

Proposed Establishment of an  
Investor Education Council and a  
Financial Dispute Resolution Centre

Consultation Paper

Financial Services and the Treasury Bureau

February 2010



## ABOUT THIS DOCUMENT

1. This paper is published by the Financial Services and the Treasury Bureau (“FSTB”) to consult the public on the proposed establishment of an Investor Education Council (“IEC”) and a Financial Dispute Resolution Centre (“FDRC”).
2. The public are welcome to submit written comments on the issues raised in this consultation document on or before **8 May 2010** by one of the following means:

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3. Any questions about this document may be addressed to Mr Alfred Shum, Executive Officer (Support), who can be reached at (852) 2528 9134 (phone), (852) 2294 0460 (fax), or [enquiry@fstb.gov.hk](mailto:enquiry@fstb.gov.hk) (email).
4. The public may also view / download this consultation document on FSTB’s website <http://www.fstb.gov.hk/fsb>.
5. Submissions will be received on the basis that we may freely reproduce and publish them, in whole or in part, in any form and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgement of the party making the proposal.

6. Please note that names of respondents, their affiliation(s) and comments may be posted on the FSTB's website or referred to in other documents we publish. If you do not wish your name and/or affiliation to be disclosed, please state so when making your submission. Any personal data submitted will only be used for purposes which are directly related to consultation purposes under this consultation paper. Such data may be transferred to other Government departments/agencies for the same purposes. For access to or correction of personal data contained in your submission, please contact Mr Alfred Shum (see paragraph 3 above for contact details).

## **ACKNOWLEDGEMENT**

In formulating the proposals for consultation, we have benefited from the advice of our financial regulators; as well as informal advice of stakeholders from the legal, banking, securities, insurance, academic and dispute resolution sectors. We would like to extend our sincere thanks to them for sharing their preliminary views with us.

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## **ABBREVIATIONS**

ASIC	Australian Securities & Investments Commission
ATM	Automatic Teller Machine
FS	Financial Secretary
FSA	Financial Services Authority
FDRC	Financial Dispute Resolution Centre
FINRA	Financial Industry Regulatory Authority
FOS	Financial Ombudsman Service
HKEx	Hong Kong Exchanges and Clearing Limited
HKMA	Hong Kong Monetary Authority
IEC	Investor Education Council
IOSCO	International Organization of Securities Commissions
LegCo FA Panel	Legislative Council Panel on Financial Affairs Panel
MAS	Monetary Authority of Singapore
MPF	Mandatory Provident Fund
MPFA	Mandatory Provident Fund Schemes Authority
NIMPS	New Insurance Mediation Pilot Scheme
OCI	Office of the Commissioner of Insurance

ORSO Occupational Retirement Schemes Ordinance

SFC Securities and Futures Commission

SFO Securities and Futures Ordinance

UK United Kingdom

US United States



## **EXECUTIVE SUMMARY**

1. We have witnessed the launch of more complex and varied financial products that cut across traditional boundaries of banking, insurance and securities markets over the past years. We have also seen more retail investors entering the markets.
2. We attach great importance to investor education initiatives. Those who better understand the market and products are more likely to make investment decisions that best suit their needs. To enhance the investor education initiatives, the first part of this paper looks into the proposal for setting up an Investor Education Council (“IEC”).
3. While every effort should be made to enhance the financial literacy of the public, it is also important to ensure that there are effective processes for resolving problems when things go wrong. The second part of this paper examines the proposal for setting up a Financial Dispute Resolution Centre (“FDRC”), which aims to provide a platform that helps resolve monetary disputes between an individual consumer and a financial institution in a speedy, affordable, independent and impartial way.

### **Part I – Investor Education Council**

4. We propose setting up an IEC to holistically oversee the needs of investor education and delivery of related initiatives. It will aim 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.
5. We propose to set up the IEC as a company wholly owned by the Securities and Futures Commission (“SFC”). We would need to amend the Securities and Futures Ordinance to achieve this.
6. The SFC will fully fund the operation of the IEC. No extra levies and charges will be imposed on investors for the establishment of the IEC.

7. A Board of Directors will be in place to govern the IEC. Relevant financial regulators and the Government will be represented on the IEC Board. The SFC Board will recommend an SFC Non-Executive Director as the Chairman of the IEC Board for endorsement by the Financial Secretary.

## **Part II – Financial Dispute Resolution Centre**

8. We propose setting up an FDRC that would administer a financial dispute resolution scheme by way of primarily mediation, and failing which, arbitration. Financial institutions regulated or licensed by the Hong Kong Monetary Authority (“HKMA”) or SFC would be required to join the scheme as members.
9. Under the scheme, the FDRC may require financial institutions such as banks and brokers to enter into mediation and arbitration at times of a monetary dispute if (a) the claimant so wishes, and (b) the dispute cannot be resolved directly between the parties.
10. Mediation is a voluntary, non-binding and private dispute resolution process. An independent and neutral mediator helps the parties communicate in a rational way. The aim of mediation is to reach a solution that both parties can agree. The agreement is private and confidential.
11. Where mediation is unsuccessful, the FDRC may assist the claimant to bring the case further to arbitration if the claimant so wishes. An arbitrator agreed by both the claimant and financial institution should decide the claim. An arbitration award is final and binding on both parties.
12. We propose that HK\$500,000 be set as the maximum claimable amount under the financial dispute resolution scheme. This would cover more than 80% of the monetary disputes handled by the HKMA.
13. We propose that the FDRC service be offered at a charge to both the claimants and financial institutions, under a “pay-as-you-use” principle. We suggest a higher fee for financial institutions to incentivise them to resolve the disputes at an early stage.

