



Mediation First

Win-Win Solution

Background

Lehman Brothers Mini-Bond issue in 2008

- Causing about 30,000 complaints
- HKMA and SFC proposed the government that an independent dispute resolution mechanism which provides quick, simple, customer friendly services should be established
- should avoid unduly legalistic procedures and discourage involvement of legal representatives is needed
- to provide an efficient means to adjudicate or settle disputes between investors and intermediaries

Background

- 2010** : Public consultation starts, general public support and the government decides to establish FDRC
- 2011 • 11** : FDRC is funded by the government, HKMA and SFC (Government 50%, HKMA 25%, SFC 25%)
- 2012 • 6** : FDRC incorporated as a non-profit company limited by guarantee starts its operation

Mission & Vision

Vision

To provide independent and impartial **“Mediation First, Arbitration Next”** processes of dispute resolution to facilitate the resolution of monetary disputes between individual customers and financial institutions in Hong Kong

Mission

To be the leading provider of financial dispute resolution processes to deal with differences between financial institutions and their customers constructively before they escalate the conflicts and to support Hong Kong as an international financial centre by extending our services and engaging stakeholders of the financial industry

Role of FDRC

- Be an integral part of Hong Kong's financial infrastructure
- Provides **independent and impartial** alternative dispute resolution processes
- Focus on the **needs** and **concerns** of the financial institutions and their customers in order to solve the dispute
- Create a harmonious financial market environment, makes consumers in the market feel confidence

Guiding Principles

Independence:

Resolution procedures are independent

Impartiality:

Parties treated impartially

Accessibility:

FDRC is accessible & user friendly

Efficiency:

Disputes settled in timely & efficient manner

Transparency:

Transparent within confidentiality and privacy obligations

Board of Directors



Prof Teresa CHENG Yeuk-wah, GBS, SC, JP

Chairman

- Chairman, Asian Academy of International Law
- Chairmanperson, Air Transport Licensing Authority



Mr Joseph Chan, JP

Director

- Under Secretary for Financial Services and the Treasury

Board of Directors



Ms Meena DATWANI, JP

Director

- Executive Director (Enforcement and AML)
Hong Kong Monetary Authority



Mr Eugène GOYNE

Director

- Strategic Operations Coordinator & Senior Director, Enforcement
Securities and Futures Commission

Board of Directors



Mr Philip LEUNG Kwong-hon

Director

- Vice-Chairman, Hong Kong Consumer Council



Mr Frederick KAN Ka-chong

Director

- Senior Partner, Fred Kan & Co

Board of Directors



Mr TONG Hon-Shing, BSc, ACIB, FHKIB, FCIS, FCS
Director

- Deputy Chief Executive & Chief Operating Officer
The Bank of East Asia, Limited



Mr Brian FUNG Wei-lung
Director

- Chief Executive Officer
The Chinese Gold and Silver Exchange Society
(the past Chief Executive Officer of Kaiser Financial Services)

Board of Directors



Mr Anthony NG

Director

- Chief Executive Officer, FDRC

Corporate Governance

Appointment Committee



(from left)
Chairman: Mr Frederick KAN
Ka-chong
Member: Dr Shahla ALI,
Ms Sylvia SIU
Wing-yee,
Mr Norris YANG
Ex Officio Member:
Mr Anthony NG

- To assess and approve applications for admission to the FDRC List of Mediators and List of Arbitrators
- To make recommendations on matters relating to the maintenance and development of standards of mediators and arbitrators

Corporate Governance

Disciplinary Committee



(from left)
Chairman: Mr Huen WONG
Member: Ms Angelina KWAN,
Mrs Clarie LO KU
Ka-lee,
Ms Melissa Kaye
PANG,
Dr Helena YUEN
CHAN Suk-ye

- To establish a process to deal with complaints against FDRC Lists of Mediators and Arbitrators
- To ensure that the complaints are handled in a procedurally fair and impartial manner

Corporate Governance

Disciplinary Tribunal



(from left)
Alternate Convenor 2017:
Prof Anselmo REYES
Convenor 2017:
Ms Audrey EU Yuet-mee,
Dr Anthony NEOH,
Dr Margaret NG
Ngoi-ye,
Mr William STONE

