

## **FDRC Procedures for Handling Complaints against Mediators on the FDRC List of Mediators and Arbitrators on the FDRC List of Arbitrators (“Procedures”)**

### **PART I DEFINITION**

For the purposes of the Procedures, except where the context otherwise requires or permits, the following words shall have the meanings respectively attributed to them below:

- ‘Complainant’ means any of the following persons or entities as defined under the *Terms of Reference for Financial Dispute Resolution Centre in relation to the Financial Dispute Resolution Scheme (“ToR”)*, who has lodged a Complaint against a Mediator on the FDRC List of Mediators or an Arbitrator on the FDRC List of Arbitrators:
  - FDRC;
  - Eligible Claimant; or
  - Financial Institution.
- ‘Complaint’ means a written complaint against a Mediator on the FDRC List of Mediators or an Arbitrator on the FDRC List of Arbitrators initiated by a Complainant.
- ‘Complaints Officer’ means a designated staff member of the FDRC to handle a Complaint against a Mediator on the FDRC List of Mediators or an Arbitrator on the FDRC List of Arbitrators.
- ‘Convenor’ means a Panel member appointed by the Chairman of the FDRC Board to convene the Tribunal upon request of the Disciplinary Committee, or his/her alternate; or a person independent of the Panel appointed by the Chairman of the FDRC Board to convene the Tribunal for a particular case where there is a potential or actual conflict of interest on the part of convenor from the Panel or his/her alternate.
- ‘Disciplinary Committee’ means the FDRC Disciplinary Committee set up by the FDRC Board.
- ‘Dispute Resolution Manager’ means a staff of the FDRC who leads, manages and supervises the dispute resolution team in the provision of mediation and arbitration services by FDRC.

## FDRC

- 'FDRC' means the Financial Dispute Resolution Centre.
- 'FDRS' means the Financial Dispute Resolution Scheme for managing and resolving Eligible Disputes (as defined under the *ToR*) administered by FDRC.
- 'Misconduct' means an act or behaviour, including an omission, on the part of a Respondent which the Tribunal would consider to:
  - be a breach of the *ToR*;
  - be a breach of the *Ethics Codes for FDRC Mediators and Arbitrators* which are set out in the *ToR*;
  - bring into question the Respondent's professional abilities (as specified in the *Ethics Codes for FDRC Mediators and Arbitrators*) and/or suitability to remain on the FDRC List of Mediators or the FDRC List of Arbitrators; and/or
  - bring discredit upon and/or disrepute to FDRC.
- 'Panel' means a panel established by the Chairman of the FDRC Board from which the members of the Tribunal are to be selected.
- 'Prosecutor' means a legally qualified person to whom the power of investigation and prosecution against a Respondent is delegated by the Disciplinary Committee.
- 'Respondent' means a Mediator on the FDRC List of Mediators or an Arbitrator on the FDRC List of Arbitrators against whom a Complaint is made.
- 'Tribunal' means the FDRC Disciplinary Tribunal appointed by the Chairman of the Disciplinary Committee to hear and decide on a Complaint.
- Reference to days mean calendar days.

## **PART II COMPLAINT HANDLING PROCEDURES**

1. Any Complaint must be in writing and submitted to the Complaints Officer and be accompanied with all the evidence and/or statements upon which the Complaint is based. The Complainant will be informed that the Complaint and its accompanying evidence and/or statements upon which the Complaint is based may be passed to:

- the Respondent;
- the Disciplinary Committee;
- the Tribunal;
- the Prosecutor;
- any persons appointed by FDRC to conduct investigation;
- a mediator or potential mediators whom FDRC may approach for resolving any dispute in connection with the Complaint;
- courts of law in the Hong Kong Special Administrative Region (“Hong Kong”); and
- authorities permitted by law to receive such information.

2. Once a Complaint has been duly received, the Complaints Officer shall make a record of the date on which the Complaint is received, the name of the Complainant, the name of the Respondent and the nature of the Complaint. The Complaints Officer shall acknowledge receipt of the Complaint in writing. The Complaint should be forwarded to the Dispute Resolution Manager for assignment to a designated officer for preliminary review into the Complaint. The Dispute Resolution Manager should monitor the progress of the review process to ensure that due procedures are followed.

3. Where the Complainant is an Eligible Claimant or a Financial Institution, FDRC may, before or at the time of reviewing 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 *ToR* 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.

4. 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.

5. In the event FDRC decides to investigate a Complaint, the Complaints Officer shall notify the Respondent of its decision and provide to the Respondent a copy of the Complaint, copies of the evidence and/or statements upon which the Complaint is based and copies of these Procedures. The Respondent should submit in writing within twenty-one (21) days from the date of the notification, any comments he/she might wish to make in the circumstances.