14. The FDRC would not have any investigation or disciplinary powers as the regulators. The regulators deal with regulatory breaches while the FDRC deals with monetary disputes.
15. Acknowledging that the FDRC is contributing to an important public function of investor protection, the Government, together with the HKMA and SFC, are prepared to provide the set-up costs and operation costs of the FDRC in the first three years. The FDRC should be funded by the financial industry, and to a lesser extent the claimants, thereafter.
16. The FDRC should be governed by a Board of Directors to be appointed by the Government. The Board is responsible for overseeing the operations of FDRC, and ensuring the independence and impartiality of its dispute resolution procedures.

## **Part I - Investor Education Council**

## CHAPTER 1      The Need of an Investor Education Council

### Background

- 1.1 The Securities and Futures Commission (“SFC”) in its report of December 2008 on “Issues raised by the Lehmans Minibonds crisis” recommended that an Investor Education Council (“IEC”) be established as a separate body corporate chaired and funded by the SFC. The proposed IEC would co-ordinate and deliver an expanded investor education programme across the whole financial services sector.
- 1.2 Hong Kong as a major international financial centre has an integrated network of institutions and markets which provide a wide range of financial products and services to local and international consumers and investors.
- 1.3 The proportion of the local population investing in financial products and services is high. According to a survey released by the SFC in 2008<sup>1</sup>, over 1.1 million Hong Kong adults had invested in at least one type of SFC-regulated products during the year, such as stocks, funds, warrants, bonds, unlisted equity-linked instruments, etc. In general, investments are made for a variety of purposes, including in the shorter term seeking superior returns from those offered on bank deposits or hedging against inflation, and in the longer term saving for marriage, children’s education or retirement. Separately, there are currently over 2 million employees and self-employed persons enrolled in the Mandatory Provident Fund (“MPF”) or Occupational Retirement Schemes Ordinance (“ORSO”) schemes, and more than 12 million credit card accounts in Hong Kong<sup>2</sup>. As at end June 2009, there were more than 8.5 million long term insurance policies. In 2008, the aggregate number of depositors of the top 20 retail banks was more than 15 million.
- 1.4 In recent years, deregulation of overseas financial markets, greater information dissemination and increased cross-border capital flows have been transforming the landscape of the global financial markets. There is greater use of sophisticated financial

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<sup>1</sup> Source: Keep findings of Retail Investor Survey released by the SFC in December 2008.

<sup>2</sup> According to HKMA’s survey on credit card lending for the third quarter of 2009.

techniques by financial institutions to produce the enhanced yield sought by investors, resulting in proliferation of increasingly complex financial products and services.

- 1.5 The events of the global financial crisis have shown that some investors would need more support and protection as they engage in financial services. Following the Lehman Brothers Minibonds incident in Hong Kong, the Hong Kong Monetary Authority (“HKMA”) and the SFC have implemented a series of measures focusing on strengthening protection for investors<sup>3</sup>.
- 1.6 The complaints about the Lehman Brothers-related products have also highlighted the propensity on the part of some investors to commit to structured products that they have not fully understood. This echoes the findings of a survey released by the SFC in 2008, in which two-thirds of the investors indicated that they knew very little or nothing about at least one of the products they had invested in. Another survey by the SFC suggested that only about 11% of structured product investors interviewed recalled having received, read and fully understood the offering documents of the products<sup>4</sup>. The cost to society of investors not having the necessary skills to make informed financial decisions can be significant. It is thus essential for us to review the provision of investor education to see how we can enhance the financial literacy and capability of the investing public, with a view to improving the average quality of financial decisions made by the Hong Kong investing public. Enhancing investor education will also complement regulatory measures to protect the investing public.

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<sup>3</sup> For example, the HKMA has issued relevant circulars to banks requiring them to attach “health warnings” to retail derivatives products, to implement internal mystery shopper programme, to audio-record the sales process of investment products, and to have clear segregation between the general banking business and securities-related activities, etc. The SFC has also launched a list of unlisted authorised products on its investor education website, and issued a circular to remind intermediaries who make investment recommendations or solicitations to clients about the suitability obligations in the Code of Conduct for Persons Licensed by or Registered with the SFC. On 25 September 2009, the SFC launched a consultation on proposals to enhance the existing regulations governing the sale of retail investment products to the public, such as the requirement for key facts statements, introduction of a limited cooling-off period, disclosure of commissions or other benefits arising from investment sales, etc.

<sup>4</sup> Source: Structured Product Investor Survey released by the SFC in November 2006.

