

Consultation Conclusions

Nov 2017

CONTENTS

I. Amendments to Major Terms of the FDRS

- A. Raise Maximum Claimable Amount
- B. Extend Limitation Period
- C. Refine Eligible Claimants to Include Small Enterprises
- D. Accept Cases Under Current Court Proceedings

II. Extension of FDRC Services Based On Mutual Agreement

A. Intake of Cases With Parties' Mutual Agreement

- 1) Cases which exceed amended Intake Criteria
- 2) Cases which FIs Initiate to Lodge Disputes with FDRC
- 3) Cases which FIs Counterclaim Against ECs

B. Flexible Mediation / Arbitration Rules

III. Fees, Implementation & Information Reporting

A. Revised Fee Schedule

- 1) Same Fees for Maximum Claimable Amount up to HK\$1M
- 2) Affordable Escalating Fees

B. Implementation of the Amended ToR

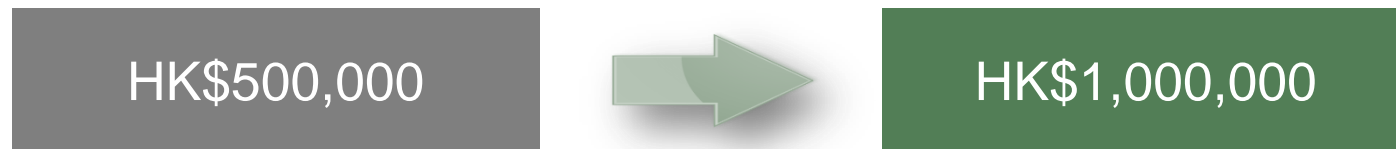
C. Information Reporting to Regulators

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A. Maximum Claimable Amount (“MCA”)

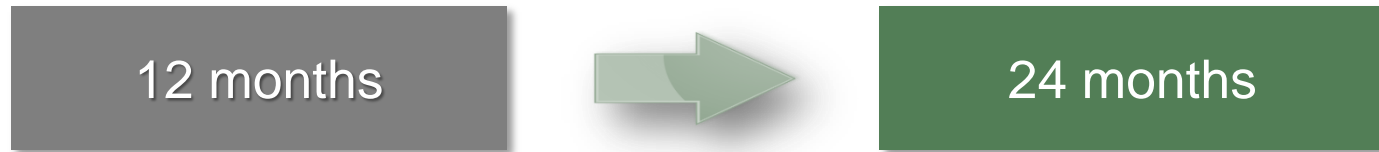
- ✓ **The MCA will be raised from HK\$500,000 to HK\$1,000,000**



- ❖ HK\$1,000,000 amount would account for about 50% of cases exceeding HK\$500,000
- ✓ **One single maximum claimable amount should continue to be applied to the banking and the securities sectors.**

B. Limitation Period

- ✓ **The limitation period for lodging claims will be extended from 12 months to 24 months**



- ❖ 24-month covers 35% of cases beyond 12 months

C. Refine Eligible Claimants to Include Small Enterprises

✓ **Small Enterprises (“SE”), viz a limited company or a partnership, will be included as Eligible Claimants (“EC”)**

➤ An SE is defined as :

- (1) SE’s or its group’s annual turnover \leq HK\$50M;
- (2) SE’s or its group’s gross asset \leq HK\$50M; and
- (3) SE’s or its group’s employee number in HK \leq 50.

1) Individuals
2) Sole proprietors



1) Individuals
2) Sole proprietors
3) Small enterprises

✓ **A financial institution qualified as a SE would be allowed to apply the FDRS as an EC, in which case the fees will be shared equally between the SE and the FI**

D. Cases under Current Court Proceedings

- ✓ **FDRC could deal with cases under current court proceedings without the claimant withdrawing the case from the Court**

Subject to

- 1) stay of court proceedings; OR
- 2) proper notification to the Court

- ❖ Save time and costs by waiving the withdrawing the case from court
- ✓ **Parties to the mediation in PD31 cases allow legal representatives to attend.**

