

LIST OF QUESTIONS FOR CONSULTATION

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.
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>Based on the rationale provided in the consultation paper, it seems HKD 2,000,000 would be sufficient to capture the majority of the types of applicants and claims that are denied and meant to be heard by the FDRC, leaving more complex claims between HKD 2,000,000 – HKD 3,000,000 for the district courts to address. Additionally, there appears to be a provision allowing any amount to be heard if agreed among the parties and the FDRC.</p>
1.2	If not, what would be your suggestion of a suitable upper claimable limit? _____ HK\$1,000,000; <u> X </u> HK\$2,000,000; _____ Others (please specify) _____ Please state the reasons for your selection.
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>HKD 2,000,000 for the above reasons.</p>
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?
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>Yes.</p>
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? Please state the reasons for your suggestion.
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p>
Question 3	
3.1	Do you agree to extend the limitation period for lodging Claims to 36 months? Why or why

	not?
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>We believe doubling the limitation period for lodging claims to 24 months instead of 12 months is sufficient for the types of claims most often heard by the FDRC. According to the consultation paper, the EC would have 24 months from the date it first had knowledge that monetary loss was suffered, which should be sufficient time to prepare a filing with the FDRC. This should also help promote efficiency in having claims filed and heard while memories may remain fresher and information is more likely to be available and preserved.</p>
3.2	<p>Do you have other suggestions?</p> <p>_____ 12 months; <u>X</u> 24 months; _____ 48 months; _____ 60 months; _____ 72 months; _____ Others (please specify) _____</p> <p>Please explain your choice.</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>Please see our response to 3.1 above.</p>
Question 4	
4.1	<p>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?</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>We do not agree with expanding the scope of the FDRC to cover claims from SEs. These types of claims are often more complex and legal representation is preferred due to the sophistication of the claims. These types of ECs would also likely be able to afford legal representation in a court process, as opposed to the purpose and scope of ECs under the current FDRC requirements.</p>
4.2	<p>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.</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p>
4.3	<p>Do you agree that an FI qualifying as an SE could file a Claim as an EC against another FI? Please explain.</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p>

	<p>We do not agree that an FI qualifying as an SE could file a claim as an EC against another FI for similar reasons as expressed in response to 4.1. These types of claims seem to fall outside the scope and purpose of the FDRC.</p>
Question 5	
5.1	<p>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?</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>This seems it would be helpful for mediation purposes, but only if the proceedings are stayed pending the conclusion of the FDRC process or potentially only if agreed to by both parties. The FDRC process likely is only a resource and time saving endeavor for the parties involved if it does not require addressing the issues in arbitration and trial at the same time. For this reason, we do not believe arbitration through the FDRC process while a court proceeding is pending should be a unilateral option for the EC, but should only be an option if the parties agree to such a course.</p>
5.2	<p>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.</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>We believe the same claim amount decided upon in response to Question 1 should apply to all cases, including PD31 cases.</p>
5.3	<p>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.</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>Yes, in keeping in line with market practice for these specific types of cases and their complexity, as referenced in our responses to 4.1 and 4.3, this seems reasonable.</p>
Question 6	
6.1	<p>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?</p>
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>Yes, if parties wish to proceed through the FDRC and agree upon that course there does not seem to be a reason to prevent them from doing so.</p>
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?
	<u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate) Yes.
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?
	<u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate) Yes, but in the instance of a counterclaim we do not believe the consent of the EC should be required if the process is intended, in part, to be a time and resource saving endeavor. Without the ability to have a counterclaim heard by the FDRC, or only with the EC's consent, the FI would be required to file the claim in court to have the same or similar facts heard, which would be inefficient for all parties involved.
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?
	<u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate) Yes.
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.
	<u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate) Yes.
8.2	Do you agree that such “mediation only” or “arbitration only” option should not be available for “normal” cases under the FDRS? Why or why not?
	<u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate) Yes.
Question 9	
9.1	Do you agree with the proposed revised fee scale for dispute resolution services of the FDRC? Please provide your comments and/or suggestions.
	<u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)

	Yes.
Question 10	
10.1	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.
	<p><u>Comment</u> (please provide detailed rationale and suggested alternatives where appropriate)</p> <p>We believe that if the intake criteria are amended it should be applicable only to prospective cases to help provide certainty of claims for all parties.</p>