## Current Investor Education Initiatives in Hong Kong

- 1.7 The Government has been attaching great importance to investor protection and education initiatives. Enhancing investor education not only helps protect investors themselves, but also improves investor confidence in the financial system and the effectiveness of their dealings with financial services providers, and is conducive to maintaining the stability of Hong Kong's financial services industry.
- 1.8 Among the financial regulators in Hong Kong, only the SFC has an explicit statutory remit to pursue investor education<sup>5</sup>. The SFC has been actively carrying out investor education activities. For example, it disseminates educational messages through a dedicated investor education website; publishes leaflets and newspaper articles; broadcasts radio segments, TV programmes and videos on buses; delivers talks to different demographic groups; and organises financial knowledge quiz and investor story competitions. Also, the SFC has launched an investor day seminar in cooperation with the Open University of Hong Kong since 2003, and run personal financial management credit courses with the Lingnan University of Hong Kong since 2005. In the fiscal year of 2009/10, the SFC devoted around HK\$21 million to investor education efforts<sup>6</sup>.
- 1.9 The SFC, as a regulator, does not give advice on when and where to invest, nor how much one should set aside for investment. However, the SFC offers generic advice (like points-to-note when making investments) and helps investors get the key facts in its investor education initiatives. Its investor education programmes aim at –

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<sup>5</sup> Section 5 of the Securities and Futures Ordinance prescribes the functions of the SFC, which include inter alia –

- (a) to promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;
- (b) to encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the SFC under any of the relevant provisions; and
- (c) to promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor.

<sup>6</sup> This sum includes external expenditure, e.g. on TV and radio programmes, advertising, website resources, outreach activities and publication costs, as well as relevant establishment costs, e.g. premises and personnel.

- (a) promoting understanding of the operation and functioning of the securities and futures industry;
- (b) explaining the benefits and risks of investing and steps that investors should take to protect their rights;
- (c) promulgating the importance of making informed investment decisions; and
- (d) informing investors of scams and dishonest market malpractices.

1.10 Apart from the SFC, the Mandatory Provident Fund Schemes Authority (“MPFA”) also devotes significant amount of resources in providing investor education programmes on an ongoing basis through various means, although this is not its statutory responsibility. Its programmes are aimed at enhancing scheme members’ / the general public’s understanding of the MPF System and MPF investment, advocating the importance of having an early start on retirement planning and facilitating the making of informed decisions by scheme members about their own MPF investments.

1.11 Similarly, while other financial regulators and operators, as well as industry bodies, do not have statutory responsibility for investor education nor formal investor education programmes, they do make information available through various means to promote public understanding of various financial matters –

- (a) the Hong Kong Exchanges and Clearing Limited (“HKEx”) publishes investor education materials on the products traded on its platform on its website, organises briefings for market participants upon launch of new products, and displays relevant information in its exhibition hall;
- (b) the Office of the Commissioner of Insurance (“OCI”) provides consumer education on insurance for the public through various publications and the media;
- (c) the Hong Kong Federation of Insurers, as an industry body, has been putting efforts to help educate the public on insurance through various publications and different media channels, including radio, website and newspaper;



- (d) the HKMA promotes public understanding of how the financial system works through its website and publications. It has issued a guideline to encourage Registered Institutions<sup>7</sup> to distribute the SFC's investor education leaflets to customers and refer their customers to the SFC-operated investor education portal for further information where appropriate. It also provides a Resource Centre to which students and other members of the public have access for research and enquiry purpose; and
- (e) the Hong Kong Association of Banks publishes leaflets on various banking related topics, e.g. "Financial Health Leaflet", "Understanding Dormant Accounts Leaflet", "Leaflet on Internet Banking", "Guide to Greater Data Sharing Leaflet", etc. It also launches community wide Automated Teller Machine education campaign.

1.12 Furthermore, the Consumer Council and the Police also educate the public on financial matters –

- (a) the Consumer Council's ongoing consumer education campaigns include personal finance education. The Council is involved in the design of school curricula as well as teaching materials pertaining to areas in personal financial education and consumer protection in business and humanities subjects, and cooperates with other statutory or regulatory bodies such as the MPFA and SFC. It provides information and advice via its website, resource centre, consumer advice centres, publications, media programmes, etc; and
- (b) the Police alert the public to a selection of deceptions including examples involving use of credit cards and trading in loco London Gold, through various channels.

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<sup>7</sup> Registered Institutions refer to authorised institutions which are registered under the Securities and Futures Ordinance ("SFO") to conduct securities intermediary activities. Under the existing regulatory framework authorised in the SFO and Banking Ordinance, the HKMA is the front-line supervisor of registered institutions.

## *The Need for an Investor Education Organisation*

- 1.13 The general public in Hong Kong are increasingly interested in financial products and services. Investor profiles and knowledge levels are becoming more diverse. We are also seeing the proliferation of increasingly complex financial products and services among the general public. However, the investor education initiatives undertaken by the said organisations are specific to the latter's respective jurisdictions, and the scope are fragmented. As reflected in the SFC's surveys mentioned in paragraph 1.6 above and the Lehman Brothers Minibonds incident, there is still a lot to do in promoting a proper investment attitude among the investing public as well as enhancing the overall financial literacy.
- 1.14 Looking abroad, many major financial centres have made efforts in recent years to develop coherent national strategies to enhance financial literacy and capability of their citizens. In Singapore, the Monetary Authority of Singapore launched a specific national financial education programme, "MoneySENSE", in 2003 to bring together industry and public sector initiatives to enhance the financial literacy of Singaporean citizens. In the United Kingdom, the Government has introduced the Financial Services Bill to the Parliament in November 2009 which includes, inter alia, the proposal for establishing a new independent consumer financial education body by the Financial Services Authority to increase financial education and awareness among consumers.