II. Extension of the FDRC Services Based On Mutual Agreement

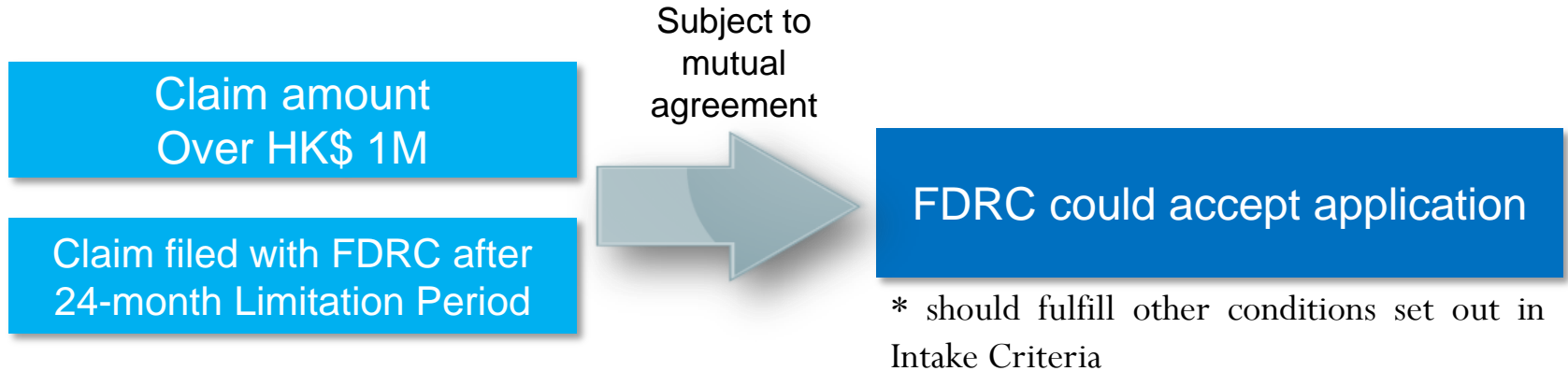
A. Intake of Cases With Parties' Mutual Agreement

- 1) Cases which exceed amended Intake Criteria
- 2) Cases which FIs Initiate to Lodge Disputes with FDRC
- 3) Cases which FIs Counterclaim against ECs

B. Flexible Mediation / Arbitration Rules

A(1) Cases Beyond the Amended Intake Criteria

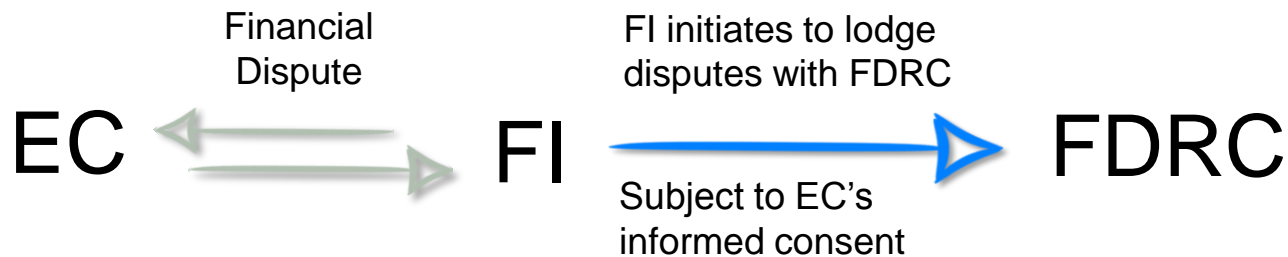
- ✓ Subject to parties' mutual agreement, FDRC could accept claims that exceed amended Intake Criteria, i.e. maximum claimable amount and/or limitation period



- ❖ Provide greater flexibility for the parties and increase the accessibility of the FDRS

