

Notes to Parties to a Complaint

1. The Role of the Disciplinary Committee of The Financial Dispute Resolution Centre (FDRC) is to:

- (i) investigate complaints of misconduct* against:
 - (a) a mediator on the FDRC List of Mediators for mediation conducted under the Financial Dispute Resolution Scheme (FDRS); and/or
 - (b) an arbitrator on the FDRC List of Arbitrators for arbitration conducted under the FDRS

(1(i)(a) and (b) above are collectively known as respondent ("respondent"));
and

- (ii) facilitate the adjudication of complaints by the FDRC Disciplinary Tribunal ("Disciplinary Tribunal").

**[Please refer to the Guidance Notes to the Complaint Form (DC-1) (as attached to the Complaint Form (DC-1)) for examples of possible "misconduct". Complaint Form (DC-1) and the Guidance Notes to the Complaint Form (DC-1) can be downloaded from the FDRC website at www.fdr.org.hk.]*

2. The FDRC Disciplinary Committee ("Disciplinary Committee") does not:

- (i) investigate complaints against respondents who are not acting in their capacities as mediators or arbitrators under the FDRS;
- (ii) proceed with the investigation of a complaint if it involves an on-going litigation which directly relates to the complaint or the complaint is being investigated by other organisations or authorities;
- (iii) normally handle complaints which are not set out in the *Complaint Form (DC-1)*;
- (iv) give legal advice or adjudicate on legal issue(s) or disputes; and
- (v) take proceedings on behalf of the complainant.

3. The Disciplinary Committee seeks to ensure that:

- (i) the independence and impartiality of its investigative role is maintained;
- (ii) it is not perceived to be partial to one or other party to a complaint.
(For this reason, it is not the practice of the Disciplinary Committee to meet complainants or respondents.)

4. Complainant should:

- (i) read the *Guidance Notes to the Complaint Form (DC-1)*;
- (ii) set out the complaint in full details;
- (iii) not make any defamatory statements or comments in the *Complaint Form (DC-1)*;
- (iv) send the *Complaint Form (DC-1)* together with copies of all relevant documents to the Disciplinary Committee:

by post: Financial Dispute Resolution Centre
 Unit 3701-4, Sunlight Tower
 248 Queen's Road East
 Wan Chai, Hong Kong

or by fax: (852) 2565 8662

or by e-mail: complaints@fdrc.org.hk

- (v) note that copies of the *Complaint Form (DC-1)* and enclosures (if any) may be sent to the respondent(s) that the complainant is complaining against for explanation and in some cases, to the Disciplinary Committee, the Disciplinary Tribunal, the prosecutor in relation to the complaint, any person appointed by the FDRC to conduct investigation, a mediator or potential mediators whom FDRC may approach for resolving any dispute in connection with the complaint, court, relevant government departments, related authorities and organisations, agencies which are authorised to receive information relating to law enforcement, prosecution or review of the Disciplinary Committee's decision;
- (vi) remain courteous throughout the investigation;

- (vii) assist the FDRC by acting as witness in the event that disciplinary proceedings are commenced against the respondent;
- (viii) avoid delay in making a complaint as it may be difficult to investigate the complaint properly;
- (ix) note that reports to the Disciplinary Tribunal and the FDRC Board of Directors will not be disclosed.

5. Deficient Complaint

- (i) The FDRC shall review the *Complaint Form (DC-1)* and enclosures (if any) received for administrative compliance review.
- (ii) All deficient complaints will not be processed. These deficiencies include but are not limited to the following:
 - (a) the complaint(s) was/were not filed by the relevant complainant;
 - (b) documents were not properly signed and/or dated;
 - (c) the names and particulars of the complainant and the respondent were not provided; and
 - (d) the relevant supporting document(s) is/are not provided.
- (iii) The FDRC will notify the relevant complainant in writing if the complaint is deficient. Unless otherwise extended by the FDRC, if all deficiencies are not corrected within 7 days, the FDRC may close the case without proceeding to the disciplinary process.

6. Upon receipt of a complaint

- (i) the FDRC would conduct a preliminary review of the complaint to ensure that the substance of the complaint is within the remit of the Disciplinary Committee and that the essential information is in order;
- (ii) if a complaint is within the remit of the Disciplinary Committee, the Disciplinary Committee may request relevant searches from the public registry (if applicable) and review the relevant rules (if any), principles (if any), circulars (if any), policies (if any) and guidelines (if any) governing