### **Proposal**

- 1.15 Without reducing the obligation and responsibility of those who sell financial products to the public, we propose strengthening investor education in Hong Kong by establishing an IEC. We propose that the IEC be a dedicated investor education organisation in Hong Kong that holistically oversees the needs of investor education and delivery of related initiatives in respect of the entire financial sector in Hong Kong. It will aim to improve the financial literacy and capability of the general public by influencing their fundamental financial attitudes and behaviours, so as to help them improve the quality of their financial decisions to be made. It is important as investor education is more than just provision of product specific education and knowledge. It is also

about helping the general public understand the importance of, and acquire the general know-how to, asking the right questions before making investments; understanding the trade-off between risk and return; and evaluating their own risk tolerance level.

1.16 To achieve this, we expect that the IEC aligns with the Government and the financial regulators' initiatives in strengthening investor protection of the Hong Kong general public. It should proactively lead / co-ordinate investor education initiatives in Hong Kong to enhance the financial literacy and capability of the investing public, and raise the profile and status of investor education. It will work with public and private sector organisations to establish an integrated approach to investor education. It will also measure levels of financial literacy and capability in Hong Kong to understand in greater detail people's financial attitudes and behaviours.

1.17 The following chapters look into the possible arrangements for such a proposal.

Consultation Question :

1. Do you agree to the need to establish an IEC as a dedicated investor education organisation in Hong Kong that holistically oversees the needs of investor education and delivery of related initiatives in respect of the entire financial sector in Hong Kong, and works to improve the financial literacy and capability of the investing public? Please explain.

## CHAPTER 2 Proposed Scope of the Investor Education Council

### Background

- 2.1 In considering the proposed scope of the IEC, we have been guided by the following underlying principles for the establishment and implementation of investor education programmes as suggested by the International Organization of Securities Commissions (“IOSCO”)<sup>8</sup> –
- (a) investor education should assist regulators in achieving the goal of protecting investors; and
  - (b) when regulators engage in investor education activities, care must be given to distinguish investment advice from investor education and avoid the even appearance of endorsing the products or services of any market participants.

### Proposal

- 2.2 We propose that the IEC should aim to improve the financial literacy and capability of the general public by influencing their fundamental financial attitudes and behaviours, so as to help them improve the quality of financial decisions to be made. We consider that the IEC could, through its investor education programmes, help the general public understand the importance of, and acquire the general know-how on, the following areas –
- (a) **making ends meet:** making sure that spending does not consistently exceed income is a fundamental element of financial survival. This message should be promulgated among the public, particularly the young people;

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<sup>8</sup> The IOSCO is a pre-eminent forum for international cooperation among securities regulators and the international standard setter for the securities sector.

The Discussion Paper on the Role of Investor Education in the Effective Regulation of Collective Investment Schemes and Collective Investment Scheme Operators released by the IOSCO Technical Committee in 2001 identified, inter alia, these two principles based on the varied experience of its members in undertaking investor education. Members of the IOSCO Technical Committee include the Australian Securities and Investments Commission, Financial Services Agency of Japan, Financial Services Authority of the UK, and the Securities and Exchange Commission of the US, etc.

- (b) **keeping track of their finances:** it is important for people to keep track of details of their day-to-day finances so as to facilitate their financial planning and making realistic financial decisions. It is particularly important for those people on tight budgets;
- (c) **planning ahead:** it is essential for people to have the ability to make adequate provision for future purposes, particularly for retirement;
- (d) **choosing financial products:** it is about being able to make informed choices about financial products. In this regard, people need to have an understanding of risk: both what risk they face, and the trade-off between risk and return. This needs to be complemented by a good general awareness of the types of financial products that can help them achieve their goals, for example how exposure to different asset classes can help to spread risk; and
- (e) **staying informed about financial matters:** having some knowledge of financial matters and keeping abreast of general financial developments could help people improve the financial decisions they make.

2.3 We propose that the IEC takes up and enhances the current investor education initiatives undertaken by the SFC, and on that basis broadens its remit to other forms of financial products and services regulated by the HKMA, OCI and MPFA, e.g. life insurance products, MPF / ORSO products, mortgages, loans, etc. Over time, the IEC should build an increasingly comprehensive coverage of investor education across the entire financial sector, and reach larger and more diverse audiences by working closely with relevant regulators and organisations.

2.4 The IEC could deliver its investor education strategy with the two main components below –

- (a) **reaching the masses:** primarily through regular media campaigns and availability of self-service materials on the website; and
- (b) **reaching specific target audiences:** through outreach programmes targeting at primary and secondary school

children, university students, working adults, pre-retirees, parents wanting to invest for their children's futures, etc.

