

Section B: Power and Functions of the FDRC

4. Objectives and Power of the FDRC

- 4.1 The objective of setting up the FDRC is to provide FIs and their customers with an independent and affordable avenue, as an alternative to litigation, for resolving monetary disputes.
- 4.2 The FDRC shall at all times be independent and impartial and shall not act as an advocate for any Party in an Eligible Dispute.
- 4.3 The FDRC shall have the power to –
- (a) accept and reject Applications in accordance with the Intake Criteria set out in Annex II;
 - (b) request for information that is necessary for and relevant to the handling of Claims and/or Eligible Disputes;
 - (c) provide guidance for the conduct of its Mediators and Arbitrators, including but not limited to the setting out of rules, ethical codes and guidance notes from time to time;
 - (d) publish data about Eligible Disputes for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties;
 - (e) notify and/or to submit such information within its knowledge relating to systemic issues (which relate to issues that have affected or have the potential to affect other customers of the relevant FI or members of the public) and/or suspected serious misconduct to the relevant Regulator(s);
 - (f) collect the relevant fees from the Applicants, ECs and the FIs in accordance with the *Schedule of Fees* set out in Annex 1;
 - (g) issue letters or notices to the FIs, and/or informing the relevant Regulator(s) in case the FIs fail to fulfil any of their obligations under these Terms of Reference; and
 - (h) take any such other actions and initiatives as deemed appropriate to put into effect the objectives of the FDRC.
- 4.4 The FDRC has the full and sole authority to:
- (a) maintain a List of Mediators and a List of Arbitrators;
 - (b) decide the entry and exit of Mediators and Arbitrators on the above lists; and
 - (c) appoint Mediators and Arbitrators in case the Parties could not reach an agreement.

5. Principles and Functions of the FDRC

5.1 The FDRC is established on the following guiding principles:

- (a) **Independence** – the resolution procedures should be independent;
- (b) **Impartiality** – the process of the FDRC should ensure that both Parties are treated in an impartial way;
- (c) **Accessibility** – the FDRC should be accessible and user friendly. The dispute resolution procedures should be straight forward, clear and easy to understand;
- (d) **Efficiency** – the Eligible Disputes should be settled in a timely and efficient manner; and
- (e) **Transparency** – in dealing with the Eligible Disputes, the FDRC should be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations under the laws of Hong Kong.

5.2 The FDRC is set up to administer the FDRS by way of primarily Mediation and, failing which and if the EC so wishes, Arbitration.

6. Set-up of the FDRC

6.1 The FDRC is set up as a non-profit making company limited by guarantee under the Companies Ordinance (Cap. 622). Its articles of association have been formulated to define the objectives, scope and governance of the FDRC.

7. Governance of the FDRC

7.1 The FDRC is governed by a Board (comprising seven to fifteen members, including the Chairman). The Board is responsible for formulating the overall policy of the FDRC, overseeing its operations and ensuring the independence and impartiality of its dispute resolution procedures. The Board shall not interfere with the conduct and outcomes of Mediation and Arbitration.

7.2 The Board is broadly based and comprises persons from the financial services industries and persons who are well-regarded in the community and who have good knowledge of financial services-related matters and consumer protection issues. The Board includes the Chief Executive Officer of the FDRC, and persons appointed by the Government and the Regulators.

7.3 The Board may delegate any of its powers to a committee/sub-committee or committees/sub-committees consisting of members who may or may not be directors of the Board, upon such terms and conditions as the Board may see fit. A committee/sub-committee to which any powers have been delegated must exercise those powers in accordance with the directions of the Board.