- conduct in order to decide whether the complaint involves a prima facie case of misconduct and the appropriate way to handle the complaint;
- (iii) if a complaint involves a negligence claim or a criminal allegation, the Disciplinary Committee may, in appropriate cases, advise the complainant to refer the complaint to the relevant authority or organisation or government body for their investigation and/or handling, and inform the complainant to refer the matter back to the Disciplinary Committee if there is pertinent observation from the above bodies upon conclusion of their investigation or decision. In some cases, the Disciplinary Committee may refer the complaint to the relevant authority, organisation or government body for their investigation;
 - (iv) if a complaint does not reveal a prima facie case of misconduct but the complainant is not satisfied with the services provided by the respondent, the Disciplinary Committee may, if applicable, advise the parties to resolve the complaints amicably between themselves through mediation. Where the parties succeed in resolving the disputes amongst themselves, the complaint file can be closed;
 - (v) where the complainant is an Eligible Claimant or a Financial Institution, FDRC may, before or at the time of investigating the complaint, invite the complainant and the respondent to resolve their dispute by way of mediation administered by FDRC. If both parties agree to proceed to mediation to be conducted by a mediator on the FDRC List of Mediators, FDRC will bear the mediation costs for no more than four (4) hours of the mediation and if the parties wish to continue mediating after the initial four (4) hours, the parties will have to bear the mediation costs for such part of the mediation exceeding four (4) hours. The fee structure will be determined by FDRC from time to time. The procedures for appointment of mediators should follow the process set out in the *Terms of Reference of the FDRC in relation to the FDRS* and the *FDRS Mediation and Arbitration Rules*. However, if both parties agree to resolve the matter on their own accord and would choose a mediator who is not on the FDRC List of Mediators, the parties will have to bear all costs of the mediation themselves. FDRC may close the file if the complaint is resolved by mediation;
 - (vi) if a complainant is not satisfied with the Disciplinary Committee's reply (as referred to paragraph 6(ii) above) or he cannot resolve the dispute with the respondent (as in paragraph 6(iii) above), and insists on the Disciplinary Committee investigating the complaint, the Disciplinary Committee may obtain background information about the complaint from the respondent in order to maintain the independence and impartiality of its investigatory

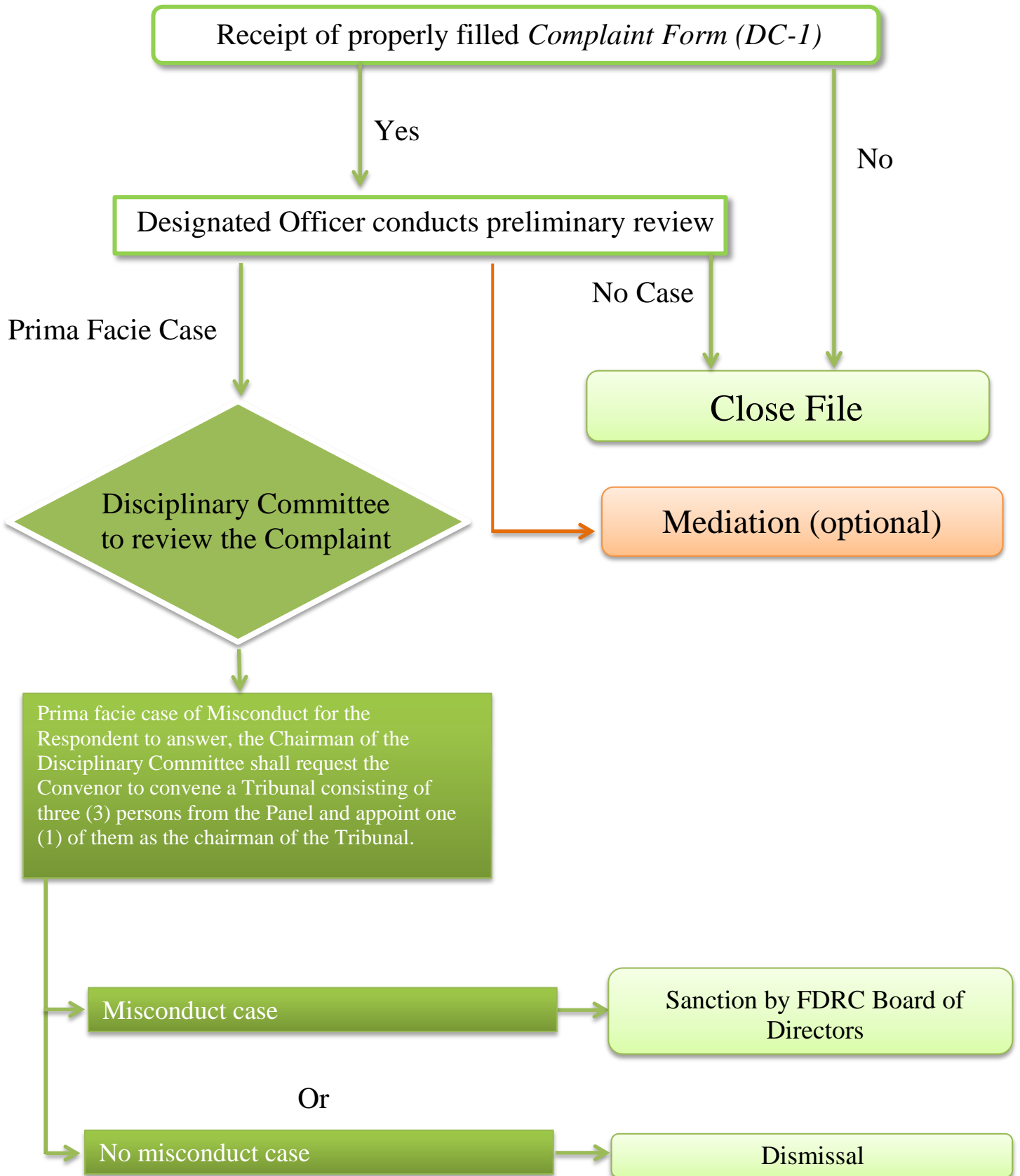
role. Subject to the respondent's reply (if any), a report may be prepared to the Disciplinary Tribunal to decide whether the investigation should be proceeded or no action will be taken by the FDRC;

