

NOTE FOR FINANCE COMMITTEE

Financial Dispute Resolution Centre

PURPOSE

This note informs Members of the enhancements to the Financial Dispute Resolution Scheme (FDRS) and provides an update on the funding situation of the Financial Dispute Resolution Centre (FDRC).

SERVICE ENHANCEMENTS

2. In October 2016, the FDRC issued a consultation paper proposing a number of enhancements relating to the service features and scope of the FDRS, with a view to providing greater accessibility and flexibility of the Scheme. The three-month consultation exercise lasted until the end of December 2016. Stakeholders, including FDRS members, industry associations, relevant professional bodies, etc., were consulted. After considering views received from the stakeholders, a number of enhancements to the FDRS will be made. Key enhancements include raising the maximum claimable amount from the current \$500,000 to \$1 million and the acceptance of financial disputes exceeding the maximum claimable amount and/or the limitation period, subject to the prior agreement of the parties involved. For such claims, they may go through a “mediation only” or “arbitration only” approach, again subject to mutual agreement of parties involved.

Encl.

3. A summary of the changes to the FDRS is at Enclosure. A full set of the FDRC’s consultation conclusions can be found at the FDRC’s website at <http://www.fdrc.org.hk>. The enhancements will be implemented by phases from 1 January 2018 onwards. The FDRC will arrange the necessary publicity on the enhancements.

/FUNDING

FUNDING SITUATION

4. As reported in July 2016 vide FCRI(2016-17)7, the Government would use the outstanding balance of the non-recurrent commitment approved under FCR(2011-12)23 to continue funding the operation of the FDRC until around 2019. Since then, the FDRC has continued to implement various cost-saving measures¹, which have further reduced its annual expenditure from around \$18 million in 2015 to around \$14 million in 2016. The latest assessment is that the surplus could be sufficient to sustain the operation of the FDRC until around 2021/2022² barring unforeseen circumstances. The FDRC will review the long-term funding arrangements after the implementation of the enhanced FDRS.

BACKGROUND

5. The FDRC was incorporated on 18 November 2011 as a non-profit making company limited by guarantee and came into operation on 19 June 2012. It administers in an independent and impartial manner the FDRS which provides an effective and cost-efficient channel for financial institutions (FIs) and their customers to resolve their financial disputes by way of “mediation first, arbitration next”. The maximum claimable amount per case is \$500,000. At present, there are more than 2 000 FI members of the FDRS.

6. As the establishment of the FDRC would contribute to an important public policy objective of investor protection, the Government had agreed with the Hong Kong Monetary Authority and the Securities and Futures Commission to share on a 50:25:25 basis the set-up cost and the operating costs of the FDRC for the first three years of its operation (i.e. from 1 January 2012 to 31 December 2014). The Finance Committee of the Legislative Council approved in June 2011 a non-recurrent commitment of \$92 million to meet the Government’s funding share. The original plan was for FIs to shoulder the operating costs of the FDRC from 1 January 2015 onwards. We informed Members in July 2016 that the accumulated surplus would sustain the operation of the FDRC until around 2019.

7. Since its commencement of operation, the FDRC has handled 157 applications for mediation services as of 30 June 2017. Of these, 112 cases were completed and closed at the mediation stage, of which 94 were settled,

/representing

¹ These measures include controlling staff size to lower staff cost and implementing more cost-efficient and focused advertising strategies to lower publicity expenses.

² The projection is made on the basis of an annual expenditure level of about \$14 million (figure in 2016), with an assumption of an increase of 2.5% (the medium-term inflation rate) on a per year basis.

representing a success rate of 84%. During the period, the FDRC has also handled about 8 100 enquiries, comprising about 4 500 on complaints about financial products and services, as well as about 3 600 enquiries on other issues such as the FDRC's services and related administrative issues. To enhance awareness of its service across the community, the FDRC have been reaching out to FIs, professional bodies, district councils and the general public through meetings, talks, briefing sessions, visits, promotional activities and media channels.

8. Members are invited to note the content of this paper.

Financial Services and the Treasury Bureau
August 2017

Enhancements to the Financial Dispute Resolution Scheme (FDRS)

Expansion of Intake Criteria for Claims

1. The maximum claimable amount under the FDRS will be increased from \$500,000 to \$1 million.
2. The limitation period for lodging a claim will be extended from 12 months to 24 months from the date of purchase of financial instrument or the date of first knowledge of loss, whichever is the later.
3. A small enterprise (SE), including a small financial institution (FI), may file claims under the FDRS. An SE, which is a limited company or a partnership, has to meet all of the following requirements as per its latest financial statement –
 - (a) SE's annual turnover is not more than \$50 million;
 - (b) SE's gross asset is not more than \$50 million; and
 - (c) SE's employee number in Hong Kong is not more than 50.^{Note}
4. Claims which are cases under court proceedings can be filed under the FDRS, without the claimant withdrawing the case from the court. Parties to these cases can be legally represented.

Extension of the FDRS Services based on Mutual Agreement

5. Claims involving financial disputes with a claimable amount in excess of (1) above and/or exceeding the amended limitation period under (2) above may be filed under the FDRS, subject to prior mutual agreement of the parties involved.
6. When there is a financial dispute between a customer and an FI, the FI may lodge a claim under the FDRS, subject to the consent of the customer. When there is a claim by a customer against an FI, the FI will have a right to lodge a counter-claim against the customer under the FDRS, subject to the consent of the customer.

/7.

^{Note} If the SE is a subsidiary or a holding company of a group, the group's consolidated figures will be used instead.

7. In addition to the standard “mediation first, arbitration next” approach, cases exceeding the amended intake criteria and subject to mutual agreement of the two parties concerned may go through a “mediation only” or “arbitration only” approach.

Fees, Implementation and Information Reporting

8. There will be new fee scales for cases within the amended intake criteria and those beyond the amended intake criteria and/or under mutual agreement.
9. The implementation of the enhanced FDRS will be as follows –
 - (a) a claim whose date of first knowledge of loss by the claimant falls **on or after** the effective date of the enhanced FDRS shall be subject to the terms of the enhanced FDRS; and
 - (b) a claim whose date of first knowledge of loss by the claimant falls **before** the effective date of the enhanced FDRS shall be subject to the original FDRS.
10. The Financial Dispute Resolution Centre (FDRC) will continue to provide the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) with monthly reports, on an anonymous basis, about the number and types of disputes handled by the FDRC. The FDRC would no longer provide information on individual cases to the regulators. Meanwhile, the FDRC will submit to the HKMA and the SFC such information within its knowledge relating to systemic issues and/or suspected serious misconduct, and the HKMA and the SFC may request the FDRC to provide information that is reasonably required for discharging their statutory functions.
