Agreement*, all persons involved in the Mediation shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party: –
- (a) the matters that transpired in the course of the Mediation;
  - (b) any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Mediation;
  - (c) any views expressed by the Mediators;
  - (d) all materials made available and communication made during the Mediation; and/or
  - (e) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation including but not limited to any *Mediated Settlement Agreement* (and the substance and/or terms thereof) except as directly necessary to implement and enforce any such settlement agreement.

Nothing in this Rule shall prevent an FI from disclosing any such information to the Regulators or law enforcement agencies in compliance with any regulatory or statutory requirement(s), guidelines or requests. The fact that the Mediation has occurred, is continuing or has concluded shall not be considered confidential.

- 2.5.5 Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Mediation shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Eligible Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.
- 2.5.6 The Parties shall not call the Mediator or the FDRC (or any of its employees, officers or representatives) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.
- 2.5.7 The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.

- 2.5.8 Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
- 2.5.9 The FDRC shall have the right to make observations, including the right to appoint observer(s) to attend and/or observe any Mediation conducted under these Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Rule 2.5 as if he was a Party or a Mediator to the Mediation and sign the *Confidentiality Agreement* set out in Annex VII.
- 2.5.10 The Parties acknowledge that, by entering into Mediation according to the terms of the *Agreement to Mediate*, they agree and accept that information shall be used by the FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.
- 2.5.11 The Parties shall ensure that all its officers, representatives and/or agents comply with this confidentiality rule.

## **2.6 *Language of the Mediation***

- 2.6.1 The language of Mediation shall be decided by the Mediator, taking into consideration the Parties' preferences as far as practicable. The FDRC does not provide translation services for the Parties and/or the Mediator.

## **2.7 *Mediator's Role in Subsequent Proceedings***

- 2.7.1 The Parties undertake that the Mediator shall not be appointed as arbitrator, representative, counsel or expert witness of any Party in any subsequent arbitration or judicial proceedings in connection with the same dispute. No Party shall be entitled to call the Mediator as a witness in any subsequent arbitration or judicial proceedings arising out of the same dispute.

## **3. *Arbitration***

(Rule 3 applies to both "Mediation First, Arbitration Next" and "Arbitration Only".)

### **3.1 *Applicability of the Rules***

3.1.1 These Rules apply to any Eligible Dispute between the Parties that is submitted to documents-only Arbitration under the Terms of Reference. Upon submission of the Eligible Dispute to Arbitration, these Rules are incorporated by reference into the Parties' arbitration agreement.

### **3.2 *Arbitration under the Rules***

3.2.1 Provided that the Mediation is terminated in accordance with Rules 2.4.1(b) and (c), the Claimant may request for Arbitration of the Eligible Dispute under these Rules within 60 days from the date of the *Mediation Certificate*. Late request will not be accepted. (Rule 3.2.1 only applies to "Mediation First, Arbitration Next".)

3.2.2 The Arbitration may be commenced on a "documents-only" basis by the Claimant giving to the FDRC a Notice to Arbitrate in written form together with all written submissions and copies of supporting documents. The Notice to Arbitrate shall be filed in a number of copies sufficient to provide one copy for the Arbitrator, for the Respondent and for the FDRC.

3.2.3 The Notice to Arbitrate shall include the following:

- (a) a request that the Eligible Dispute be referred to Arbitration;
- (b) the names and contact details of the Parties;
- (c) identification of the arbitration agreement that is invoked;
- (d) identification of any contract or other legal instrument out of or in relation to which the Eligible Dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (e) a brief description of the Claim and an indication of the amount involved;
- (f) the relief or remedy sought;
- (g) a proposal on the appointment of Arbitrator and the language of Arbitration; and
- (h) authorised signature with date.