A(2) FIs Initiate to Lodge Disputes with FDRC

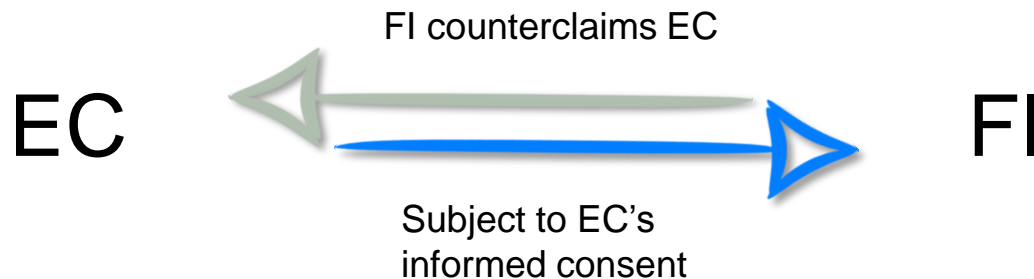
- ✓ FI may refer a financial dispute to the FDRC, subject to the consent of the EC



- ❖ Provide greater flexibility for the parties and increase the accessibility of the FDRS

A(3) FIs Counterclaim ECs

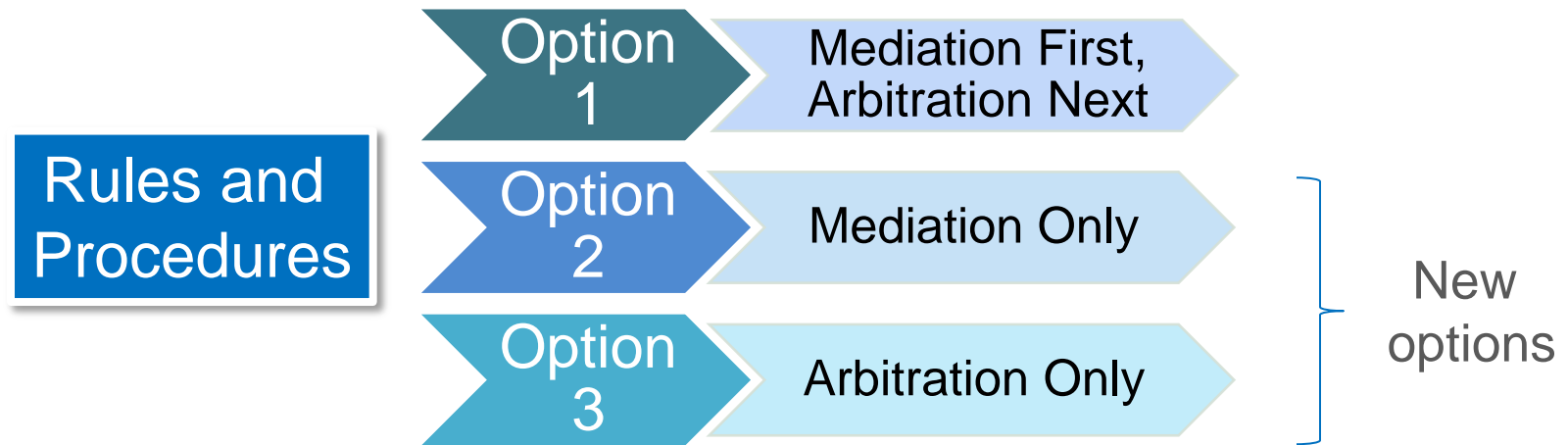
- ✓ When there is a Claim by an EC against an FI, the FI may lodge a counterclaim to the FDRC, subject to the consent of the EC



- ❖ Provide greater flexibility for the parties
- ❖ Save time and resources as the claim and counterclaim are handled aggregately

B. Flexible Mediation / Arbitration Rules

- ✓ Two new options of FDRS rules and procedures applies only to cases that have exceeded the amended Intake Criteria and that both parties have mutually agreed to engage in the alternative dispute process at the FDRC



- ❖ Increase flexibility for FDRS for parties under mutual agreement
- ✓ The “usual” cases, which fall within the amended Intake Criteria, follow “mediation first, arbitration next”.

