

# Financial Dispute Resolution Centre Financial Dispute Resolution Scheme

## Mediation and Arbitration Rules

February 2014

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## **Financial Dispute Resolution Scheme (FDRS) Mediation and Arbitration Rules**

### **1. Definitions**

- ‘Applicant’ means a person making or who had made an Application to the FDRC;
- ‘Application’ means an application to the FDRC for assessing whether a Claim may be accepted under the FDRS in accordance with the Terms of Reference and the *FDRS Guidelines on Intake Criteria of Cases*;
- ‘Arbitration’ means the process of arbitration of an Eligible Dispute under the FDRS;
- ‘Arbitral Award’ means an arbitral award rendered by the Arbitrator which is final and binding on the FI and the Eligible Claimant;
- ‘Arbitrator’ means a person who is suitably qualified and experienced in arbitration and is appointed by the FDRC to act as an arbitrator;
- ‘Board’ means the board of directors which is the governing body of the FDRC;
- ‘Case Officer’ means any person employed by the FDRC who acts as a case manager responsible for addressing enquiries, gathering information and vetting applications to decide whether an application should be accepted under the FDRS in accordance with the Terms of Reference and the *FDRS Guidelines on Intake Criteria of Cases*;
- ‘Claim’ means a claim against an FI, which the FDRC may accept for Mediation and, failing which and if the Eligible Claimant so wishes, Arbitration;
- ‘Complaint’ refers to a written complaint raised by the Applicant to the FI before a Claim is lodged with the FDRC;
- ‘Court’ refers to the courts of the Hong Kong Special Administrative Region;
- ‘Eligible Claimant’ refers to an individual or a sole proprietor having or who had a customer relationship with an FI, or an individual or a sole proprietor who has been provided with a Financial Service;
- ‘Eligible Dispute’ refers to a dispute that fulfils the conditions set out in Paragraph 12 of the Terms of Reference;

- ‘Extended Mediation Time’ means any duration beyond the Specified Mediation Time which the Parties, the Mediator and the FDRC have agreed to continue with an adjourned Mediation;
- ‘FDRC’ means the Financial Dispute Resolution Centre, a company limited by guarantee under the Companies Ordinance (Cap. 622);
- ‘FDRS’ means the Financial Dispute Resolution Scheme for managing and resolving Eligible Disputes administered by the FDRC;
- ‘Financial Service’ means a financial product, service or advice about a financial product or service provided by or via an FI;
- ‘Final Written Reply’ means a written response from the FI to an Applicant which accepts the Complaint (and where appropriate offers redress), offers redress without accepting the Complaint or rejects the Complaint;
- ‘FI’ means a financial institution or a financial services provider authorized by the HKMA or licensed by the SFC, but excludes those financial institutions which only carry on Type 10 regulated activity (i.e. provision of credit rating services) under the Securities and Futures Ordinance (Chapter 571);
- ‘Government’ means the Government of the Hong Kong Special Administrative Region;
- ‘HKMA’ means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance, Chapter 66 of the Laws of Hong Kong;
- ‘Hong Kong’ means the Hong Kong Special Administrative Region;
- ‘ICCB’ means the Insurance Claims Complaints Bureau;
- ‘List of Arbitrators’ means the FDRC’s list of arbitrators for arbitration under the Terms of Reference and these Rules;
- ‘List of Mediators’ means the FDRC’s list of mediators for mediation under the Terms of Reference and these Rules;
- ‘Mediation’ is the process of mediation of an Eligible Dispute under the FDRS;
- ‘Mediated Settlement Agreement’ means a written agreement setting out the terms Parties have agreed in Mediation to resolve the Eligible Dispute;
- ‘Mediator’ means a person who is suitably qualified and experienced in mediation and is appointed by the FDRC to act as a mediator;

