

22 December 2016

Financial Dispute Resolution Centre  
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37/F, Sunlight Tower  
248 Queen's Road East  
Wan Chai,  
Hong Kong

Send via email to [consultation@fdrc.org.hk](mailto:consultation@fdrc.org.hk)

**IBHK's Responses on Proposals to Enhance the Financial Dispute Resolution Scheme ('FDRS')**

Dear Sirs,

Interactive Brokers Hong Kong Limited ("IBHK") appreciates to take this opportunity to provide comments on the "Proposals to Enhance the Financial Dispute Resolution Scheme" (the "Consultation Paper") issued by the Financial Dispute Resolution Centre ("FDRC") on October 2016.

**Introduction**

By way of background, IBHK is an affiliate of Interactive Brokers LLC ("IBLLC"), which located in Greenwich, CT, USA. Interactive Brokers is an online broker that provides trade execution and clearing services to public clients around the world. Interactive Brokers does not employ any human "brokers" that manages client accounts. All trading in a client account under IB or IBHK is self-directed by the clients or by an outside advisor selected by the client. Interactive Brokers personnel are specifically prohibited from providing any investment, trading or tax advice to clients. Trades are entered by the client on a personal computer and transmitted over the Internet to Interactive Brokers for execution on various exchanges and market centers. IBHK acts as executing broker on the HKEx for its sister company IBLLC.

**Comments**

Overall, we support the initiatives given in this Consultation Paper. IBHK considers the proposals on the Consultation Paper to be worthwhile, subject to the points and observations made in response to the questions below.

Where appropriate, the abbreviations and terms used in the response below shall follow those used in the Consultation Paper.

**Question 1**

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

**1.2 If not, what would be your suggestion of a suitable upper claimable limit? \_HK\$1,000,000; \_HK\$2,000,000; \_Others (please specify) \_\_\_\_.**

We do not hold any objections on the proposed amendment to raise the upper claimable limit to HK\$3,000,000. However, taking Point 2.9 of the Consultation Paper in consideration, FDRC should at least wait until the proposal of increasing financial limit for civil jurisdiction of the District Court is being finalized and approved by the Legislative Council before implement this new upper claimable limit to FDRS.

### **Question 2**

**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?**

**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?**

Single maximum claimable for both industries is more preferable to avoid any unnecessary confusion when claimants lodging complaints.

### **Question 3**

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

**3.2 Do you have other suggestions? \_12 months; \_24 months; \_48 months; \_60 months; \_72 months; \_Others (please specify) \_\_\_\_\_. Please explain your choice.**

We have no specific concerns about extending the limitation period for lodging claims to 36 months as it seems to be a sensible adjustment in response to market demand and common practices across different jurisdictions.

We would appreciate FDRC can make further clarification on how this limitation period could be looked backwards (i.e. if this is agreed and passed on 1 January 2017, does that mean claimant can make a complaint on an issue from 2015?). As this area did not fully specified in the Consultation Paper, a detailed guideline will be required on the new intake criteria for the avoidance of doubts.

### **Question 4**

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

We have no particular comments on this.

#### **Question 5**

- 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?*
- 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.*
- 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.*

We generally welcome this proposal as to encourage claimants to make use of FDRC's services as an alternate to litigation in resolving monetary disputes.

#### **Question 6**

- 6.1** *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?*

We agree with the FDRC and it seems to be fair for all parties that FDRC will look at the mutual agreement between the claimant and FI before taking disputes which exceed the amended intake criteria.

#### **Question 7**

- 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?*
- 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?*
- 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?*

We, in principle, welcome these proposals as FI may refer disputes to FDRC and may lodge counterclaim to FDRC. However, in the FI's perspective, these arrangements should not be limited only with the consent of EC, unless FDRC can provide further elaboration on this purpose.

#### **Question 8**

- 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.*
- 8.2** *Do you agree that such “mediation only” or “arbitration only” option should not be available for “normal” cases under the FDRC? Why or why not?*

We welcome this proposal as to provide more options for FI and EC when using FDRC's services.

But as the objective of the current FDRC's approach on 'mediation first, arbitration next' is to encourage settlement in the mediation stage as far as possible before it comes to arbitration. If FDRC is considering making "mediation only" or "arbitration only" also apply to other "normal" cases, we would appreciate FDRC can provide rationales or further information on this new approach for us to comment.

#### **Question 9**

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

The proposed revised fee schedule given in the Consultation Paper seems reasonable. With the current fee schedule, it is noted that ECs are responsible with application fee and part of the mediation/arbitration fee. However, we think FDRC should also consider imposing penalties payable by the EC on the FDRS for any frivolous complaints in order to compensate

resources and unreasonable time spent by the FI. This suggestion can also conjunct with comment we made on question 7, whereas FI should have the ability to initiate and make reasonable claims back from the EC through the counterclaim arrangement.

### **Question 10**

- 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.***

As long as FDRC can provide a detailed guideline on the amended Intake criteria at the time of implementation, we do not hold any objections for FDRC to re-consider the rejected applications which fall into FDRS.

Please contact if you wish to discuss any of the above Interactive Brokers comments on the Consultation Paper.

Sincerely,

**IB Compliance**