III. Fees, Implementation & Information Reporting


A. Revised Fee Schedule

- 1) Same Fees for Maximum Claimable Amount up to HK\$1M
- 2) Affordable Escalating Fees

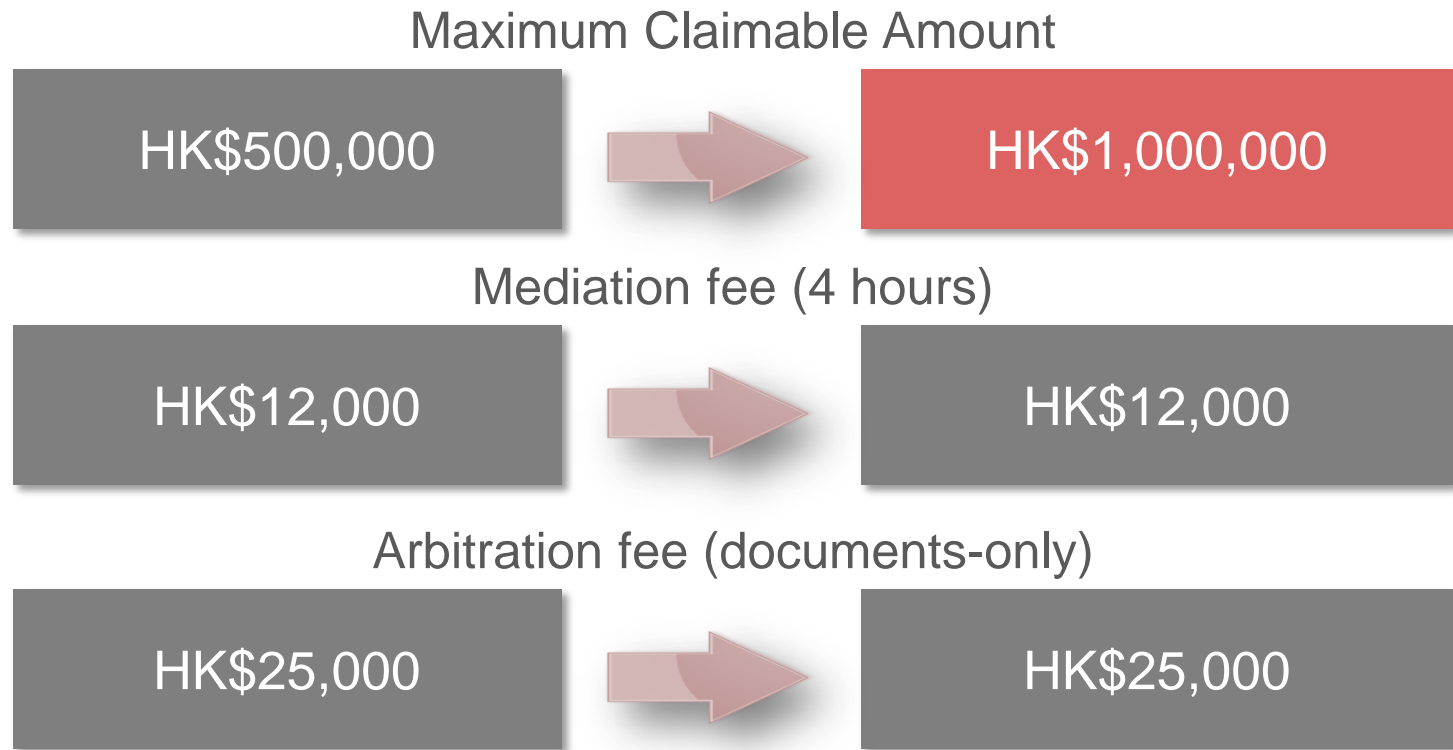
B. Implementation of the Amended ToR

C. Information Reporting to Regulators

A(1) Same Fees for MCA up to HK\$1,000,000

| Current bands (HKD) | | New bands (HKD) |
|---------------------------------|--|-----------------------------------|
| Less than \$100,000 |  | Less than \$200,000 |
| Between \$100,000 and \$500,000 | | Between \$200,000 and \$1,000,000 |
| | | Bands Over \$1,000,000 |
| | | \$1,000,001 to \$2,000,000 |
| | | \$2,000,001 to \$3,000,000 |
| | | \$3,000,001 to \$5,000,000 |
| | | \$5,000,001 to \$10,000,000 |