- 3.2.4 The FDRC shall then notify Claimant of the receipt of the Notice to Arbitrate and the date of such receipt, and transmit to the Respondent a copy of the Notice to Arbitrate including the date of receipt, together with an invitation to submit a response to the Notice to Arbitrate.
- 3.2.5 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice to Arbitrate, which shall be finally resolved by the Arbitrator. The Claimant shall rectify any non-compliance in the Notice to Arbitrate upon request by the FDRC within 7 days of the receipt of such request.
- 3.2.6 The Arbitration shall be deemed to commence on the date on which the Notice to Arbitrate is received by the FDRC.
- 3.2.7 A copy of the Notice to Arbitrate shall be kept by the FDRC.
- 3.2.8 Unless otherwise indicated by the FDRC, the Respondent shall, within 21 days of the service of the Notice to Arbitrate, send to the Claimant via the FDRC a response to the Notice to Arbitrate, their written submissions together with copies of the documents relied on additional to those already provided by the Claimant. The response to the Notice to Arbitrate shall be filed with the FDRC in a number of copies sufficient to provide one copy for the Arbitrator, the Claimant and the FDRC.
- 3.2.9 The response to the Notice to Arbitrate shall include:
- (a) the name and contact details of the Respondent;
  - (b) any response to the information set forth in the Notice to Arbitrate pursuant to Rule 3.2.3;
  - (c) a proposal on the appointment of Arbitrator and the language of Arbitration; and
  - (d) authorised signature with date.
- 3.2.10 The FDRC shall notify the Respondent of the receipt of the response to the Notice to Arbitrate and the date of such receipt, and transmit to the Claimant a copy of the response to the Notice to Arbitrate, including the date of receipt, together with an invitation to make a final submission.

- 3.2.11 Upon receipt of the Notice to Arbitrate and the relevant response from the Parties, a single Arbitrator will be appointed pursuant to Rule 3.4 who shall resolve any dispute or controversy, if any, in connection with the language of the Arbitration and/or the sufficiency of the Notice to Arbitrate and/or the relevant response.
- 3.2.12 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the Respondent's failure to communicate a response to the Notice to Arbitrate, or an incomplete or late response to the Notice to Arbitrate which shall be finally resolved by the Arbitrator. The Respondent shall rectify any non-compliance in the response to the Notice to Arbitrate upon request by the FDRC within 7 days of the receipt of such request.
- 3.2.13 The Claimant's final submissions (if any) on the Claim shall be provided to the Respondent via the FDRC within 21 days after receipt of the Respondent's response, submissions and documents.
- 3.2.14 The FDRC shall then notify the Claimant of the receipt of the final submissions and the date of such receipt, and transmit to the Respondent a copy of the final submissions including the date of receipt.
- 3.2.15 The Arbitrator shall give notice to the Parties of his intention to proceed with the rendering of Arbitral Award and will so proceed unless either Party within 7 days requests, and is thereafter granted, leave to serve further submissions.

### **3.3 *Deficient Claims***

- 3.3.1 The FDRC shall review the Notice to Arbitrate, response to the Notice to Arbitrate, submissions and documents received for administrative compliance review and shall proceed with the appointment of Arbitrator, if all in compliance.
- 3.3.2 The FDRC will not serve any Notice to Arbitrate, and/or the relevant response nor proceed with appointing an Arbitrator if the Claim is deficient. The reasons for deficiency include but are not limited to the following:
- (a) the Claim was not filed by the relevant Claimant;
  - (b) documents were not properly signed and/or dated;



- (c) the names and particulars of the Parties were not provided; and
  - (d) the Claimant did not file the correct number of copies of the Notice to Arbitrate, and/or supporting documents for service on the Respondent and/or for the Arbitrator.
- 3.3.3 The FDRC will notify the relevant Party in writing if the Claim is deficient. Unless otherwise extended by the FDRC, if all deficiencies are not corrected within 7 days, the FDRC may close the case without serving the Notice to Arbitrate, and/or the relevant response.