- ‘Notice to Arbitrate’ means a written notice sent by an Eligible Claimant to the FDRC to request for the initiation of Arbitration;
- ‘Paragraph’ means a term and/or condition set out in paragraphs in the Terms of Reference, excluding the annexes;
- ‘Parties’ mean an Eligible Claimant and the relevant FI;
- ‘Regulators’ mean the regulators of financial services in Hong Kong such as the SFC and the HKMA;
- ‘Representative’ means the representative of an FI at the Mediation and Arbitration conducted under the FDRS, and may include any individual who dealt with the Eligible Claimant or supervised the dealing with the Eligible Claimant in the provision of the Financial Service that gave rise to the Eligible Dispute, and the individual is an employee, agent or third party contractor of the FI;
- ‘Rule’ means a term and/or condition set out in these Rules;
- ‘Specified Mediation Time’ means the 4 hours allocated for Mediation under the Terms of Reference;
- ‘SFC’ means the Securities and Futures Commission referred to in section 3 of Securities and Futures Ordinance, Chapter 571 of the Laws of Hong Kong; and
- ‘Terms of Reference’ means the terms of reference of the FDRC.

1.1 References to the provision of Financial Service include, where the context admits, references to its non-provision.

1.2 References to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa.

1.3 References to days mean calendar days.

1.4 References to month mean calendar month.

## **2. Mediation**

### **2.1 Appointment of Mediator**

2.1.1 Upon acceptance of an Eligible Dispute, if the amount of claims involved –

(a) is within the prescribed level of HK\$100,000 as stated in Rule 5.1 below, the FDRC shall normally assign the case to an in-house Mediator; or

(b) is beyond the prescribed level of HK\$100,000 as stated in Rule 5.1 below, the Parties may agree on the appointment of the Mediator from the List of Mediators. If the Parties fail to agree on the appointment of the Mediator, the FDRC will be required to appoint the Mediator. The FDRC shall appoint a Mediator from the List of Mediators as soon as practicable, taking into account the Parties' preference so far as practicable.

2.1.2 The appointment of the Mediator takes effect upon confirmation in writing by the FDRC, notwithstanding the Parties and the Mediator have not yet entered into an *Agreement to Mediate* pursuant to Paragraph 19.3 of the Terms of Reference.

## **2.2 Roles of Mediator and the Parties**

2.2.1 The Mediator appointed under Rule 2.1 above will conduct the Mediation with due care and skill and in such manner, as he considers appropriate, taking into account the circumstances of the case, the wishes of the Parties and the need for a speedy settlement of the dispute.

2.2.2 The Mediator may communicate with the Parties together or with any Party separately, including private meetings and each Party shall cooperate with the Mediator. A Party may request a private meeting with the Mediator at any reasonable time. The Parties shall give the Mediator full assistance to enable the Mediation to proceed and be concluded within the time specified in Rule 2.3.2 below.

2.2.3 The Mediator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Mediation. The Mediator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Mediator to the Eligible Dispute.

## **2.3 The Mediation Process**

2.3.1 The Mediator shall ensure that the Parties sign an *Agreement to Mediate* prior to the substantive mediation session between the Parties.

- 2.3.2 The Mediator shall commence and conduct the Mediation as soon as possible after his appointment. The Mediator shall commence the Mediation session within 21 days of his appointment, unless otherwise directed by the FDRC in writing. Subject to Paragraph 19.9 of the Terms of Reference which provides for the Extended Mediation Time, Mediation under FDRS shall not exceed the Specified Mediation Time.
- 2.3.3 No legal representative, including in-house lawyer, is allowed to act on behalf of either Party in the Mediation. However, each Party may seek legal advice or expert opinion or be accompanied by one or more persons who are not their legal representative, in-house or otherwise, to assist and advise them during Mediation. Any such legal advisors, experts or any persons attending Mediation who are not a Party shall sign a separate *Confidentiality Agreement* in a form prescribed by the FDRC in Annex VII of the Terms of Reference.
- 2.3.4 The Mediator shall file the *Mediation Certificate* set out in Annex IX of the Terms of Reference with the FDRC at the conclusion of the Mediation regardless of whether a settlement was reached or the Mediation terminated.