- 2.5 It is important for the IEC to maximise effectively the reach of its programmes to, as well as their impact on, all sectors of the community, with the limited amount of resources allocated to it. To achieve this, we propose that the IEC develops and delivers "train the trainer" sessions to volunteer presenters who will deliver outreach programmes concerning investor education to the public.
- 2.6 In fact, it would be useful to start educating young people on financial matters, e.g. the importance of making ends meet, while they are still at school. We propose that the IEC works with the Education Bureau to develop personal finance programmes at schools; to organise seminars / workshops; and to provide teaching aids to teachers to facilitate their teaching of finance-related courses. This would allow young people to get familiar with fundamental financial knowledge at an early stage.
- 2.7 With respect to the goals of the IEC in paragraphs 2.2(d) and (e) above, we propose that the IEC provides a regular outlet of information, advice and view points to provide generic advice to the general public, for instance the questions they should ask before making investment decisions, the issues to which they should pay attention in evaluating investment recommendations, etc. This can be done through press conferences, publications on the IEC's website, seminars, etc.
- 2.8 We consider that it would also be feasible and useful for the IEC to educate the general public to avoid engaging in activities that are not permitted under the law, for example insider dealing, front running, etc.
- 2.9 We consider that the IEC should respond to public enquiries received by phone, email, fax and post, in the same way as the SFC, OCI and HKMA do at present. However, given the need to avoid the appearance of endorsing the products or services of any market participants (in line with IOSCO principles in paragraph 2.1 above), it would be inappropriate for the IEC to comment on the merits of individual investment products, or provide recommendations / investment advice to the investing public. The IEC may, however, signpost people to relevant sources of information.

- 2.10 We propose that the IEC establishes a collaboration framework with the relevant financial regulators and market operators, industry bodies, as well as Government departments and public bodies, etc, by signing with them Memoranda of Understanding. The IEC may also develop its own website or build on SFC's existing Investor Education website, and make it the repository of all relevant topics on investor education<sup>9</sup>.
- 2.11 The IEC should prioritise its work and minimise any duplication of efforts of existing providers. For example, the IEC will not handle investor complaints on financial institutions, which should continue to be handled by those financial institutions and/or the financial regulators. In the case of monetary disputes, they can be brought to the proposed Financial Dispute Resolution Centre (discussed in Part II). In addition, the IEC should not handle any regulatory-related issues or investigate any investor complaints.

#### Development Strategy of the IEC

- 2.12 We propose that the IEC, as a newly established organisation, should grow in phases to allow for gradual development and effective delivery of investor education initiatives. For example, the IEC will build up its outreach programmes step by step, and modify them as more information becomes available about the specific needs of the community. In addition, we propose that the IEC promulgates its key performance indicators; and evaluate the impact of its initiatives against such performance indicators to improve the quality and penetration of its initiatives.
- 2.13 We propose that the IEC conducts a comprehensive survey in the first year of operation to establish baseline levels of financial literacy and capability in Hong Kong to understand people's financial attitudes and behaviours and their abilities to manage their finances effectively. The findings of the survey will help IEC prioritise the direction of its initiatives and shape its strategy. The IEC may also conduct the survey on a regular basis to track the impact of its investor education initiatives over time.

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<sup>9</sup> Similar to the way of UK FSA putting the relevant resources on financial capability on its website: [http://www.fsa.gov.uk/financial\\_capability/resources/](http://www.fsa.gov.uk/financial_capability/resources/).

Consultation Questions:

2. Do you agree to the proposed scope of the IEC in paragraphs 2.2 – 2.11 above? Please provide reasons and suggest alternatives as appropriate.
3. Do you agree that the IEC should take up and enhance the current investor education initiatives undertaken by the SFC, and on that basis broaden its remit to other forms of financial products and services regulated by the HKMA, OCI and MPFA as discussed in paragraph 2.3 above? Please explain.
4. Do you agree to the proposed phased development strategy of the IEC in paragraphs 2.12 and 2.13 above? Please explain.



## **CHAPTER 3 Institutional Set-up of the Investor Education Council**

### **Background**

- 3.1 In Hong Kong, the four major financial regulators, i.e. HKMA, SFC, OCI and MPFA, are responsible for regulation in their respective industries of banking, securities and futures, insurance and retirement schemes. Among them, only the SFC has an explicit statutory remit to pursue investor education.
- 3.2 In his 2007-08 Budget, the then Financial Secretary (“FS”) announced that the SFC would explore ways of utilising part of its levy income to enhance investor protection and education. Since then, the SFC has increased the resources spent on its investor education programmes.

### **Proposal**

- 3.3 We propose to set up the IEC as a company wholly owned by the SFC. We will amend the relevant provisions of the Securities and Futures Ordinance (“SFO”) to broaden the statutory investor education remit of the SFC to cover other financial products and services, rather than just those SFC-regulated ones. The proposed legislative amendments would also empower the SFC to form the IEC as a company wholly owned by the SFC, with the investor education responsibilities of the SFC delegated to the IEC.
- 3.4 As the IEC will need to tap into the experience and require considerable support in delivering investor education from the financial regulators, particularly the SFC, it would be more cost-effective for the IEC to be set up as part of the regulatory community instead of as an independent entity. The SFC is the only financial regulator with an explicit statutory remit to pursue investor education in Hong Kong, and it has already been actively carrying out formal education programmes which cover the bulk of investment products. Therefore, inviting the SFC to operate the IEC can create the most synergy. The IEC may leverage fully the regulatory experience of the SFC in investor education, and utilise the existing funding mechanisms of the SFC, and leverage its back office support, e.g. finance, human resources, information

technology and premises<sup>10</sup>. Relevant financial regulators and the Government will be represented on the IEC Board to maintain a strategic oversight, and to ensure the investor education initiatives to be pursued by the IEC are complementary to financial regulation. Salient features of corporate governance, funding arrangements, etc for the IEC are as follows –