A(1) (cont'd) Same Fees for MCA up to HK\$1,000,000



❖ Competitive fees level

A(2) Affordable Escalating Fees

| Revised Mediation Fee scale (HKD) | | | | |
|-----------------------------------|--|----------|----------|--|
| Claim amount | Fees | | | Mediation fees Caps if Over 4 hours scheduled time limit |
| | EC | FI | EC+FI | |
| Less than \$200,000 | \$1,000 | \$5,000 | \$6,000 | \$20,000 |
| Between \$200,000 and \$1,000,000 | \$2,000 | \$10,000 | \$12,000 | \$20,000 |
| From \$1,000,001 to \$2,000,000 | \$2,500 | \$12,500 | \$15,000 | \$20,000 |
| From \$2,000,001 to \$3,000,000 | \$3,000 | \$15,000 | \$18,000 | \$20,000 |
| From \$3,000,001 to \$5,000,000 | \$3,500 | \$17,500 | \$21,000 | \$30,000 |
| From \$5,000,001 to \$10,000,000 | \$4,000 | \$20,000 | \$24,000 | \$30,000 |
| Over \$10,000,000 | To be agreed by the parties, the mediator and the FDRC | | | |

* The FDRC will deduct administrative fee of \$1,000, \$1,500, \$2,000, \$2,500 respectively from the total fee to the mediator, for the monetary bands over \$1,000,000.



A(2) (cont'd) Affordable Escalating Fees

| Revised Arbitration Fee scale (HKD) | | | |
|-------------------------------------|--|-------------------------------------|---------------|
| Claim amount | Document Only Fees | | Total Fees |
| | EC | FI | EC+FI |
| Up to \$1,000,000 | \$5,000 | \$20,000 | \$25,000 |
| Between \$1,000,001 and \$2,000,000 | \$7,000 | \$28,000 | \$35,000 |
| Between \$2,000,001 to \$3,000,000 | \$9,000 | \$36,000 | \$45,000 |
| From \$3,000,001 to \$10,000,000 | \$9,000 + 0.1% of amount over \$3M | \$36,000 + 0.4% of amount over \$3M | \$80,000 max. |
| Over \$10,000,000 | To be agreed by the parties, the arbitrator and the FDRC | | |

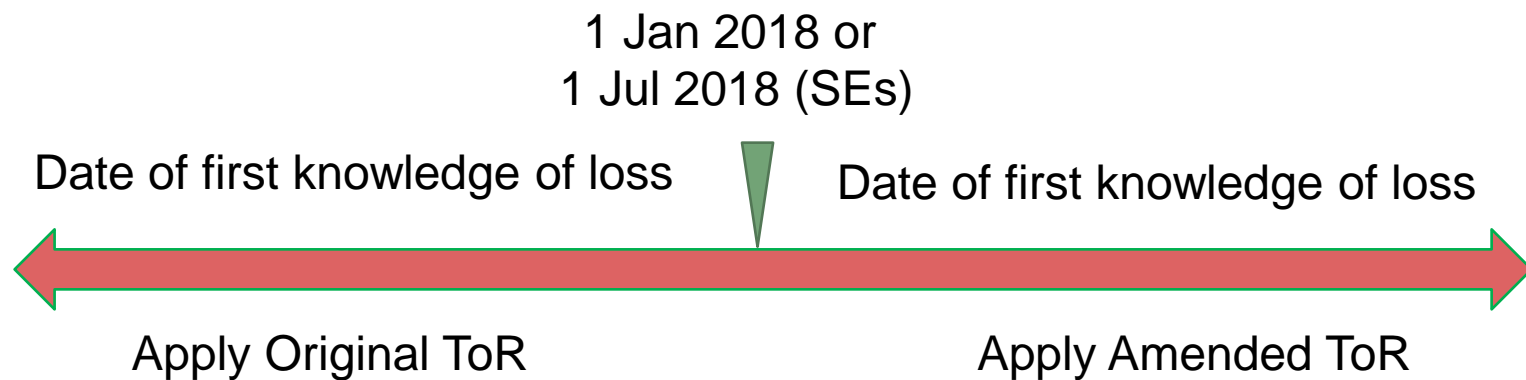
* The FDRC will deduct administrative fee of \$3,000, \$4,000 and \$5,000 respectively from the total fee to the arbitrators, for the monetary bands over \$1,000,000.