## **2.4 Termination of the Mediation**

- 2.4.1 The Mediation process shall come to an end:
- (a) upon the signing of a *Mediated Settlement Agreement* in the form set out in Annex VIII of the Terms of Reference by the Parties settling all or part of an Eligible Dispute; or
  - (b) upon the written advice of the Mediator after consultation with the Parties that in the Mediator's opinion further attempts to resolve the dispute by Mediation are no longer practicable according to the *Ethics Code for FDRC Mediators* as set out in Annex V of the Terms of Reference; or
  - (c) upon written notification by the Eligible Claimant at any time to the Mediator and the other Party that the Mediation is terminated.
- 2.4.2 In the event the Mediation is terminated, the Mediator shall report the termination to FDRC in the form of a *Mediation Certificate* as set out in Annex IX of the Terms of Reference. The Parties agree that the form may be provided to the HKMA and/or SFC by the FDRC.

## **2.5 Confidentiality**

- 2.5.1 The *FDRS Application Form* may be sent to the HKMA and/or SFC by the FDRC if the Applicant consents.
- 2.5.2 A copy of the following documents shall be sent to the HKMA and/or the SFC by the FDRC on behalf of the Parties and the Mediator:-
- (a) the *Agreement to Mediate* as set out in Annex VI;
  - (b) the *Mediated Settlement Agreement* (if any) in the form set out in Annex VIII; and
  - (c) the *Mediation Certificate* in the form set out in Annex IX.
- 2.5.3 Where the documents are sent on behalf of the FIs, the relevant FI shall be notified.
- 2.5.4 Subject to Rules 2.5.1, 2.5.2 and 2.5.3 and save as shall be required under any written law, regulation or an order of court, or as necessary to implement and enforce any *Mediated Settlement Agreement*, all persons involved in the Mediation process shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party: –
- (i) the matters that transpired in the course of the Mediation;
  - (ii) 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;
  - (iii) proposals suggested by the Mediators;
  - (iv) all materials made available and communication made during the Mediation; and/or
  - (v) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation including but not limited to any *Mediated Settlement Agreement* (and the substance and/or terms thereof) except as directly necessary to implement and enforce any such settlement agreement.

Nothing in this Rule 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). The fact that the Mediation has occurred, is continuing or has concluded shall not be considered confidential.

- 2.5.5 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 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.

- 2.5.6 The Parties shall not call the Mediator or the FDRC (or any of its employees, officers or representatives) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.
- 2.5.7 The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.
- 2.5.8 Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
- 2.5.9 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 Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Rule 2.5 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.
- 2.5.10 The Parties acknowledge that, by entering into Mediation according to the terms of the *Agreement to Mediate*, they agree and accept that information shall be used by the FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.
- 2.5.11 The FI shall ensure that all its officers, representatives and/or agents comply with this confidentiality rule.

## **2.6 Language of the Mediation**

- 2.6.1 The language of Mediation shall be decided by the Mediator, taking into consideration the Parties' preferences as far as practicable. The FDRC does not provide translation services for the Parties and/or the Mediator.

## **2.7 Mediator's Role in Subsequent Proceedings**

- 2.7.1 The Parties undertake that the Mediator shall not be appointed as arbitrator, representative, counsel or expert witness of any Party in any subsequent arbitration or judicial proceedings in connection with the same dispute. No Party shall be entitled to



call the Mediator as a witness in any subsequent arbitration or judicial proceedings arising out of the same dispute.

### **3. Arbitration**

#### **3.1 Applicability of the Rules**

These Rules apply to any Eligible Dispute between an Eligible Claimant and an FI that is submitted to documents-only Arbitration under the Terms of Reference. Upon submission of the Eligible Dispute to Arbitration, these Rules are incorporated by reference into the Parties' arbitration agreement.

#### **3.2 Arbitration under the Rules**

3.2.1 Provided that the Mediation is terminated in accordance with Rules 2.4.1(b) and (c), the Eligible Claimant may request for Arbitration of the Eligible Dispute under these Rules within 60 days from the date of the *Mediation Certificate*. Late request will not be accepted.