<b>Items</b>	<b>Proposed Features</b>
<i>Governance Structure</i>	<ul style="list-style-type: none"> <li>• Board of Directors – the IEC Board should have not less than 10 members, from relevant financial regulators, Government (including representatives from the Education Bureau) and the financial services industry. The Chief Executive Officer (“CEO”) of the IEC should also sit on the IEC Board.</li> <li>• Appointing authority – The Chairman of the IEC will be assumed by an SFC Non-Executive Director. The SFC Board will make a recommendation to the FS for his endorsement. The rest of the IEC Board Members will be appointed by the SFC Board. The CEO of the IEC will be recruited openly.</li> <li>• Advisory groups – The IEC Board will be advised by two advisory groups, one on children, teenagers and young people, and the other one on adults. Appointments to these advisory groups will be made by the IEC Board.</li> <li>• Headcount of IEC – Inclusive of the CEO of the IEC, the IEC will have an initial headcount of 19 staff.</li> </ul>

<sup>10</sup> Placing the investor education organisation under a financial regulator is consistent with the international practice. Apart from the UK’s practice in paragraph 1.14, the Australian government also transferred the Financial Literacy Foundation established in 2005 to the Australian Securities and Investments Commissions (“ASIC”), the regulator for conduct of business in Australia, in 2008 to consolidate the financial literacy responsibility under ASIC.

<b>Items</b>	<b>Proposed Features</b>
<i>Legislative Amendments Required</i>	<ul style="list-style-type: none"> <li>• Revise the objectives and functions of the SFC by amending the relevant provisions of section 4 and 5 of the SFO with a view to broadening the statutory investor education remit of the SFC to cover financial services and products other than those in the securities and futures sector.</li> <li>• Provide for the establishment of the IEC by amending the SFO with a view to empowering the SFC to form the IEC as a wholly owned company, with delegated investor education responsibilities from the SFC. The amendments will follow closely the approach previously adopted in relation to the establishment of an Investor Compensation Company (see section 79 – 90 of the SFO).</li> </ul>
<i>Funding</i>	<ul style="list-style-type: none"> <li>• Annual budget for the IEC is estimated to be around HK\$50 million<sup>11</sup>, subject to inflationary changes and subsequent adjustments. The SFC is spending around HK\$21 million (including inflationary adjustment) on investor education efforts in 2009/10, including premises, human resources costs and other overheads. As the IEC will have a broader remit in investor education initiatives, it would be reasonable that the budget of the IEC be larger than this sum.</li> <li>• The SFC will provide funding to the operations of the IEC, and no extra levies and charges will be imposed on the investors in Hong Kong for the purpose of the establishment of the IEC. The IEC expenditure will be put under the SFC expenditure, but the IEC would have its own separate budget for the sake of accountability and transparency.</li> <li>• Annual budget of the IEC will be incorporated as part of the SFC's budget, which is subject to</li> </ul>

<sup>11</sup> Forecasts include housekeeping support from the SFC for finance, human resources, information technology, etc.

<b>Items</b>	<b>Proposed Features</b>
	<p>approval by the SFC Board and then the FS. The draft budget of the SFC will be presented to the Legislative Council Panel on Financial Affairs (“LegCo FA Panel”) every year.</p>
<i>Checks and Balances</i>	<ul style="list-style-type: none"> <li>• IEC staff will be governed by a code of conduct and required to comply with procedure manuals covering its main processes, including financial transactions and tendering procedures, which will be similar to those adopted by the SFC.</li> <li>• IEC will be subject to the independent checks and balances by the Director of Audit (through value for money studies), Independent Commission Against Corruption, etc.</li> </ul>
<i>Financial Oversight</i>	<ul style="list-style-type: none"> <li>• The financial year of the IEC will end on 31 March each year to coincide with that of the SFC. The IEC will publish annual financial statements in alignment with that of the SFC. Periodic management accounts will also be regularly provided to the IEC Board for information. Alongside the financial statements, the IEC will publish an annual report approved by the IEC Board, and then send it to the FS who shall cause a copy of the report to be laid on the table of LegCo. Upon request of the FS or the financial regulators, the IEC will submit periodic status reports on the investor education initiatives.</li> </ul>

Consultation Questions:

5. Do you support that the IEC be set up as a company wholly owned and fully funded by the SFC?
6. Do you agree to the corporate governance and funding arrangements for the IEC in paragraph 3.4 above; and have any other views on the institutional set-up of the IEC? Please elaborate.