- (vii) even if the complaint has been resolved by mediation, FDRC may not wish to close the file and may investigate matters of its own motion. FDRC may request further information and take other appropriate steps, including but not limited to tendering the complainant as a witness in subsequent disciplinary proceedings;
- (viii) if the complaint reveals a prima facie case of misconduct, the Disciplinary Committee will write to the respondent and send him a copy of the completed *Complaint Form (DC-1)* together with copies of all documents provided by the complainant (if any) and seek an explanation from the respondent;
- (ix) complainant will be given the opportunity to comment upon the respondent's explanation. If additional information or allegation is contained or raised in the complainant's written comments, the respondent will be given an opportunity to make representations. Further correspondence may ensure that sufficient information is gathered;
- (x) in appropriate cases, the Disciplinary Committee will refer a matter to the Convenor with a view to appointing a Disciplinary Tribunal ("Tribunal");
- (xi) from the gathered information and documents, a report will be prepared for consideration by the Tribunal;
- (xii) if the Tribunal finds any misconduct on the part of the Mediators/Arbitrators, it shall inform the Disciplinary Committee in writing. The Disciplinary Committee shall notify the FDRC Board of the Tribunal's findings together with the recommendation on the sanctions to be imposed on the respondent; and
- (xiii) sanctions, which can be imposed by the FDRC, are: (a) reprimand or warn the respondent(s) as to the future conduct; (b) the issue of a letter of regret or a letter of disapproval to respondents; and/or (c) suspending/ removing the respondent(s) from the FDRC List of the Mediators and the FDRC List of Arbitrators.
- (xiv) The FDRC, its Disciplinary Committee and its Disciplinary Tribunal have no obligation to give reasons for any decision it makes in respect of a complaint against the Mediator/Arbitrator.

7. Respondent should note that:

- (i) explanations can be sought in respect of matters revealed during an investigation even if they are not the subject of the original complaint;
- (ii) failure to respond to a request for an explanation or delay in responding to the Disciplinary Committee's inquiries is a matter of misconduct and can result in a separate and additional complaint;
- (iii) the tenor of the correspondence must remain courteous throughout the investigation no matter how strongly a respondent might feel about the issue under investigation;
- (iv) no references should be made to confidential information which it is not intended to be disclosed to the complainant unless privilege can be asserted over such information. If that is the case, this should be made clear in a separate letter and such information will not be treated as part of the explanation and will not lessen the responsibility to give a full explanation to a complaint upon which a complainant can comment;
- (v) a report will be submitted to the Tribunal for directions as to how the matter should be proceeded in the case of the respondent's non-disclosure of the letter of explanation to the complainant; and
- (vi) when a case is submitted to the Tribunal, the Tribunal first has to decide whether a prima facie case has been made out against a respondent. As the rules do not enable a respondent to make further submissions before the Tribunal considers that point, respondents must ensure that a comprehensive explanation is provided from the outset.

8. How will your complaint be dealt with:



9. Enquiries:

If you have any enquiries, please feel free to contact our office at Unit 3701-4, Sunlight Tower, 248 Queen's Road East, Wan Chai, Hong Kong. Telephone No. (852) 3199 5199.

10. Acknowledgement:

The *Notes to Parties to a Complaint* ("Note") are formulated with reference to the similar notes from the Law Society of Hong Kong ("LSHK"). The LSHK has consented to the FDRC adopting the *Note* for its own complaint handling procedures. The LSHK gives no warranty representation or assurance that the *Notes are* suitable for use or adoption by the FDRC for the above purpose.