3.2.2 The Arbitration may be commenced on a "documents-only" basis by the Eligible Claimant giving to the FDRC a Notice to Arbitrate in written form together with all written submissions and copies of supporting documents. The Notice to Arbitrate shall be filed in a number of copies sufficient to provide one copy for the Arbitrator, for the FI and for the FDRC.

3.2.3 The Notice to Arbitrate shall include the following:

- (a) a request that the Eligible Dispute be referred to Arbitration;
- (b) the names and contact details of the Parties;
- (c) identification of the arbitration agreement that is invoked;
- (d) identification of any contract or other legal instrument out of or in relation to which the Eligible Dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (e) a brief description of the Claim and an indication of the amount involved;
- (f) the relief or remedy sought; and
- (g) a proposal on the appointment of Arbitrator and the language of Arbitration.

3.2.4 The FDRC shall then notify the Eligible Claimant of the receipt of the Notice to

Arbitrate and the date of such receipt, and transmit to the FI a copy of the Notice to Arbitrate including the date of receipt, together with an invitation to submit a response to the Notice to Arbitrate.

- 3.2.5 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice to Arbitrate, which shall be finally resolved by the Arbitrator. The Eligible Claimant shall rectify any non-compliance in the Notice to Arbitrate upon request by the FDRC within 7 days of the receipt of such request.
- 3.2.6 The Arbitration shall be deemed to commence on the date on which the Notice to Arbitrate is received by the FDRC.
- 3.2.7 A copy of the Notice to Arbitrate will be sent to the HKMA and/or SFC on behalf of the Parties and the Arbitrator.
- 3.2.8 Unless otherwise indicated by the FDRC, the FI shall, within 21 days of the service of the Notice to Arbitrate, send to the Eligible Claimant via the FDRC a response to the Notice to Arbitrate, their written submissions together with copies of the documents relied on additional to those already provided by the Eligible Claimants. The response to the Notice to Arbitrate shall be filed with the FDRC in a number of copies sufficient to provide one copy for the Arbitrator, the Eligible Claimant and the FDRC.
- 3.2.9 The response to the Notice to Arbitrate shall include:
- (a) the name and contact details of the FI;
  - (b) any response to the information set forth in the Notice to Arbitrate pursuant to Rule 3.2.3; and
  - (c) a proposal on the appointment of Arbitrator and the language of Arbitration.
- 3.2.10 The FDRC shall notify the FI of the receipt of the response to the Notice to Arbitrate and the date of such receipt, and transmit to the Eligible Claimant a copy of the response to the Notice to Arbitrate, including the date of receipt, together with an invitation to make a final submission.
- 3.2.11 Upon receipt of the Notice to Arbitrate and the relevant response from the Parties, a single Arbitrator will be appointed pursuant to Rule 3.4 who shall resolve any dispute or controversy, if any, in connection with the language of the Arbitration and/or the sufficiency of the Notice to Arbitrate and/or the relevant response.
- 3.2.12 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the FI's failure to communicate a response to the Notice to Arbitrate, or an incomplete or late response to the Notice to Arbitrate which shall be finally resolved by the Arbitrator. The FI shall rectify any non-compliance in the response to the Notice to Arbitrate upon request by the FDRC within 7 days of the receipt of such

request.

- 3.2.13 The Eligible Claimant's final submissions (if any) on the Claim shall be provided to the FI via the FDRC within 21 days after receipt of the FI's response, submissions and documents. The final submissions shall be filed in a number of copies sufficient to provide one copy for the Arbitrator, for the FI and for the FDRC.
- 3.2.14 The FDRC shall then notify the Eligible Claimant of the receipt of the final submissions and the date of such receipt, and transmit to the FI a copy of the final submissions including the date of receipt.
- 3.2.15 The Arbitrator shall give notice to the Parties of his intention to proceed with the rendering of Arbitral Award and will so proceed unless either Party within 7 days requests, and is thereafter granted, leave to serve further submissions.