- To deal with complaints against mediators and arbitrators on the Lists in relation to handling the disputes under the FDRS in a procedurally fair and impartial manner

FDRC's FDRS

Member of FDRS

- All financial institutions authorised by the **HKMA** and/or licensed by the **SFC**
- Around 200 financial institutions under HKMA, including 156 licensed banks, 21 restricted licensed banks and 17 deposit-taking company
- Around 2,000 securities companies, futures companies, fund houses, asset management companies under SFC (except those providing only credit rating services)

**Based on the data from HKMA as of 30th Apr 2017*

FDRC's FDRS

Incorporated regulations for Members of FDRS

- Licensing terms of HKMA
- Code of Conduct at Securities & Futures Ordinance

Responsibility for Members of FDRS

- To comply with the Terms of Reference (“ToR”) of FDRC

FDRC's FDRS

Eligible Claimant: an individual or a sole proprietor

- Had a customer relationship with an FI, or has been provided with a Financial Service

FDRC's FDRS

The definition of Eligible Dispute:

- The dispute between **Eligible Claimant** and **Member of FDRS**
- The dispute must arise out of a contract between the Eligible Claimant and the FI that was entered into or arose in Hong Kong, or any act or omission of the FI in connection with the provision of a Financial Service to an Eligible Claimant where the FI acted as an agent
- The dispute must be of a **monetary nature**

FDRC's FDRS

The definition of Eligible Dispute:

- The amount for each individual claim does not exceed **HK\$500,000** (including any interest on any amount alleged to be a loss) or the foreign currency equivalent
- An Eligible Claimant has **filed a Complaint** to the relevant FI and received a Final Written Reply issued by the FI; or it has been more than **60 days** from the date he filed the Complaint with the relevant FI and has not received a Final Written Reply from the relevant FI

FDRC's FDRS

The definition of Eligible Dispute:

- The claim is made within **12 calendar months** from the date of the purchase of the Financial Services, or the date on which the Eligible Claimant first had knowledge that he suffered monetary loss arising out of the Financial Services, whichever is the later

Unqualified dispute (1)

- Eligible Claimant has not suffered **actual monetary loss**, or failed to provide supporting documents for the monetary loss
- The claim is without substance or is frivolous or vexatious
- Claim has been lodged with the **Insurance Claims Complaints Bureau (“ICCB”)**
- Claim is a subject of **current court proceedings** or past proceedings where there has been a decided judgment

Unqualified dispute (2)

- Claim about **policies and practices, fees, premiums, charges or interest rates charged** by an FI, except a dispute concerning an alleged non-disclosure, inadequate disclosure, misrepresentation, incorrect application, breach of any legal obligation or duty or maladministration or regulatory requirement
- Claim **about investment performance**, except a dispute concerning an alleged non-disclosure, inadequate disclosure, misrepresentation, incorrect application, breach of any legal obligation or duty or maladministration or regulatory requirement

FAQ (1)

1. Will FDRC handle a case being handled by SFC or HKMA?

Under the MOU between SFC, HKMA and FDRC, the dispute resolution by FDRC is to be carried out in parallel unless HKMA or SFC states otherwise.

FAQ (2)

2. Will the regulators involve in the operation and the case management of FDRC?

According to the Memorandum of Understanding signed between the FDRC and the Regulators, both regulators are not involved in the operation and the case management of FDRC. However, FDRC shall notify and/or 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 Regulators in accordance with the Memorandum of Understanding signed between the FDRC and the Regulators. (excerpt from paragraph 22.1 of ToR)

FAQ (3)

3. Is MPF product or service covered by FDRS?

Yes, if the provider is an FI or if FI acted as an agent AND all other relevant ToR criteria met.

4. Is London gold fix product or service covered by FDRS?

Yes, if the provider is an FI or if FI acted as an agent AND all other relevant ToR criteria met.

