

Financial Institutions: Prepare for the FDRC

The Financial Dispute Resolution Centre Limited (“FDRC”) is expected to be operational in Hong Kong by mid-2012 and will effect all retail financial institutions. This update sets out some of the key facts and features of the FDRC.

Government introduces the FDRC

Following the collapse of Lehman Brothers in 2008, Hong Kong witnessed a surge in the number of claims brought by investors against banks and other financial institutions. This exposed certain deficiencies in the ability of the existing mechanisms in Hong Kong to effectively and efficiently handle the increasing number of financial disputes, some of which involved complex issues.

At present, Hong Kong has no permanent and independent mechanism in place to settle financial disputes between financial service providers and consumers. This contrasts with other jurisdictions around the world such as Singapore (the Financial Industry Disputes Resolution Centre) and the United Kingdom and Australia (the Financial Service Ombudsman Service).

As a response and in order to promote greater accountability and transparency in the financial sector, in February 2010, the Finance Services and Treasury Bureau launched a consultation process on the proposed establishment of a new independent Financial Dispute Resolution Centre. The results of the consultation process were published in the early months of 2011 which confirmed the government’s intention to have the FDRC set up by mid-2012.

Key features of the FDRC

- the FDRC will administer an independent disputes resolution scheme in respect of disputes which:

(i) arise in respect of services provided by a financial institution to individual consumers or sole proprietors;

(ii) are of a monetary nature; and

(iii) involve a financial institution which is a licensee or a regulatee of HKMA and SFC;

- participation in the scheme will be compulsory for all financial service providers regulated or licensed by HKMA or SFC (save that the insurance and MPF sectors will be carved out at the beginning and the coverage of the scheme will be reviewed later)
- the dispute resolution methods of the scheme are “mediation first, arbitration next” - that is, upon a financial dispute arising, where the dispute cannot be resolved directly between the parties and if the claimant so wishes, the FDRC may require financial institutions to participate in mediation, failing which, the matter will be referred to arbitration to resolve the dispute
- the scheme is limited to monetary claims of a maximum amount of HK\$500,000
- acceptance of a claim into the scheme will be subject to a vetting process to be carried out by intake officers who will be trained with mediation knowledge and given a general overview of the regulatory landscape. One of the most important functions of the vetting process is so that any vexatious and frivolous cases can be identified early in the process
- a set of intake criteria to be devised will be applied by the intake officers to determine whether a case should be accepted for mediation. The initial indication is that the FDRC will not handle:- claims concerning

the performance of financial investments; general policies and practices, or fees charged by financial services providers; a claim that has been the subject of court actions; or claims determined by the FDRC to be frivolous or vexatious

- during the first three years, the initial set-up and operation costs of the FDRC will be borne by the Government together with the HKMA and SFC. Thereafter, it will be funded by the finance industry itself
- the FDRC will not have any investigation or disciplinary powers. The regulators will deal with regulatory breaches while the FDRC will deal with monetary disputes
- the FDRC will be established alongside the Investor Education Council (“IEC”), which will be tasked to improve the financial literacy and capability of the general public by influencing their fundamental financial attitude and behaviour, with a view to assisting them to improve the quality of their financial decisions

Corporate structure of the FDRC

- the FDRC has been incorporated as a company limited by guarantee
- it is governed by a Board of Directors to oversee its operation and formulate the overall policy and strategy. The Board includes representatives from Government, the HKMA and the SFC
- Ms. Teresa Cheng Yeuk-Wah was appointed the Chairman on 1st March 2012 for a term of two years
- Ms. Sou Chiam was appointed the Chief Executive Officer on 1st March 2012 for a term of three years

Fee scale

- the FDRC service will be offered at a charge to both the claimants and financial institutions, with a higher fee chargeable to financial institutions to incentivise them to resolve the disputes at an early stage
- the proposed fees are as follows:-

	Claimant	Financial Institutions
Making enquiries	Nil	Not Applicable
Filing a claim form	HK\$200	Not Applicable
Mediation	(Case fees)	(Case fees)
Amount of claims		
• less than \$100,000	HK\$1,000	HK\$5,000
• between \$100,000 and \$500,000	HK\$2,000	HK\$10,000
Arbitration	(Case fees)	(Case fees)
(regardless of the amount of claims)	HK\$5,000	HK\$5,000

Comments and observations

- in theory, the FDRC should assist both the consumers and the financial service providers in reaching a satisfactory resolution of smaller monetary disputes more efficiently and economically
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- we will keep you informed in the coming months as the FDRC is rolled out

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