### **3.3 Deficient Claims**

- 3.3.1 The FDRC shall review the Notice to Arbitrate, response to the Notice to Arbitrate, submissions and documents received for administrative compliance review and shall proceed with the appointment of Arbitrator, if all in compliance.
- 3.3.2 The FDRC will not serve any Notice to Arbitrate, and/or the relevant response nor proceed with appointing an Arbitrator if the Claim is deficient. The reasons for deficiency include but are not limited to the following:
- (a) the Claim was not filed by the relevant Eligible Claimant;
  - (b) documents were not properly signed and/or dated;
  - (c) the names and particulars of the Parties were not provided; and
  - (d) the Eligible Claimant did not file the correct number of copies of the Notice to Arbitrate, and/or supporting documents for service on FI and/or for the Arbitrator.
- 3.3.3 The FDRC will notify the relevant Party in writing if the Claim is deficient. Unless otherwise extended by the FDRC, if all deficiencies are not corrected within 7 days, the FDRC may close the case without serving the Notice to Arbitrate, and/or the relevant response.

### **3.4 Appointment of Arbitrator**

- 3.4.1 The Eligible Claimant and the FI may agree on the appointment of the Arbitrator from the List of Arbitrators. If the Parties fail to agree on the appointment of the Arbitrator, the Eligible Claimant or the FI may request the FDRC to appoint the Arbitrator.

3.4.2 Notwithstanding Rule 3.4.1 above, upon receipt of the Notice to Arbitrate, response to the Notice to Arbitrate, submissions and documents from the Parties, the FDRC shall appoint a single Arbitrator from the List of Arbitrators as soon as practicable, taking into account the Parties' preference so far as practicable and shall confirm in writing to the Parties the appointment of the Arbitrator.

3.4.3 The appointment of the Arbitrator takes effect upon confirmation in writing by the FDRC.

### **3.5 Disclosures Required of Arbitrators**

3.5.1 The Arbitrator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Arbitration.

3.5.2 Before appointing an Arbitrator, the FDRC will notify the potential Arbitrator(s) of the nature of the dispute and the identities of the Parties. Each potential Arbitrator must make a reasonable effort to learn of, and must disclose to the FDRC, any circumstances which might preclude the potential Arbitrator from rendering an objective and impartial determination in the proceeding, such as:

- (a) Any direct or indirect financial or personal interest in the outcome of the Arbitration;
- (b) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any Party, or anyone who the potential Arbitrator is told may be providing a witness statement and/or an expert statement in the Arbitration, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; or
- (c) Any such relationship or circumstances involving members of the potential Arbitrator's family or the potential Arbitrator's current employers, partners, or business associates.

3.5.3 The obligation under Rule 3.5.2 to disclose interests, relationships, or circumstances that might preclude a potential Arbitrator from rendering an objective and impartial determination is a continuing duty that requires an Arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

3.5.4 The FDRC will inform the Parties of any information disclosed to the FDRC under Rules 3.5.2 and 3.5.3 by the potential Arbitrator and/or the Arbitrator unless the potential Arbitrator declines appointment or voluntarily withdraws from the Arbitration as soon as the Arbitrator learns of any interest, relationship or circumstance that might preclude the Arbitrator from rendering an objective and impartial determination in the proceeding, or the FDRC removes the Arbitrator.

3.5.5 Subject to Rules 3.5.2 and 3.5.3, the Arbitrator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Arbitrator to the Eligible Dispute.

3.5.6 The appointment of the Arbitrator takes effect upon confirmation in writing to the Parties by the FDRC.

### **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.

### **3.7 Jurisdiction of the Arbitrator to Interpret these Rules**

3.7.1 In the conduct of Arbitration proceedings, the Arbitrator shall have the authority to interpret and determine the applicability of all provisions under these Rules. Such interpretations are final and binding upon the parties.

### **3.8 The Arbitration Process**

3.8.1 The Arbitrator shall conduct and decide the Eligible Dispute on the basis of the documents submitted and evidence provided. Each Party shall bear the burden of proof for its own case.

3.8.2 In all cases, the Arbitrator shall ensure that the Parties are treated impartially and that each Party is given a fair opportunity to present its case, give its reasons and provide evidence.