Cognition and Promotion of FDRC

- Public awareness: 40% approx. (general public)
50% approx. (investor)
- Promotion Events: over 100 per year
(including exhibitions, public seminars, guided tours of FDRC, briefings to District Councils, CPD training and seminars for financial industries and exchanges and talks for different parties)
- Advertising campaigns

Enquiry & Category of Cases

- Enquiry: 7,679 cases
- Enquiry involving complaint of Financial Dispute: 4,270 cases (56%)
- Distribution of intake case type:
 - A) Misrepresentation: 40%**
 - B) Mis-selling: 25%**
 - C) Operation Issues: 20%**
 - D) Forced Liquidation: 10%**
 - E) Others: 5%**

**Based on the data from Jun 2012 the start of FDRC till Dec 2016*

Category of Cases

A) Misrepresentation: the presentation is inconsistent with the actual information while selling the product/service

例如涉及：

1. 投資表現

- 到期總回報（包含保證及非保證），陳述令購買者誤以為所有回報均為保證可得總額
- 購買者誤以為投資數年後（不需要等最後到期日）便可隨時終止，並可收回本金及利息

Category of Cases

A) Misrepresentation: the presentation is inconsistent with the actual information while selling the product/service

2. 產品性質

- 將保險產品形容為與定期存款類同
- 將「債券掛鈎基金」形容為「債券」

3. 行政事宜

- 將按揭 / 貸款所需手續、還款安排、利率、年期等錯誤表述

Category of Cases

B) Mis-selling: 銷售產品 / 服務時， 遺漏 / 資料披露不足 / 隱瞞等

例如涉及：

- 產品 / 服務的銷售資料 / 文書的提供
- 產品風險程度的解釋
- 產品的風險與投資者風險程度承受不符
- 基金提早終止引致的損失 / 涉及的費用

Category of Cases

C) 運作事宜：提供服務時在操作 / 運作上涉及的問題

例如涉及：

1. 遺漏

➤ 買入 / 沽出股票 / 基金指示之處理 / 執行

2. 行政失當

➤ 客戶通知或結單未能到達客戶（如寄往客戶舊地址）

➤ 匯款資料處理錯誤

Category of Cases

C) 運作事宜：提供服務時在操作 / 運作上涉及的問題

3. 疏忽

- 提供一些未查明 / 確證的資料，如基金的投資策略 / 操作 / 交收日期
- 沒有通知股票持有人關於該股票的重大變動事項
- 未確認身份前，將款項存入

Category of Cases

D) 斬倉：

例如：

- 斬倉容忍度（包括時間及金額）
- 未事先通知 / 未獲客戶同意先行斬倉

E) 其他：

例如：

- 存款 / 提款 / 入票機系統失靈 / 故障
- 網上銀行服務系統失靈 / 故障

Results of FDRS



High Success Rate:
about 80%



High Satisfaction Rate:
about 90%



High Effectiveness:
complete mediation within 3 to 6
months on average

Characteristic of FDRS

- Mediation First, Arbitration Next
- Initiated by financial institution clients
- A mediation process with administrative support from FDRC
- A service with fixed reasonable fee
- Confidentiality for both Mediation and Arbitration
- The result of Mediation and/or Arbitration are binding on both sides

What is Mediation?

- According to the Mediation Ordinance, Mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following:
 - (a) identify the issues in dispute;
 - (b) explore and generate options;
 - (c) communicate with one another;
 - (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.

**according to Chapter 620 of the Laws of HKSAR (Mediation Ordinance)*

Confidentiality of Mediation Communications

- A person must not disclose a mediation communication except for exceptional cases
- Mediation Communications means:
 - (a) anything said or done;
 - (b) any document prepared; or
 - (c) any information provided,for the purpose of or in the course of mediation, but does not include an agreement to mediate or a mediated settlement agreement

**according to Chapter 620 of the Laws of HKSAR (Mediation Ordinance)*

FDRS's Confidentiality Agreement (1)

Confidentiality Agreement:

- All persons involved in the Mediation process shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party. The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.
- The Parties shall not call the Mediator or the FDRC (or any of its employee, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute

FDRS's Confidentiality Agreement (2)

Exceptional cases:

- Mutual agree to disclose (Prescribe at Agreement to Mediate)
- The copy of Agreement to Mediate, Mediated Settlement Agreement and Mediation Certificate will be sent to FDRC, HKMA and/or SFC by mediator and/or involved parties
- All information may only be used by FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties involved
- Necessary to implement and enforce any settlement agreement
- Required under any written law, regulation or an order of court