## **List of Questions for Consultation of Part I**

- Question 1 Do you agree to the need to establish the IEC as a dedicated investor education organisation in Hong Kong that holistically oversees the needs of investor education and delivery of related initiatives in respect of the entire financial sector in Hong Kong, and works to improve the financial literacy and capability of the investing public? Please explain.
- Question 2 Do you agree to the proposed scope of the IEC in paragraphs 2.2 – 2.11 above? Please provide reasons and suggest alternatives as appropriate.
- Question 3 Do you agree that the IEC should take up and enhance the current investor education initiatives undertaken by the SFC, and on that basis broaden its remit to other forms of financial products and services regulated by the HKMA, OCI and MPFA as discussed in paragraph 2.3 above? Please explain.
- Question 4 Do you agree to the proposed phased development strategy of the IEC in paragraphs 2.12 and 2.13 above? Please explain.
- Question 5 Do you support that the IEC be set up as a company wholly owned and fully funded by the SFC?
- Question 6 Do you agree to the corporate governance and funding arrangements for the IEC in paragraph 3.4 above; and have any other views on the institutional set-up of the IEC? Please elaborate.

## **Part II – Financial Dispute Resolution Centre**

## Chapter 1 Introduction

This chapter introduces the background on the deliberation on the proposed establishment of a Financial Dispute Resolution Centre (“FDRC”). It also gives an overview of the practices overseas.

### Background

- 1.1 The SFC and the HKMA, in their reports submitted to the FS in December 2008 on the issues arising from the Lehman Brothers-related products, recommended the Government look into the establishment of a dispute resolution mechanism for the financial industry in Hong Kong, such as a financial services ombudsman.
- 1.2 The SFC recommended that an independent dispute resolution scheme that provides quick, simple, customer friendly service should be in place. It should avoid unduly legalistic procedures and discourage involvement of legal representatives. The scheme should contain elements of conciliation (for achieving a mutually acceptable resolution) and ultimately determination by a panel if the parties remain unable to arrive at an agreed outcome. The financial ombudsman, if set up, could be given the power to order compensation.
- 1.3 The HKMA recommended that an independent dispute resolution mechanism should be established in Hong Kong to provide an efficient means to adjudicate or settle disputes between investors and intermediaries. The power to order compensation is an essential feature of the mechanism.



## **Past Reviews**

- 1.4 In April 2001, the HKMA presented to the LegCo FA Panel a comparative study of the banking consumer protection and competition arrangements in the UK, Australia and Hong Kong. Some options to deal with complaints against banks were identified, including the establishment of a separate banking ombudsman along the lines of the practice in some other jurisdictions. The idea was to provide a separate agency to process and resolve complaints, with powers to arbitrate in complaints and award compensation. It was noted, however, that this would be a costly solution and would take a considerable time to implement.
- 1.5 Separately, the LegCo FA Panel in June 2001 studied the Financial Ombudsman Service (“FOS”) in the UK. The Panel considered at that time that “it is premature to suggest if a neutral body similar to the single ombudsman in the UK is needed in Hong Kong. The free service of the FOS may appear very attractive to consumers. However, the problem of preventing the making of unsubstantiated complaints remains unresolved. The possible abuse of a free ombudsman service needs serious consideration as the funding of which might cut into the competitiveness of Hong Kong as an international financial centre.” The matter was further discussed at the Panel in February and June 2002. The consensus at the time was that neither the volume and nature of complaints nor the deficiencies in existing arrangements would justify the creation of such an elaborate machinery.

## **Overseas Experience**

- 1.6 We have researched into the operation of an independent dispute resolution mechanism in other jurisdictions including -
- (a) the FOS in Australia;
  - (b) the FOS in the UK;

(c) the Financial Industry Regulatory Authority (“FINRA”) in the US; as well as

(d) the Financial Industry Disputes Resolution Centre Ltd (“FIDReC”) in Singapore.

1.7 In Australia, Singapore and the UK, the financial dispute resolution scheme invariably started off as sector specific but finally developed into a one-stop centre for resolving disputes across the financial sector. The dispute resolution procedures are largely similar. Financial services providers are usually required by their regulators to have mandatory “membership” in the ombudsman scheme. This is made an obligatory requirement in their statute.

1.8 A consumer should approach the financial services provider in the first instance to try to resolve the issue bilaterally. If such internal dispute resolution scheme fails and the consumer remains dissatisfied, he/she can file an application with the independent resolution mechanism which usually seeks to resolve the issue informally by mediation / conciliation first. If this too fails to settle the dispute, a determination / final decision will be made by an adjudicator or through arbitration. This decision is normally binding on the financial services providers but not on the consumers. However in the US where arbitration is used, the decision is binding on both the consumers and financial services providers.

1.9 The major source of funding of such financial dispute resolution service usually comes from the financial industry, whereas the ombudsman’s service is either free of charge (the UK and Australia) to consumers or requiring the consumers to pay a certain fee (Singapore and the US).

1.10 While such dispute resolution schemes and the financial regulators are operationally independent, the two parties work closely together. There is normally regular reporting of complaints information by the operators of the dispute resolution schemes to the regulators.

1.11 A table summarising the key features of the financial dispute resolution service overseas is at **Annex A**.

## Chapter 2 Financial Dispute Resolution Scheme

This chapter looks into two most commonly used tools in a dispute resolution: mediation and arbitration.