3.8.3 Where the Arbitration is by "documents-only",

(a) no hearing will be held;

(b) no initial prehearing conference or other prehearing conference will be held, and the Arbitrator will render an Arbitral Award based on the submissions and other materials submitted by the Parties; and

- (c) no legal representatives, including in-house lawyers, are allowed to act on behalf of either Party in the Arbitration.

3.8.4 The Arbitrator may request in his sole discretion, further information, statements or documents from either of the Parties.

3.8.5 The Parties may request documents and other information from each other. Unless otherwise specified by the FDRC, all requests for the production of documents and other information must be served on the other Party via the FDRC within 14 days from the date of the Eligible Claimant's final submissions. Any response or objection to a discovery request must be served on the other Party via the FDRC within 7 days of the receipt of the requests. The Arbitrator will resolve any discovery disputes.

3.8.6 Without prejudice to the above and with regard to the Arbitration, the Arbitrator shall have the power and/or jurisdiction to:

- (a) make monetary awards, subject to the maximum claimable amount set out in Paragraph 12.1(e) of the Terms of Reference;
- (b) conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;
- (c) order the Parties to make any property or thing available for inspection, in their presence, by the Arbitrator;
- (d) order any Party to produce to the Arbitrator, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, except where the Party satisfies the FDRC that –
  - to provide the information would breach a Court order;
  - to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
  - to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
  - the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
  - the information is irrelevant to the Eligible Dispute.

Notwithstanding the aforesaid, nothing in the Terms of Reference shall prejudice any Party's right against self-incrimination or legal professional privilege;

- (e) receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence; and/or
  - (f) proceed with the Arbitration and make an Arbitral Award notwithstanding the failure or refusal of any of the Parties to comply with the Terms of Reference or these Rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving the Parties written notice that he intends to do so.
- 3.8.7 At any stage of the Arbitration, where the Arbitrator is aware and considers that it would be more suitable for the subject matter of the Eligible Dispute to be dealt with by a court, the Arbitrator may terminate the Arbitration if both Parties agree and advise the Eligible Claimant the appropriate steps to take.
- 3.8.8 In any case the Arbitrator shall, unless otherwise reasonably extended by the Arbitrator, with the consent of the FDRC or the Parties, render an Arbitral Award within one month of the receipt of the last document in case of documents-only arbitration, or the holding of the in-person hearing whichever is later.
- 3.8.9 Within 7 days of receiving the Arbitral Award, a Party may by written notice to the FDRC and the other Party request the Arbitrator to correct in the Arbitral Award any clerical or typographical errors or any errors of a similar nature. Any such corrections shall be given in writing to the Parties and shall become part of the Arbitral Award within 7 days of the written notice.
- 3.8.10 A copy of the Arbitral Award will be sent to the HKMA and/or SFC on behalf of the Parties and the Arbitrator.

### **3.9 In-Person Hearing**

- 3.9.1 Unless the Arbitrator determines, in his sole discretion, that an in-person hearing is necessary for deciding the Claim, and the Parties are further willing to take on and pay to the FDRC such fees as prescribed in Rule 5.1 below, there shall be no in-person hearings (including hearings by videoconference and any other form).
- 3.9.2 Where the Parties have so agreed on having in-person hearings and the Arbitrator has also so determined, upon application of either Party or at the initiation of the Arbitrator, the Arbitrator is entitled to allow legal representation in the further proceeding of the Arbitration and the Arbitrator may make directions on the further conduct of the Arbitration, including adopting the HKIAC Administered Arbitration

Rules or other rules, and may amend any such rules as the Arbitrator considers appropriate. In any event the recoverable legal costs of an in-person hearing are limited to HK\$25,000.

### **3.10 Communication between the Parties and the Arbitrator**

3.10.1 A Party shall not communicate with the Arbitrator directly. All communications between any of the Parties and the Arbitrator must be in writing via the FDRC and shall be in the language of the Arbitration. Copies of all communications between the Parties and between a Party and the Arbitrator must be copied to the other Party via the FDRC. Any written communication to the Eligible Claimant or FI provided for under the procedure shall be made by the preferred means stated by the Eligible Claimant or the FI respectively, or in the absence of such specification, by facsimile transmission, with a confirmation of transmission; or by postal or courier service, postage pre-paid and return receipt requested; or electronically via the Internet, provided a record of its transmission is available.