Benefits of resolving dispute via Mediation (1)

- Involved parties may avoid the tension, conflict and risk in the adversarial court system
- Involved parties may save some time and money in not having to contest matters in court
- You make your own decisions and reach agreements with which you and the other party may be more willing and ready to comply
- The settlement terms can be kept private and confidential

Benefits of resolving dispute via Mediation (2)

- Mediation can result in terms of settlement of greater flexibility and in more practical ways going beyond the legal remedies that the court is empowered to grant
- Mediation can help maintain a continuing relationship with the other party or parties involved in the dispute and may improve that relationship
- The chances of an appeal are greatly reduced, in contrast to litigation

Work of FDRC (1)

- Accept and reject Applications in accordance with the FDRS Guidelines on Intake Criteria of Cases set out in Annex II of ToR
- Request for information that is necessary for and relevant to the handling of Claims and/or Eligible Disputes
- Provide guidance for the conduct of its Mediators and Arbitrators
- Publish data about Eligible Disputes for research, evaluation or educational purposes

Work of FDRC (2)

- Promote and increase public awareness of FDRC's purpose of establishment, authority, service and facility
- 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)
- 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 ToR;

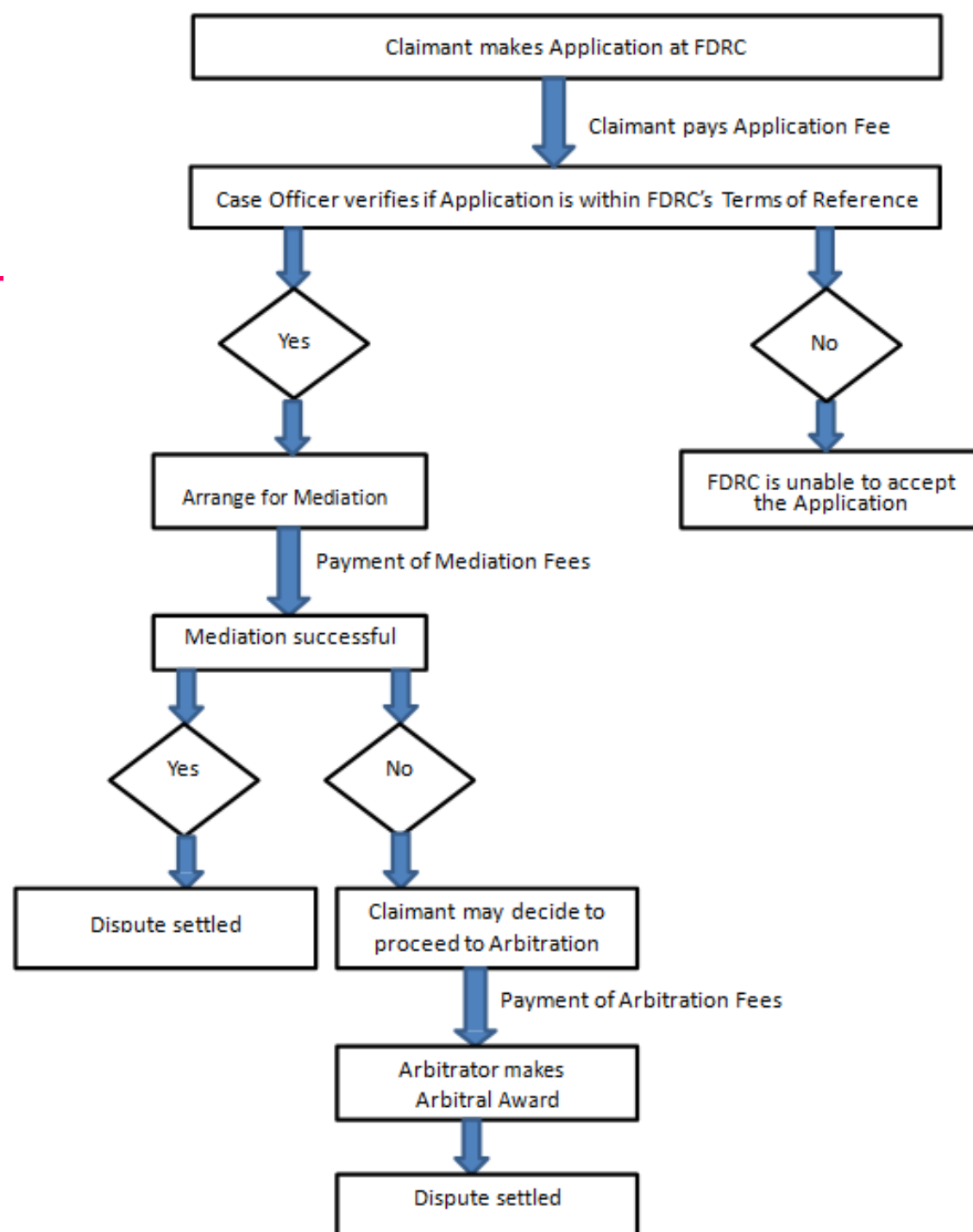
The role of FDRC's Mediator

- The Mediator is the facilitator of the Mediation Meeting
- The Mediator shall be independent, shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party or in relation to the Mediation and in such situation obtain the prior written consent of all the Parties before proceeding with the Mediation, and shall be impartial to the identity and status of both parties
- The Mediator shall be neutral and unbiased without any opinions and suggestions to both parties
- The Mediator shall act fairly and impartially as between the parties, at all stages of the proceedings

Process of the Scheme

FDRS

- Mediation First, Arbitration Next
- Initiated by financial institution clients



Mediation procedure

- FDRC will vet the application to decide whether it should be accepted under the FDRS in accordance with the ToR and the FDRS Guidelines on Intake Criteria of Cases
- If the application is accepted, the FI being claimed will be notified by FDRC