### **3.4 *Appointment of Arbitrator***

- 3.4.1 The Claimant and the Respondent may agree on the appointment of the Arbitrator from the List of Arbitrators. If the Parties fail to agree on the appointment of the Arbitrator, the Claimant or the Respondent may request the FDRC to appoint the Arbitrator. The FDRC shall transfer all relevant data, information and materials relating to and necessary for the Arbitration from the Parties to the Arbitrator,
- 3.4.2 Notwithstanding Rule 3.4.1 above, upon receipt of the Notice to Arbitrate, response to the Notice to Arbitrate, submissions and documents from the Parties, the FDRC shall appoint a single Arbitrator from the List of Arbitrators as soon as practicable, taking into account the Parties' preference so far as practicable and shall confirm in writing to the Parties the appointment of the Arbitrator.
- 3.4.3 The appointment of the Arbitrator takes effect upon confirmation in writing by the FDRC.

### **3.5 *Disclosures Required of Arbitrators***

- 3.5.1 The Arbitrator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Arbitration.
- 3.5.2 Before appointing an Arbitrator, the FDRC will notify the potential Arbitrator(s) of the nature of the dispute and the identities of the Parties. Each potential Arbitrator must make a reasonable effort to learn of, and must disclose to the FDRC, any circumstances which might preclude the potential Arbitrator from rendering an objective, independent

and impartial determination in the proceeding, such as:

- (a) Any direct or indirect financial or personal interest in the outcome of the Arbitration;
- (b) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any Party, or anyone who the potential Arbitrator is told may be providing a witness statement and/or an expert statement in the Arbitration, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; or
- (c) Any such relationship or circumstances involving members of the potential Arbitrator's family or the potential Arbitrator's current employers, partners, or business associates.

3.5.3 The obligation under Rule 3.5.2 to disclose interests, relationships, or circumstances that might preclude a potential Arbitrator from rendering an objective, independent and impartial determination is a continuing duty that requires an Arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

3.5.4 The FDRC will inform the Parties of any information disclosed to the FDRC under Rules 3.5.2 and 3.5.3 by the potential Arbitrator and/or the Arbitrator unless the potential Arbitrator declines appointment or voluntarily withdraws from the Arbitration as soon as the Arbitrator learns of any interest, relationship or circumstance that might preclude the Arbitrator from rendering an objective, independent and impartial determination in the proceeding, or the FDRC removes the Arbitrator.

3.5.5 Subject to Rules 3.5.2 and 3.5.3, the Arbitrator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Arbitrator to the Eligible Dispute.

3.5.6 The appointment of the Arbitrator takes effect upon confirmation in writing to the Parties by the FDRC. If the Arbitrator is replaced, the Arbitration shall resume at the stage where the Arbitrator was replaced or ceased to perform his functions, unless the substitute Arbitrator decides otherwise.

### **3.6 *Removal of Arbitrator by the FDRC***

3.6.1 The FDRC may remove an Arbitrator for conflict of interest or bias , either upon request

of a Party or on the FDRC's own initiative.

3.6.2 The FDRC will grant a Party's request to remove an Arbitrator if it is reasonable to infer, based on information known at the time of the request, that the Arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative.

3.6.3 The FDRC must first notify the Parties in writing before removing an Arbitrator on its own initiative. The FDRC may not remove the Arbitrator if the Parties agree in writing to retain the Arbitrator within 7 days of receiving notice of the FDRC's intent to remove the Arbitrator.

### **3.7 *Jurisdiction of the Arbitrator to Interpret these Rules***

3.7.1 In the conduct of Arbitration proceedings, the Arbitrator shall have the authority to interpret and determine the applicability of all provisions under these Rules. Such interpretations are final and binding upon the Parties.

### **3.8 *The Arbitration Procedures***

3.8.1 The Arbitrator shall conduct and decide the Eligible Dispute on the basis of the documents submitted and evidence provided. Each Party shall bear the burden of proof for its own case.