### **3.11 Confidentiality**

3.11.1 Subject to Rule 3.11.2, the Parties and the Arbitrator agree not to disclose, transmit, introduce or otherwise use any documents, communications, opinions, suggestions, proposals, offers, or admissions, or other information obtained or disclosed during the Arbitration by the Parties or the Arbitrator as evidence in any judicial proceedings, other arbitrations or proceedings, unless agreed in writing by the Arbitrator and the Parties to the Arbitration or compelled by law. The fact that Arbitration has occurred, is continuing, or has concluded shall not be considered confidential.

3.11.2 The Arbitrator shall send a copy of the Notice to Arbitrate, and the Arbitral Award to the HKMA and/or SFC via the FDRC. The Parties acknowledge that, by agreeing to arbitrate under these Rules, they agree and accept that information relating to the Arbitration shall be used by the FDRC for purposes of study and promotion of arbitration provided that the Parties' identity and any reference that may lead to their identity being made known shall be omitted or obliterated from such information.

### **3.12 Appeal on point of law**

3.12.1 Unless otherwise agreed by the Parties, sections 3, 4, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Chapter 609) providing for appeal against Arbitral Award on question of law shall apply.

3.12.2 In the event of an appeal against the Arbitral Award in the Arbitration is brought by a Party, that appealing Party agrees the recoverable legal costs incurred in, arising out of and/or resulting from such an appeal shall be limited to HK\$25,000.

### **3.13 Issues not covered by these Rules**



3.13.1 For matters which are not covered by these Rules, the Arbitrator may adopt such measures as he deems appropriate, consistent with the need for a speedy and efficient resolution of the Eligible Dispute, provided the Parties shall be given reasonable opportunities to address their concern with the Arbitrator.

#### **4. Exclusion of Liability**

The Parties jointly and severally release, discharge and indemnify the FDRC, its staff members and representatives, the Mediator and the Arbitrator in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any Mediation and/or Arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

## 5. Fees and Costs

5.1 The fees for the Mediation and/or Arbitration are specified as follows:-

	<b>Applicant/ Eligible Claimant</b>	<b>FI</b>
<b>Making enquiries</b>	Nil	Not Applicable
<b>Filing a FDRS Application Form*</b>	\$200	Not Applicable
<b>Mediation</b>	<b>Per case</b>	<b>Per case</b>
- <b>Specified Mediation Time</b> Amount of claim		
- less than \$100,000	\$1,000	\$5,000
- between \$100,000 and \$500,000	\$2,000	\$10,000
- <b>Extended Mediation Time</b> Amount of claim		
- less than \$100,000	\$750/hour or part thereof	\$750/hour or part thereof
- between \$100,000 and \$500,000	\$1,500/hour or part thereof	\$1,500/hour or part thereof
<b>Arbitration</b> (amount of claim up to \$500,000)	<b>Per case</b>	<b>Per case</b>
- Documents-only	\$5,000	\$20,000
- In-person hearing (in addition to the fees payable for documents-only arbitration)	\$12,500	\$12,500

**\*The application fee of \$200 is not refundable even if the Application is later rejected by the FDRC.**

**All fees are in Hong Kong dollars and are not refundable after payments are made to the FDRC.**

5.2 The FDRC may provide the venue for conducting the Mediation and/or the Arbitration. Parties may have to bear the cost of a venue for conducting the Mediation and/or Arbitration if the rooms at FDRC are fully occupied or otherwise unavailable.

5.3 The FDRC may, at its sole discretion, require the Parties to make advance payment of fees, costs and expenses. The FDRC may require payments for deposits and security.

5.4 The FDRC shall review the above fee structure regularly and any changes to the fee structure will be subject to approval by the Board, after consulting with Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where

appropriate.