- **Mediation fee will be paid by both parties**
- The FI should respond to FDRC for the request of information gathering within a specified time frame
- Attend the case management meeting before Mediation
- Appointment of Mediator

Mediation procedure

- Attend the **case management meeting before Mediation**
 - Let **both parties**:
 - 1) understand the information needed in order to make the Mediation Meeting proceeded smoothly
 - 2) understand the confidentiality
 - 3) understand the Mediation procedure
 - 4) understand the function and right of Mediator and all parties during the Mediation Meeting
 - Let **FDRC**:
 - 1) understand the intention of both parties in appointing the Mediator
 - 2) arrange the pre-Mediation Meeting and the date of Mediation Meeting

Mediation procedure

➤ Attend Mediation Meeting*

- The Mediator shall commence the mediation session within **21 days** from the date of his appointment, unless otherwise directed by the FDRC in writing
- The Mediation to proceed and be concluded within **4 hours**
- The Mediation time can be extended under mutual agreement AND the extra fee will be paid by both parties

** Legal representative (including internal lawyers of FI) is not allowed to attend the meeting*

Mediation procedure

➤ Attend Mediation Meeting*

- Signing of the Agreement to Mediate and the Confidentiality Agreement
- Authorized representative of FI should attend the Mediation Meeting, the representative must be able to make a decision on reconciliation
- Should be participated in Mediation in good faith
- Attend the pre-mediation session for the preparation of the Mediation Meeting

** Legal representative (including internal lawyers of FI) is not allowed to attend the meeting*

Mediation procedure

➤ Attend Mediation Meeting*

- The Mediator shall file the **Mediation Certificate** with the FDRC at the conclusion of the Mediation
- Both parties should sign the **Mediated Settlement Agreement** if the dispute resolved
- The terms and conditions must be implemented by both parties at the **Mediated Settlement Agreement**

** Legal representative (including internal lawyers of FI) is not allowed to attend the meeting*

The purpose and principle of Arbitration

Purpose

- Facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense

Principle

- Subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved; and
- The court should interfere in the arbitration of a dispute only as expressly provided for in this Ordinance