3.8.2 In all cases, the Arbitrator shall ensure that the Parties are treated impartially and that each Party is given a reasonable opportunity to present its case, give its reasons and provide evidence.

3.8.3 Where the Arbitration is by "documents-only",

(a) no hearing will be held;

(b) no initial prehearing conference or other prehearing conference will be held, and the Arbitrator will render an Arbitral Award based on the submissions and other materials submitted by the Parties; and

(c) no legal representatives, including in-house lawyers, are allowed to act on behalf of

either Party in the Arbitration.

- 3.8.4 The Arbitrator may request in his sole discretion, further information, statements or documents from either of the Parties via the FDRC.
- 3.8.5 The Parties may request documents and other information from each other. Unless otherwise specified by the FDRC, all requests for the production of documents and other information must be served on the other Party via the FDRC within 14 days from the date of the Claimant's final submissions. Any response or objection to a discovery request must be served on the other Party via the FDRC within 7 days of the receipt of the requests. The Arbitrator will resolve any discovery disputes.
- 3.8.6 Without prejudice to the above and with regard to the Arbitration, the Arbitrator shall have the power and/or jurisdiction to:
- (a) make monetary awards
    - (i) subject to the Maximum Claimable Amount for each Customer Claim which has been accepted as a Standard Eligible Dispute;
    - (ii) subject to the amount of each individual claim (inclusive of interest) which has been accepted as an Extended Eligible Dispute;
    - (iii) with order as to costs in relation to Arbitrations where each individual claim has been accepted as an Extended Eligible Dispute;
    - (iv) with no order as to costs in relation to Arbitrations where each individual claim has been accepted as a Standard Eligible Dispute and the Parties shall bear their own costs;
  - (b) conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;
  - (c) order the Parties to make any property or thing available for inspection, in their presence, by the Arbitrator;
  - (d) order any Party to produce to the Arbitrator, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, except where the Party satisfies the Arbitrator that –

- (i) to provide the information would breach a Court order;
- (ii) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
- (iii) to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
- (iv) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- (v) the information is irrelevant to the Eligible Dispute.

Notwithstanding the aforesaid, nothing in the *Terms of Reference* shall prejudice any Party's right against self-incrimination or to claim legal professional privilege;

- (e) receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence; and/or
- (f) proceed with the Arbitration and make an Arbitral Award notwithstanding the failure or refusal of any of the Parties to comply with the *Terms of Reference* or these Rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving the Parties written notice that he intends to do so.

3.8.7 At any stage of the Arbitration, where the Arbitrator is aware and considers that it would be more suitable for the subject matter of the Eligible Dispute to be dealt with by a court, the Arbitrator may terminate the Arbitration if both Parties agree and advise the Parties the appropriate steps to take.

3.8.8 In any case the Arbitrator shall, unless otherwise reasonably extended by the Arbitrator, with the consent of the FDRC or the Parties, render an Arbitral Award within one month of the receipt of the last document in case of documents-only arbitration, or the holding of the in-person hearing whichever is later.

- 3.8.9 Within 7 days of receiving the Arbitral Award, a Party may by written notice to the FDRC and the other Party request the Arbitrator to correct in the Arbitral Award any clerical or typographical errors or any errors of a similar nature. Any such corrections shall be given in writing to the Parties and shall become part of the Arbitral Award within 7 days of the written notice.
- 3.8.10 A copy of the Arbitral Award shall be kept by the FDRC.

