



# 香港證券業協會 HONG KONG SECURITIES ASSOCIATION



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Financial Dispute Resolution Centre  
Unit 3701-04, 37/F  
Sunlight Tower  
248 Queen's Road East  
Hong Kong

Email: [consultation@fdrc.org.hk](mailto:consultation@fdrc.org.hk)

Dear Sirs,

## **Re: Comments on the Proposals to Enhance the Financial Dispute Resolution Scheme (the "Consultation Paper")**

The Hong Kong Securities Association ("HKSA") welcomes the opportunity to respond to the Consultation Paper issued by Financial Dispute Resolution Centre ("FDRC").

Aside from the answers to the ten consultation questions, we want to emphasize that confidentiality is a powerful and attractive feature of mediation. It lowers the risk to participants of disclosing information and emotions and encourages realism by eliminating the benefits of posturing. In particular, information discussed in mediation should not be used as evidence in the event that the matter proceeds to Securities and Futures Commission.

It is difficult for mediation to achieve its full potential benefits unless the parties can communicate fully and openly without fear of compromising potential regulatory actions. The promise of confidentiality mitigates such concerns. Licensed corporations often see confidentiality as a reason to use other mediation centres in Hong Kong as preferred venue for alternative dispute resolutions in lieu of FDRC, particularly where it might involve sensitive regulatory areas. Establishing confidentiality will make FDRC on par with other mediation centers as far as confidentiality is concerned thus encourage more usage of the FDRC and prevent waste of FDRC resources.

### **LIST OF QUESTIONS FOR CONSULTATION**

***Question 1 1.1 Do you agree with the proposed amendment to raise the upper claimable limit to HK\$3,000,000? Please state your reasons. 1.2 If not, what would be your suggestion of a suitable upper claimable limit? \_\_HK\$1,000,000; \_\_HK\$2,000,000; \_\_Others (please specify) \_\_ Please state the reasons for your selection.***



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We do not agree to raise the upper claimable limit to HK\$3,000,000. Based on our members' feedback, HK\$500,000 claimable amount is sufficient for securities firms in general.

***Question 2 2.1 Do you agree that a single maximum claimable amount continues to be applicable for the banking and the securities industries? If not, why? 2.2 If there are two different maximum claimable amounts, what would be your suggestion of suitable upper claimable limits for the banking and securities industries respectively? Please state the reasons for your suggestion.***

We do not agree that a single maximum claimable amount is suitable for the banking and securities industries because the nature and client demographics of each industry are different. The banking industry first and foremost serves the purpose of providing savings and loans while securities clients' objective is to invest which entails risk taking. For securities companies, the suggested claim amount is HK\$500,000. We do not have a suggested amount for the banking industry.

***Question 3 3.1 Do you agree to extend the limitation period for lodging Claims to 36 months? Why or why not? 3.2 Do you have other suggestions? \_\_12 months; \_\_24 months; \_\_48 months; \_\_60 months; \_\_72 months; \_\_Others (please specify) \_\_\_\_\_ Please explain your choice.***

We do not agree to extend the limitation period for lodging Claims to 36 months. Instead, we suggest 24 months since such a requirement would be more in line with current securities legislation requiring contract notes and other relevant documents to be kept for 24 months.

***Question 4 4.1 Do you agree with the proposal to extend the service scope to cover Claims from SEs (as defined in paragraph 2.33 of this Consultation Paper)? Why or why not? 4.2 Besides the proposed definition of SEs in paragraph 2.33 of this Consultation Paper, do you have any other suggestions to define the size of a small business? Please provide elaborations on your suggestions. 4.3 Do you agree that an FI qualifying as an SE could file a Claim as an EC against another FI? Please explain.***

We agree to extend the service scope to cover Claims from all companies, regardless of their size, should be encouraged to resolve financial disputes through mediation via FDRC.

Confidentiality is a powerful and attractive feature of mediation. It lowers the risk to participants



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of disclosing information and emotions and encourages realism by eliminating the benefits of posturing. In particular, information discussed in mediation cannot be used as evidence in the event that the matter proceeds to SFC.

It is difficult for mediation to maximize its potential benefits unless the parties can communicate fully and openly without fear of compromising a potential regulatory action. The promise of confidentiality mitigates such concerns. Licensed corporations often see confidentiality as a reason to use FDRC for mediation in lieu other mediation centres in Hong Kong, particularly in regulatory sensitive areas.

***Question 5 5.1 Do you agree that the FDRC should deal with cases under current court proceedings without the claimant withdrawing the case from the Court? Why or why not? 5.2 For PD31 cases, do you agree that the maximum claimable amount be set at an amount in tandem with the future monetary jurisdiction of the District Court? Please give your reasons. 5.3 Do you agree that parties to the mediation in PD31 cases at the FDRC can be legally represented as elaborated in paragraph 2.43 of this Consultation Paper? Please explain.***

We agree that FDRC should deal with cases under current court proceedings without a claimant withdrawing the case from the Court. For PD31 cases, maximum claimable amount should not be set at an amount in tandem with the future monetary jurisdiction of the District Court and instead should stay at the HK\$500,000 level. We agree that parties to the mediation in PD31 cases at the FDRC can be legally represented.

***Question 6 Do you agree that, subject to a prior mutual agreement between an FI and a claimant, the FDRC could consider handling disputes which exceed its certain amended Intake Criteria as specified in paragraph 3.1(a) and (b) of this Consultation Paper? Why or why not?***

We agree that FDRC can consider handling disputes of such cases only if an FI and a claimant mutually consent to it.

***Question 7 7.1 Do you agree that when there is a financial dispute between an EC and an FI, the FI may refer the financial dispute to the FDRC, subject to the consent of the EC? Why or why not? 7.2 Do you agree that when there is a Claim by an EC against an FI, the FI with a counterclaim may lodge the counterclaim to the FDRC, subject to the consent of the EC? Why or why not? 7.3 Do you agree with the arrangement that the FI can pay for the mediation and/or arbitration fees for their customers if the FI so wishes? Why or why not?***



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We agree that when there is a financial dispute between an EC and an FI, the FI may refer the financial dispute to the FDRC as it is fair and equal treatment to both sides. We also agree that when there is a Claim by an EC against an FI, the FI with a counterclaim may lodge the counterclaim to the FDRC as it will be more efficient to combine the cases. We agree with the arrangement that the FI can pay for the mediation and/or arbitration fees for their customers subject to the FI's consent.

**Question 8 8.1 Do you agree that options of “mediation only” and “arbitration only” in addition to the original “mediation first, arbitration next” be offered to the parties with mutual agreement? Please state your reasons. 8.2 Do you agree that such “mediation only” or “arbitration only” option should not be available for “normal” cases under the FDRS? Why or why not?**

We agree that options of “mediation only” and “arbitration only” can be additional options as long as there is mutual agreement. These options should be available regardless of if the cases are “normal”. Allowing for more choices may help the conflict resolution process.

***Question 9 Do you agree with the proposed revised fee scale for dispute resolution services of the FDRC? Please provide your comments and/or suggestions.***

We agree with the proposed revised fee scale for claim amounts of HK\$500,000 or lower. Because we have suggested a maximum claimable amount of HK\$500,000, we have no comments for claimable amounts above HK\$500,000.

***Question 10 Do you agree that the FDRC could re-consider the rejected applications if they now fall within the amended Intake Criteria? Why or why not? Please give your reasons.***

We agree the FDRC could re-consider rejected applications if there is mutual agreement between claimant and FI.

Yours faithfully,

**Benny MAU**

Chairman