**according to Chapter 609 of the Laws of HKSAR (Arbitration Ordinance)*

Arbitration procedure

- If the dispute fail to resolve by Mediation, the Eligible Claimant may request for Arbitration of the Eligible Dispute under these Rules within 60 days from the date of the Mediation Certificate with Arbitration fee payment
- When the written request for Arbitration made by the Eligible Claimant is received, FDRC would notify the FI to give feedback to the Notice to Arbitrate and also paying the Arbitration Fee
- Appointment of Arbitrator
- The Eligible Claimant and the FI should respond to the enquiry of the Arbitrator
- The place of Arbitration shall be in Hong Kong

Arbitration procedure

- Attend the **case management meeting before Arbitration**
 - Let **both parties**:
 - 1) understand the confidentiality
 - 2) understand the Mediation procedure
 - 3) understand the function and right of Arbitrator and all parties during the Arbitration Meeting
 - Let **FDRC**:
understand the intention of both parties in appointing the Arbitrator and also the language for Arbitration

Arbitration procedure

- An Eligible Dispute which is unresolved by Mediation, the Eligible Claimant may select resolve the dispute via Arbitration administered by the FDRC
- The Arbitration shall be conducted in such language(s) as the Arbitrator sees fit
- Arbitration should commence on a “documents-only” basis, the Arbitration Fee for the Eligible Claimant would be HKD5,000 while it is HKD20,000 for FI

Arbitration procedure

- Under exceptional circumstances, the Arbitrator can call for in-person formal hearings if the Arbitrator determines that such hearings are necessary for deciding the award and both Parties are willing to take on and agree to pay the related expenses and fees. Such extra expenses and fees incurred shall be shared equally between the Parties (HKD12,500 for each party)

Arbitration procedure

➤ **Arbitral Awards** is:

- final and binding on the Parties, and not subject to review other than on point of law
- with the maximum total monetary value of the award for a Claim must not exceed HK\$500,000, inclusive of interest
- an award that can be executed directly through the court

Fees of FDRS

Reasonable fees (HKD)

		Eligible Claimant	Financial Institution
Filling an Application Form		\$200	Not Applicable
Mediation	Amount of claim: Less than \$100,000	\$1,000	\$5,000
	Amount of claim: Between \$100,000 and \$500,000	\$2,000	\$10,000
Arbitration	Documents-only	\$5,000	\$20,000
	In-person hearing	\$12,500	\$12,500

Fees of FDRS

Reasonable fees

- Avoid abuse
- Affordable level for the clients of FI
- According the information from FDRC, only 8% of respondents said the fee would affect their desire to use the service of FDRC

Appointment of Mediator/Arbitrator

- Around 60 Mediators in the “List of Mediator” while around 10 Arbitrators in the “List of Arbitrator” at FDRC
- FDRC will select suitable Mediator/Arbitrator via the feasibility and the wish of both parties
- The Mediator/Arbitrator in FDRC’s list are all very experienced
有關名單中的調解員 / 仲裁員均經驗豐富，並具金融業知識，大部份更擁有法律專業背景

Appointment of Mediator/Arbitrator

可行性

合適時間
利益衝突
語言
安排觀察員
行政安排

當事人意願

調解經驗
金融或銀行業的運作 / 產品知識
規管框架或要求的知識
專業
語言
指定人生經驗 / 年齡 / 性別

調解中心調解 / 仲裁員的資歷

1) 基本要求成為以下機構 / 組織認可名單上的成員：

調解員	仲裁員
香港國際仲裁中心 香港律師會 香港大律師公會 香港和解中心 香港測量師學會 香港建築師學會 特許仲裁學會（東亞分會） 香港仲裁司學會 香港調解資歷評審協會有限公司 香港工程師學會	香港國際仲裁中心 香港大律師公會 香港測量師學會 香港建築師學會 特許仲裁學會（東亞分會） 香港仲裁司學會 香港工程師學會

*申請人不是以上任何一個機構 / 組織的認可的名冊 / 名單上的成員，遴選委員會將有權根據具體情況逐案審批及接受其申請

調解中心調解 / 仲裁員的資歷

2) 培訓及評核要求：成功完成調解中心的兩部份培訓課程

第一部份：有關香港金融業的監管架構、實務、經驗分享及調解中心工作流程

- 此部份涵蓋香港金融業的監管架構及相關操守準則、監管機構的角色及責任、監管機構主要處理的投訴個案、調解員及仲裁員的經驗分享和調解中心的個案管理的介紹

調解中心調解 / 仲裁員的資歷

第二部份：由香港銀行學會及香港證券及投資學會聯合提供的金融產品及其銷售程序課程

- 介紹由監管機構監管的金融機構所銷售的金融產品、其銷售過程及潛在爭議的基本概念
- 課程內容及學習時數會因應市場產品、政策發展及其他改變而作出適當調整
- 此部分的内容分為不同金融行業部分，每部分均設有評核（申請人需在所有部分均符合出席率及評核要求，並獲得該部分的「達至滿意水平」評級，才會獲發完成課程證明書）