### **3.9 *In-Person Hearing***

- 3.9.1 Unless the Arbitrator determines, in his sole discretion, that an in-person hearing is necessary for deciding the Claim, and the Parties are further willing to take on and pay to the FDRC such fees as prescribed in *Schedule of Fees*, there shall be no in-person hearings (including hearings by videoconference and any other form).
- 3.9.2 Where the Parties have so agreed on having in-person hearings and the Arbitrator has also so determined, upon application of either Party or at the initiation of the Arbitrator, the Arbitrator is entitled to allow legal representation in the further proceeding of the Arbitration and the Arbitrator may make directions on the further conduct of the Arbitration, including adopting the HKIAC Administered Arbitration Rules or other rules, and may amend any such rules as the Arbitrator considers appropriate. In any event the recoverable legal costs of an in-person hearing are limited to HK\$25,000 for Standard Eligible Disputes and to be determined by the Arbitrator for Extended Eligible Disputes.

### **3.10 *Communication between the Parties and the Arbitrator***

- 3.10.1 A Party shall not communicate with the Arbitrator directly. All communications between any of the Parties and the Arbitrator must be in writing via the FDRC and shall be in the language of the Arbitration. Copies of all communications between the Parties and between a Party and the Arbitrator must be copied to the other Party via the FDRC. Any written communication to the Claimant or the Respondent provided for under the procedure shall be made by the preferred means stated by the Claimant or the Respondent respectively, or in the absence of such specification, by facsimile transmission, with a confirmation of transmission; or by postal or courier service, with a delivery confirmation; or electronically via the Internet, provided a record of its transmission is available.

### **3.11**      *Confidentiality*

- 3.11.1      Subject to Rule 3.11.2, the Parties and the Arbitrator agree not to disclose, transmit, introduce or otherwise use any documents, communications, opinions, suggestions, proposals, offers, or admissions, or other information obtained or disclosed during the Arbitration by the Parties or the Arbitrator as evidence in any judicial proceedings, other arbitrations or proceedings, unless agreed in writing by the Arbitrator and the Parties to the Arbitration or compelled by law. The fact that Arbitration has occurred, is continuing, or has concluded shall not be considered confidential.
- 3.11.2      A copy of the Notice to Arbitrate and the Arbitral Award shall be kept by the FDRC. The Parties acknowledge that, by agreeing to arbitrate under these Rules, they agree and accept that information relating to the Arbitration shall be used by the FDRC for purposes of study and promotion of arbitration provided that the Parties' identity and any reference that may lead to their identity being made known shall be omitted or obliterated from such information.

### **3.12**      *Appeal on point of law*

- 3.12.1      Unless otherwise agreed by the Parties, sections 3, 4, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Chapter 609) providing for appeal against Arbitral Award on question of law shall apply.
- 3.12.2      In the event an appeal against the Arbitral Award in the Arbitration is brought by a Party, that appealing Party agrees the recoverable legal costs incurred in, arising out of and/or resulting from such an appeal shall be limited to HK\$25,000 for Standard Eligible Disputes.

### **3.13**      *Issues not covered by these Rules*

- 3.13.1      For matters which are not covered by these Rules, the Arbitrator may adopt such measures as he deems appropriate, consistent with the need for a speedy and efficient resolution of the Eligible Dispute, provided the Parties shall be given reasonable opportunities to address their concern with the Arbitrator.

## **4.          Exclusion of Liability**

4.1 The Parties jointly and severally release, discharge and indemnify the FDRC, its staff members and representatives, the Mediator and the Arbitrator in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any Mediation and/or Arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

## **5. Fees and Costs**

5.1 The fees for the Mediation and/or Arbitration are specified in the *Schedule of Fees* set out in Annex I of the Terms of Reference. All fees and charges paid to the FDRC are non-refundable.

5.2 The FDRC may provide the venue for conducting the Mediation and/or the Arbitration. Parties may have to bear the cost of a venue for conducting the Mediation and/or Arbitration if the rooms at FDRC are fully occupied or otherwise unavailable.

5.3 The FDRC may, at its sole discretion, require the Parties to make advance payment of fees, costs and expenses. The FDRC may require payments for deposits and security.

5.4 The FDRC shall review the above fee structure regularly and any changes to the fee structure will be subject to approval by the Board, after consulting with Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.