6. The Complaints Officer shall submit a report to the Chairman of the Disciplinary Committee and forward to the Chairman of the Disciplinary Committee copies of the Complaint and the evidence and statements in support of the Complaint submitted by the Complainant and any comments submitted by the Respondent.

7. The Chairman of the Disciplinary Committee shall convene a meeting of the Disciplinary Committee in order to review the Complaint to determine whether in its view there is a prima facie case of Misconduct for the Respondent to answer.

8. Save as otherwise provided for in these Procedures, the Disciplinary Committee shall have the power to conduct its review and investigation in such manner as it considers appropriate. The Disciplinary Committee may further delegate the power of investigation to a Prosecutor. All decisions of the Disciplinary Committee shall be made by majority of the members and in the case of an equality of votes the Chairman of the Disciplinary Committee shall have a second and casting vote. The Disciplinary Committee may take into consideration and act on any information available to it whether or not such information would be admissible in a court of law.

9. (a) If after conducting its review and investigation of a Complaint, the Disciplinary Committee is satisfied that there is no prima facie case of Misconduct for the Respondent to answer, the Disciplinary Committee shall dismiss the case and shall instruct the Complaints Officer to notify both the Complainant and the Respondent of the Disciplinary Committee's decision in writing.

(b) If after conducting its review and investigation of a Complaint, the Disciplinary Committee is satisfied that there is a prima facie case of Misconduct for the Respondent to answer, the Chairman of the Disciplinary Committee shall request the Convenor to convene a Tribunal consisting of three (3) persons from the Panel and appoint one (1) of them as the chairman of the Tribunal. The composition of the Panel of the Tribunal shall consist of leading members of the community.

10. As soon as possible after having satisfied itself that there is a prima facie case of Misconduct for the Respondent to answer, the Disciplinary Committee shall appoint a Prosecutor to write to the Complainant and the Respondent informing them that the

Complaint has been referred to the Tribunal.

11. (a) The Prosecutor shall file with the Tribunal the prosecution case together with evidence and statements from witnesses. Copies of such filings must be sent to the Respondent or his/her duly designated representative at the same time when they are filed with the Tribunal.

(b) The Respondent shall have up to thirty (30) days from the date of receipt of the prosecution case to file with the Tribunal a written response. The Respondent may wish to produce any evidence or statements in support of the response.

(c) Unless otherwise decided by the Tribunal, a hearing shall take place at the premises of FDRC or at such other place in Hong Kong designated by FDRC, on a date fixed by the Tribunal, which date shall not be earlier than thirty (30) days nor later than ninety (90) days from the date of the filing of the response by the Respondent pursuant to 11(b) above.

(d) At a hearing held pursuant to 11(c) above, the Prosecutor shall present to the Tribunal all the information and evidence, including tendering the Complainant and other relevant persons as witnesses, in support of the prosecution case; and the Respondent or his/her duly designated representative shall present to the Tribunal all the information and evidence available to him/her, including tendering witnesses, if any, in support of the response.

12. (a) If after considering all the evidence, information and representation in relation to the Complaint, and hearing the witnesses (if any), the Tribunal concluded that in the circumstances there was no Misconduct on the part of the Respondent, the Tribunal shall in writing inform the Chairman of the Disciplinary Committee, who in turn shall note the findings and instruct the Complaints Officer to write to the Complainant, the Respondent and the FDRC Board advising them of the Tribunal's decision.

(b) (i) In the event the Tribunal concluded that in the circumstances there was Misconduct on the part of the Respondent, the Tribunal shall in writing inform the Disciplinary Committee. 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.

(ii) If the FDRC Board accepts the findings of the Tribunal and recommendations of the Disciplinary Committee, it may impose the recommended sanctions ordering the Appointment Committee to suspend or remove the Respondent from the FDRC List of Mediators and/or FDRC List of Arbitrators and shall write to the Complainant and the Respondent advising them of the outcome of the Complaint.

**PART III POWER OF THE TRIBUNAL**

1. Save as otherwise provided for in these Procedures, the Tribunal shall have the power to conduct its proceedings in such manner as it considers appropriate. All decisions shall be made by a majority of the members of the Tribunal. The Tribunal may take into consideration and act on any information available to it whether such information would or would not be admissible in a court of law.
2. Notwithstanding anything else herein contained, the Tribunal shall have the power to extend any of the time limits and/or deadlines in such manner as the Tribunal in its discretion sees fit.
3. The Tribunal shall have no power to award costs (whether or not a Complainant and/or a Respondent has been represented by a legally qualified person).

**PART IV MISCELLANEOUS**

1. A budget would be maintained by FDRC to cover all reasonable costs of handling Complaints including the costs of mediators, legal advisors and Prosecutors.
2. The FDRC, the Disciplinary Committee and the Tribunal have no obligation to give reasons for any decision it makes in respect of a complaint against the Mediator/Arbitrator.