調解中心調解 / 仲裁員的資歷

3) 相關經驗要求：

- 在最近3年內，曾調解 / 仲裁最少3宗與受監管機構監管的金融服務 / 產品有關之爭議；或
- 在最近3年內，曾調解 / 仲裁最少3宗關於個人與法人團體之間的商業合約爭議

調解中心調解 / 仲裁員的資歷

續會要求：

- 調解中心名單上的調解員 / 仲裁員必須於申請續會前2年內取得**最少10個**持續專業發展學分。可承認的課程範圍包括：

溝通技巧	談判
進階調解技巧	調解員的衝突指導技巧
替代性糾紛解決程序	衝突管理
解決金融產品爭議的專門知識	金融產品
銀行業及金融業的監管事項	

調解中心優化建議諮詢

- 目的是優化調解計劃的服務特性及擴大服務範圍
- 正在檢視已收集的意見



FDRC

Q & A

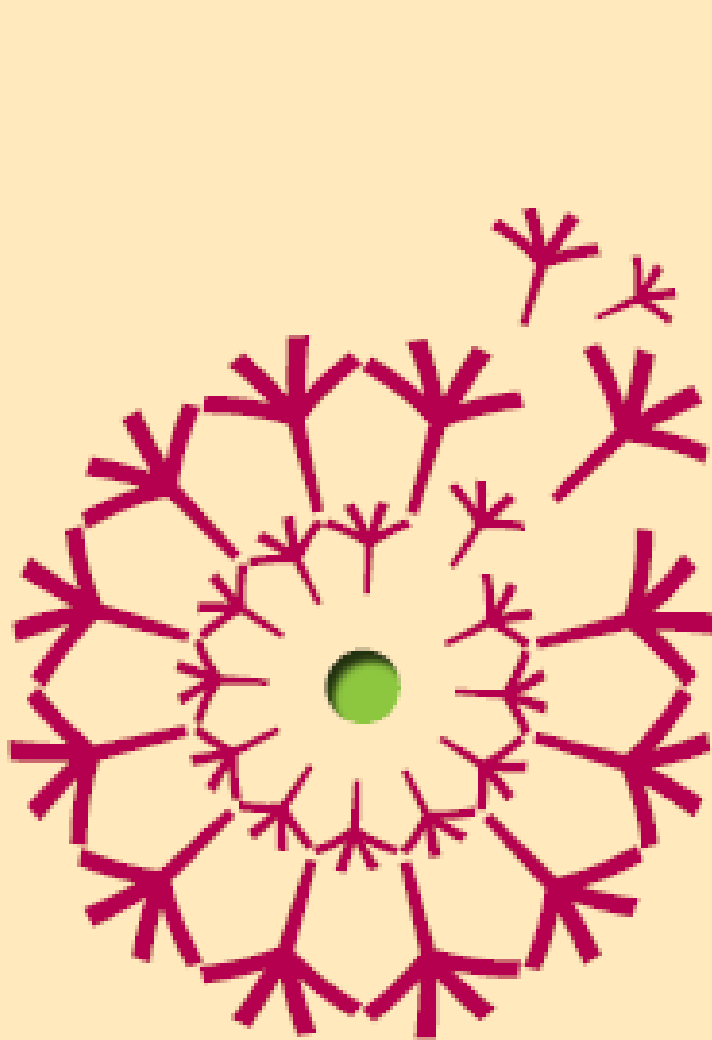
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Mediation First

Win-Win Solution

FDRC  | 金融糾紛調解中心
FINANCIAL DISPUTE RESOLUTION CENTRE

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Website : www.fdrc.org.hk