B. Implementation of the Amended ToR

- Amended ToR will take effect from 1 Jan 2018, except for the implementation of the terms in relation to Small Enterprises, which will be effective from 1 Jul 2018

Amended ToR Applies : All claims whose date of first knowledge of loss by the EC falling on or after the effective date of the amended ToR (ie, 1 Jan 2018 or 1 Jul 2018 (for SEs)) ; and

Original ToR Applies: All claims whose date of first knowledge of loss by the EC falling before the effective date of the amended ToR (ie, 1 Jan 2018 or 1 Jul 2018 (for SEs)).



C. Information Reporting to Regulators

Current Practice

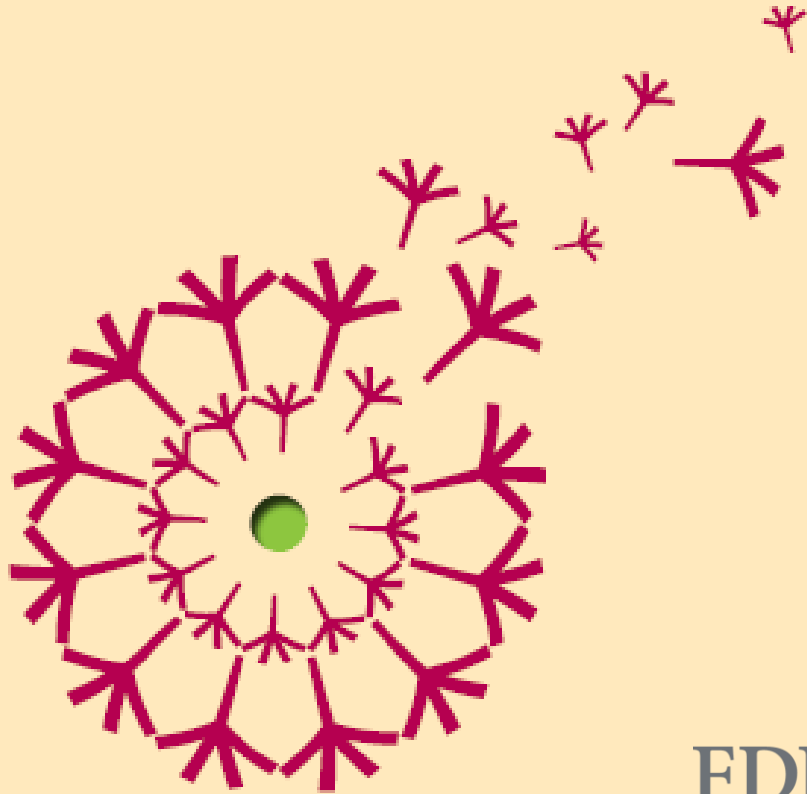
- In addition to providing monthly reports on an anonymous basis about the number and types of disputes handled by the FDRC (“Monthly Reports”), the FDRC would provide the following Case Information on individual cases to the HKMA and the SFC (“Regulators”):
 - FDRS Application Form (with EC’s consent)
 - Agreement to Mediate
 - Mediation Certificate
 - Mediated Settlement Agreement
 - Notice to Arbitrate
 - Arbitral Award

C. (cont'd) Information Reporting to Regulators

Practice after the amendment of ToR

- The FDRC would stop providing the Regulators with the Case Information.
- The FDRC would continue to provide the Regulators with the Monthly Reports.
- The FDRC would still submit to the Regulators such information within its knowledge relating to systemic issues and/or suspected serious misconduct and
- Regulators may still request the FDRC to provide information that is reasonably required for discharging their statutory functions.

Q & A session



FDRC



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