

[For Publication on 1st November, 2018]

The FDRC has today issued four guidelines (“Guidelines”) pursuant to Paragraphs 3.2 and 3.3 of Section A in the Terms of Reference (“ToR”). The Guidelines are published by the FDRC on its web site as of today and shall take immediate effect in accordance with Paragraph 3.2 of Section A in the ToR.

1. Procedures of Removal of Arbitrators

Rule 3.6 of the FDRS Mediation and Arbitration Rules addresses the removal of the arbitrator, when the arbitrator is biased, lack of impartiality or in conflict of interest. Rule 3.6 is quoted below for easy reference.

3.6 Removal of Arbitrator by the FDRC

3.6.1 The FDRC may remove an Arbitrator for conflict of interest or bias , either upon request of a Party or on the FDRC’s own initiative.

3.6.2 The FDRC will grant a Party’s request to remove an Arbitrator if it is reasonable to infer, based on information known at the time of the request, that the Arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative.

3.6.3 The FDRC must first notify the Parties in writing before removing an Arbitrator on its own initiative. The FDRC may not remove the Arbitrator if the Parties agree in writing to retain the Arbitrator within 7 days of receiving notice of the FDRC’s intent to remove the Arbitrator.

The following guidelines explain the procedures in more details in relation to the removal of the arbitrators and appeal against an arbitral award.

Guideline No. 1 : Procedures of Removal of Arbitrators

“A party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance (see Note 1 below) referred to in Rule 3.6.2, send a written statement of the reasons for the challenge to the FDRC, and in any event before the issuance of the arbitral award by the arbitrator (see Note 2 below). Unless the challenged arbitrator withdraws from his office, the FDRC shall decide on the challenge, which decision shall be subject to no appeal.”

No award shall be issued until the FDRC has decided on the challenge. While a decision of the FDRC is pending, the arbitrator shall not continue the arbitral proceedings and make an award.”

Note 1: The period of fifteen days follows that prescribed under Article 13(2) of the UNCITRAL Model Law which is adopted as part of section 26 of the Arbitration Ordinance (Cap. 609).

Note 2: The arbitrator is “functus officio” as he or she has discharged his or her duties after making the arbitral award and his or her authority is at an end. Once an arbitral award is rendered, it is final and binding on all the parties (Paragraph 2.1 of Section A, ToR). There is no further role for the arbitrator save as expressly provided in Rule 3.8.9 of the FDRS Mediation and Arbitration Rules for the correction of any clerical or typographical errors or any errors of a similar nature. If a party wishes to have recourse against the arbitral award or setting it aside, it may involve court procedures, apart from having to spend more time and costs in the process.

2. Recourse Against Arbitral Award

A party may appeal to the court against an arbitral award on question of law under Rule 3.12.1 of the FDRS Mediation and Arbitration Rules, which is an opt-in provision under Schedule 2 of the Arbitration Ordinance (Cap. 609). To promote clarity and avoid misunderstanding, Rule 3.12.1 of the FDRS Mediation and Arbitration Rules (an Annex of the ToR) is to be amended under Paragraph 3.3 of Section A of the ToR as follows in which reference to Section 4 of Schedule 2 of the Arbitration Ordinance (Cap. 609) is to be deleted as it does not relate to point of law but to serious irregularities:

Revised Rule 3.12.1:

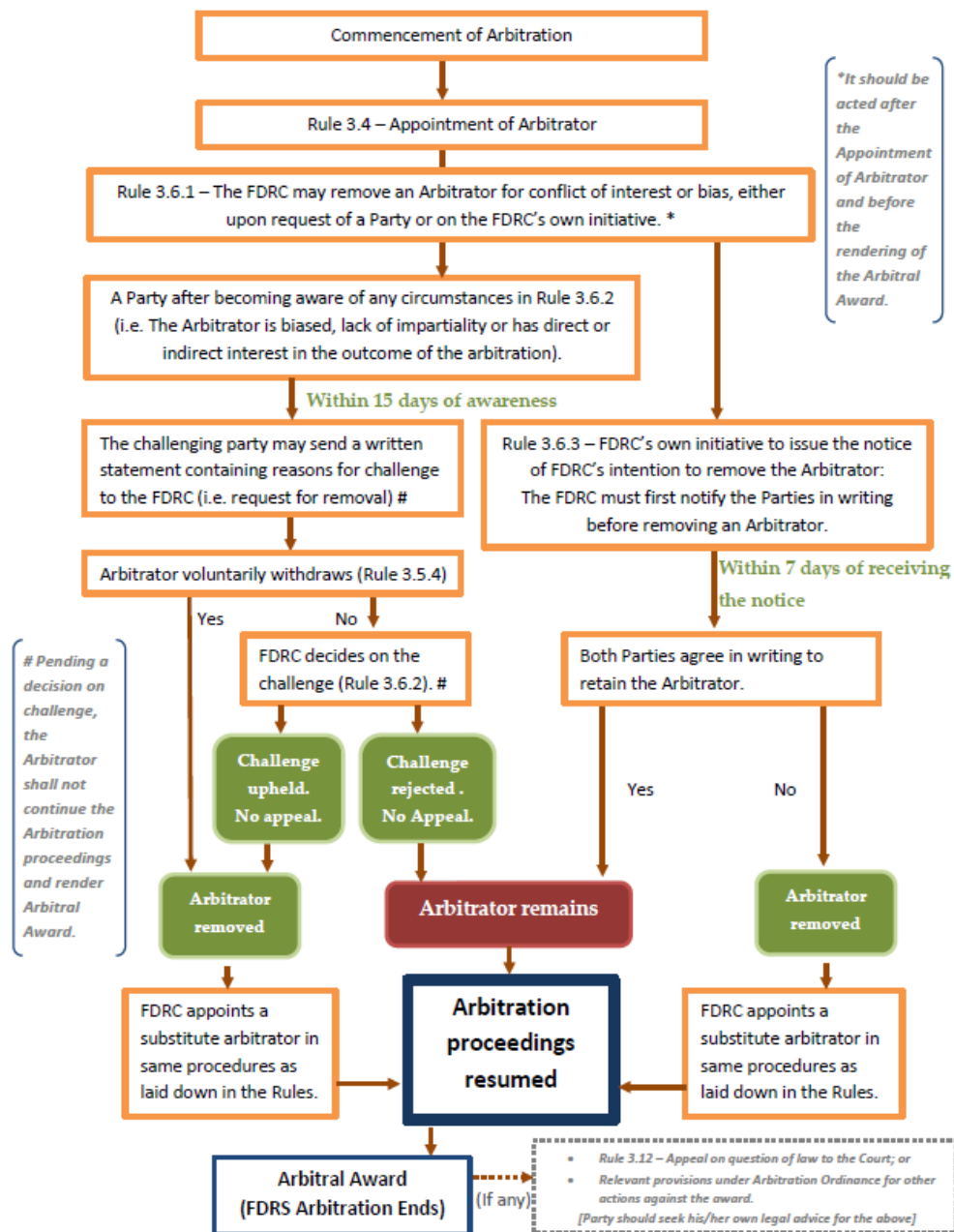
“Sections 3, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Cap. 609) providing for appeal against Arbitral Award on question of law shall apply.”

The following guideline shall also be issued to supplement Rule 3.12.1:

Guideline No. 2: Recourse Against Arbitral Award

“Sections 3, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Cap. 609) providing for appeal against Arbitral Award on question of law shall apply. For avoidance of doubt, a party may seek legal or professional advice for recourse against the arbitral award, if any, under the provisions of the Arbitration Ordinance (Cap. 609).”

Procedures of Removal (Challenging and Replacing) of an Arbitrator in the FDRS Arbitration are illustrated as below as attachment to Guidelines No.1 and No.2



3. Role of the FDRC

The following guideline is to elaborate on the role of the FDRC to avoid misunderstanding.

Guideline No. 3 : The Role of the FDRC

“The role of the FDRC has been clearly specified in Paragraph 5 of Section B in the ToR: Principles and Functions of the FDRC. This is to reiterate that the FDRC, as an administering institute of the Financial Dispute Resolution Scheme (FDRS), is to ensure that the resolution procedures of the FDRS be independent and that both parties be treated in an impartial way in the process. For avoidance of doubt, the FDRC will not interfere with the conduct and outcomes of the mediation and arbitration, which may affect the independence of the mediators and the arbitrators.”

4. Ethics Codes of the Mediators and Arbitrators (the Ethics Codes)

The Ethics Codes are amended under Paragraph 3.3 of Section A in the ToR to allow flexibility to mediators and arbitrators who are on the FDRC List of Mediators and the FDRC List of Arbitrators (the “Lists”) to show that they are on the Lists. To address the change in the Ethics Codes, a guideline is issued accordingly as follows.

Guideline No. 4 : The Ethics Codes for FDRC Mediators and Arbitrators

Before Amendment:

“Ethics Code for FDRC Mediators

13. Advertising/promotion of the Mediator’s services

A Mediator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, a Mediator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Mediators maintained by the FDRC to promote his private practice.

Ethics Code for FDRC Arbitrators

Rule Six

An Arbitrator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, an Arbitrator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Arbitrators maintained by the FDRC to promote his private practice.”

After Amendment:

“Ethics Code for FDRC Mediators

13. Advertising/promotion of the Mediator’s services

A Mediator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. A Mediator may show that he is on the List of Mediators maintained by the FDRC to promote the FDRC and its service and his private practice.

Ethics Code for FDRC Arbitrators

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An Arbitrator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. An Arbitrator may show that he is on the List of Arbitrators maintained by the FDRC to promote the FDRC and its service and his private practice.”