

Section E: Miscellaneous

21. Register, use and publication of data

- 21.1 The FDRC may publish data about Eligible Disputes for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases and any synopsis of individual cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.

22. Reporting to Regulators

- 22.1 The FDRC shall notify and/or submit such information within its knowledge relating to systemic issues (which relate to issues that have affected or have the potential to affect other customers of the relevant FI or members of the public) and/or suspected serious misconduct to the Regulators in accordance with the Memorandum of Understanding signed between the FDRC and the Regulators. The Regulators may request the FDRC to provide information that is reasonably required for discharging their statutory functions. The FDRC would provide the Regulators monthly reports, on an anonymous basis, about the number and types of disputes handled by the FDRC.

23. Confidentiality

- 23.1 The *FDRC Application Form* shall be kept by the FDRC.
- 23.2 A copy of the following documents in a Mediation shall be kept by the FDRC:-
- (a) the *Agreement to Mediate* set out in Annex VI;
 - (b) the *Confidentiality Agreement* (if any) set out in Annex VII;
 - (c) the *Mediated Settlement Agreement* (if any) in the form set out in Annex VIII;
 - (d) the *Mediation Certificate* in the form set out in Annex IX;
- 23.3 A copy of the following documents in an Arbitration shall be kept by the FDRC:-
- (a) the Notice to Arbitrate; and
 - (b) the Arbitral Award.
- 23.4 Subject to Paragraphs 23.1, 23.2 and 23.3 and save as shall be required under any written law, regulations, or an order of court, or as necessary to implement and enforce any *Mediated Settlement Agreement* or Arbitral Award, all persons involved in the Mediation and/or Arbitration shall keep confidential and shall not disclose or divulge (whether expressly or impliedly) to any third party:-
- (a) the matters that transpired in the course of the Mediation and/or Arbitration;
 - (b) any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Mediation and/or Arbitration;

- (c) any views expressed by the Mediators and/or Arbitrators;
- (d) all materials made available and communication made during the Mediation and/or Arbitration; and/or
- (e) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation and/or Arbitration, including but not limited to any *Mediated Settlement Agreement* (and the substance and/or terms thereof) or Arbitral Award, except as directly necessary to implement and enforce any such settlement agreement or award.

Nothing in this Paragraph shall prevent an FI from disclosing any such information to the Regulators or law enforcement agencies in compliance with any regulatory or statutory requirement(s), guidelines or requests. The fact that the Mediation and/or Arbitration has occurred, is continuing or has concluded shall not be considered confidential.

- 23.5 Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Mediation and/or Arbitration shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Eligible Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.
- 23.6 The FDRC shall have the right to make observations, including the right to appoint observer(s) to attend and/or observe any Mediation conducted under these Terms of Reference. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Rule 2.5 of the *FDRS Mediation and Arbitration Rules* as if he was a Party or a Mediator to the Mediation and sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.
- 23.7 The Parties shall not call the Mediator, Arbitrator or the FDRC (or any of its employees, officers or representatives) as a witness, consultant, mediator, arbitrator or expert in any legal or any subsequent proceedings relating to the Eligible Dispute.
- 23.8 The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation and/or Arbitration.
- 23.9 The Parties shall ensure that all its officers, representatives and/or agents comply with Paragraph 23.
- 23.10 The Parties hereby expressly acknowledge and agree that any breach and/or contravention of this confidentiality rule constitutes a loss which cannot be reasonably or adequately compensated in damages. The Parties expressly agree that in the event of any such breach and/or contravention, the FDRC and/or the innocent Party shall be entitled to the remedy of injunction in addition to any other remedy available at law or in equity. The FDRC and/or the innocent Party shall also be entitled to recovery of legal costs on a full indemnity basis from the Party in breach. Additionally, the FDRC reserves the right at its full discretion, to discontinue the Mediation/Arbitration with immediate effect.

24. Disclaimer

24.1 Applicants, ECs, FIs and their Representatives agree that the Arbitrators, Mediators, Case Officers and such other officers, employees and representatives of the FDRC shall not be liable for any act or omission in connection with the services provided in the course of carrying out their respective functions under these Terms of Reference, unless the act or omission is fraudulent or dishonest.

25. No Claim

25.1 Applicants, ECs, FIs and their Representatives shall not make any claim whatsoever against the FDRC, its officers, employees and representatives, Mediators or Arbitrators (save for the consequences of fraud or dishonesty), including but not limited to any claim for any matter in connection with or in relation to –

- (a) any and all the services provided by the FDRC (or any of its officers, employees or representatives);
- (b) any Mediation, Arbitration or other processes of the FDRC;
- (c) the Eligible Disputes lodged by ECs or by FIs;
- (d) the Claims made by ECs or FIs;
- (e) the Applications made by the Applicants;
- (f) any settlements entered into between the ECs and/or their representatives and FIs and/or any Representatives;
- (g) any settlement agreements executed by the ECs and/or their representatives and the FIs and/or any Representatives;
- (h) any act done in order to comply with such legal or regulatory requirement imposed by the HKMA and the SFC or any other Government agency; and/or
- (i) any act done in compliance with any provision of any written law of Hong Kong.

25.2 The FIs hereby expressly acknowledge and agree that any claim or claims (save for the consequences of fraud or dishonesty) made in contravention of this Paragraph constitutes a loss which cannot be reasonably or adequately compensated in damages. The FIs expressly agree that in the event of any such claim and/or breach and/or contravention, the FDRC or its officers, employees, agents and/or representatives and/or the Mediators/ Arbitrators shall be entitled to the remedy of injunction in addition to any other remedy available at law or in equity. The FDRC or its officers, employees, agents and/or representatives and/or the Mediators/ Arbitrators shall also be entitled to recovery of legal costs on a full indemnity basis from the FI and/or its Representatives who have acted in breach of this Paragraph.

25.3 The Parties shall ensure that all its officers, representatives and/or agents comply with this Paragraph 25.

26. Indemnity

- 26.1 Where a claim is brought against the FDRC and/or any of its employees, officers, agents or representatives or the Mediators/Arbitrators by any FI or its Representative, the FIs shall provide the FDRC and/or any of its employees, officers, agents or representatives or the Mediators/Arbitrators with a full indemnity against any loss that the FDRC and/or any of its employees, officers, agents or representatives or the Mediators/Arbitrators may suffer as a consequence of such a claim, including a reimbursement of all costs incurred in defending against such a claim.