8. Funding arrangements for the FDRC

- 8.1 The Government, the HKMA and the SFC funded the set-up costs and the operational costs of the FDRC since 1 January 2012.
- 8.2 It is intended that with effect from a date to be determined (“New Funding Date”), the FDRC shall be funded by the FIs as part of the financial industry’s commitment to the general public to resolve disputes in a fair and efficient manner.
- 8.3 The cost of funding the FDRC from the New Funding Date shall be borne by the FIs in a fair and equitable manner, taking into account the level of usage of the FDRC’s resources. The underlying principles for the funding arrangements are –
- (a) to be as fair as possible between the FIs;
 - (b) to be efficient and administratively simple to operate and collect;
 - (c) to provide the FDRC and the FIs with an appropriate degree of certainty and flexibility for timely budget planning and financial management purposes; and
 - (d) to provide the FIs an incentive to resolve Claims, where possible, at an early stage.
- 8.4 The FDRC shall proceed to work out the funding formula to apply from the New Funding Date at a reasonable period prior to the New Funding Date based on its operational experience. It shall consult with the Government, the Regulators, and the relevant stakeholders, including the relevant industry bodies. The FIs shall provide the FDRC with information that is necessary in working out the funding formula.
- 8.5 Once the funding formula for the FDRC is approved by the Government, HKMA and the SFC, the FIs agree to abide by its terms to ensure the continuity of FDRC’s operations as from the New Funding Date.

9. Membership of the FDRS

- 9.1 Under the licensing conditions imposed on financial institutions authorized by the HKMA, or the Code of Conduct for Persons Licensed by or Registered with the SFC, FIs are to be members of the FDRS operated by the FDRC.
- 9.2 The FIs agree to abide by these Terms of Reference and to follow the procedures and processes prescribed by the FDRC for the FDRS. The FIs will enter into Mediation and/or Arbitration with the aim to resolving an Eligible Dispute if –
- (a) the EC so wishes, and
 - (b) the Standard Eligible Dispute was not resolved directly between the Parties prior to the Applicant making an Application.
- 9.3 The FIs shall follow the procedures prescribed by the FDRC for the FDRS, including, but not limited to the following:
- (a) issue a Final Written Reply in respect of a Written Complaint advising the relevant

customer of his choice to refer the matter to the FDRC if the Written Complaint was not resolved. The Final Written Reply should include the relevant contact details such as the hotline number, address and website of the FDRC;

- (b) respond to the requests for relevant information from the FDRC within the timeframe specified by the FDRC;
- (c) provide the Representative at the Mediation with the requisite authority to settle any individual claim;
- (d) enter into the Mediation and/or Arbitration as provided under Paragraph 9.2;
- (e) participate in the Mediation and/or Arbitration in good faith;
- (f) fulfil the terms of *Mediated Settlement Agreement* set out in Annex VIII and/or Arbitral Award; and
- (g) pay promptly to the FDRC the Mediation and/or Arbitration fees in accordance with the *Schedule of Fees* set out in Annex I and any other costs and charges.

10. Undertaking to comply by the FIs and implications of breach

- 10.1 The FIs agree to comply with and be bound by these Terms of Reference at all times, including any and all such amendments, modifications and/or updates that may be made from time to time by the FDRC following consultation with the Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.
- 10.2 The FDRC shall issue a non-compliance letter/notice to the FIs, with a copy to the Regulators for follow-up actions, where necessary, if the FIs fail to fulfil any of their obligations under these Terms of Reference.

11. Fee structure

- 11.1 The service of the FDRC is offered at a fee to both ECs and the FIs in accordance with the *Schedule of Fees* set out in Annex I. All fees and charges paid to the FDRC are non-refundable.
- 11.2 An Applicant shall pay to the FDRC the application fee when submitting the *FDRS Application Form*. The application fee paid to the FDRC by the Applicant is not refundable even if an Application is later rejected by the FDRC.
- 11.3 The Parties shall pay the fees for Mediation and Arbitration to the FDRC before the commencement of the Mediation and Arbitration processes respectively. The fees paid to the FDRC by the Parties are not refundable even if the mediation or arbitration is later terminated by the Mediator or Arbitrator.
- 11.4 The FDRC shall review the fee structure from time to time and any changes to the fee structure in the *Schedule of Fees* set out in Annex I will be subject to approval by the Board, after consulting with the Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.