### The Need for a Financial Dispute Resolution Scheme

- 2.1 A consumer who is not satisfied with the financial services received can make his/her complaint either direct to the financial services provider in the first instance, or to the relevant regulators and consumer bodies. While the regulators and consumer bodies may examine the conduct and practices of the financial services provider, they are not in a position to adjudicate on any financial remedy for the consumer. If the financial services provider is not prepared to voluntarily offer monetary settlement to the satisfaction of the consumer, his/her only remaining remedy would be to bring the case to court. The existing avenues for an individual consumer in the case of complaints related to financial disputes are listed in **Annex B**.
- 2.2 As a general requirement by the regulators, financial services providers are required to have in place a complaint handling procedure dealing with customer complaints. They are required to handle customer complaints in a proper and effective manner.
- 2.3 The regulators' role is primarily to ensure that the process by which the complaints are handled by the financial services providers is fair and efficient. The regulators do not have the power to mediate or adjudicate on the settlement of a monetary dispute between the regulatees and their clients.
- 2.4 At present, outside of the courts, there is no mechanism in place that can achieve the outcome of a dispute resolution where a consumer and a financial services provider are unable to achieve a bilateral agreement. The main concern of an aggrieved consumer

is usually about recovering a part, or all, of the “lost” principal as quickly as possible. Sometimes it is also not clear to him/her as to where to lodge his/her complaint.

- 2.5 We propose that consumers should be provided with an independent and affordable avenue for resolving monetary disputes with the financial services providers. Such an avenue should be an alternative to litigation, as litigation may be disproportionately costly and protracted for consumers.

### **Alternative Dispute Resolution**

- 2.6 During the last few years there has been a worldwide interest in Alternative Dispute Resolution (“ADR”). ADR is an umbrella term which covers a wide range of methods to resolve disputes other than traditional court adjudication. From overseas experience, mediation and arbitration are the two most widely used forms of ADR.

- 2.7 Mediation is a voluntary, non-binding, private dispute resolution process in which an independent neutral person, the mediator, helps the parties to resolve their disputes and reach a negotiated settlement. As a trained and impartial third person, the mediator acts as a catalyst to assist the disputing parties to communicate in a rational and problem solving way; to provide supportive and practical steps to facilitate discussions of the areas in dispute; to explore each party’s needs and interest; and to assist the drawing up of a valid agreement setting out how parties have agreed to solve each problem.

- 2.8 Arbitration is a legal process where the disputes are not heard by a court but by a private individual or a panel of several private individuals known as arbitrators. An arbitrator is usually appointed by agreement of the two disputing parties to facilitate the fair and speedy resolution of disputes without unnecessary expenses; to act fairly and impartially between the parties; to give the parties a reasonable opportunity to present their cases; and to

adopt procedures appropriate to the circumstances of the particular case to avoid unnecessary delay and expenses. Arbitration procedures are largely similar to court proceedings, but arbitration is conducted in private and the procedure is generally less formal and more flexible. An arbitrator applies the governing law of the contract to determine the substantive issues in a contract claim and will make an award. Arbitration awards are final and binding on the parties. In Hong Kong the Arbitration Ordinance (Chapter 341) governs the procedural issues. Arbitration awards made in Hong Kong are enforceable through the courts.

2.9 Mediation is different from arbitration in that mediation is not an adjudicative process. Mediation does not seek to establish liability or fault. It is not a weapon for use to blame the other party. Mediation is a process that seeks to help the parties find a solution to their problems that they “can live with”. A mediator has no decision-making power. Mediation is always quicker and the cost involved is in general lower than in arbitration or litigation. On the other hand, arbitration can also be conducted more quickly and perhaps more cheaply than litigation given its procedural flexibility and informality. However, in some cases where parties adopt a strong adversarial approach, arbitration can be as expensive as litigation. As arbitration proceedings are private and confidential, arbitrators’ decisions do not create binding legal precedents. Arbitration awards are final and not subject to review on the merits. An appeal is possible only on the grounds that an arbitrator has made an error of law or has committed misconduct.

2.10 In Hong Kong, our most recent civil justice reform is to, amongst others, facilitate the settlement of disputes. In accordance with the Practice Direction 31 on Mediation issued by the Judiciary and effective from 1 January 2010, all lawyers and their clients would have to consider mediation to resolve their disputes before further proceedings. Pending mediation, the Court may stay the legal proceedings during the interim. In exercising its discretion on costs, the Court takes into account a party’s unreasonable refusal of mediation as one of the relevant circumstances. The “Report of the Working Group on Mediation” issued by the Department of

Justice on 8 February 2010 has also mapped out plans on how to employ mediation more extensively and effectively in Hong Kong in handling disputes.

## **ADR in Financial Services**

### *Lehman Brothers-Related Investment Products Dispute Mediation and Arbitration Scheme*

- 2.11 The HKMA engaged the Hong Kong International Arbitration Centre (“HKIAC”) in October 2008 to draw up a Lehman Brothers-Related Investment Products Dispute Mediation and Arbitration Scheme (“the Scheme”). The Scheme provided a platform for the resolution of disputes between investors and banks. Once the two parties have agreed to mediation, they could choose a mediator from a list provided by the HKIAC, or they could let HKIAC appoint a mediator from the list. The mediator would then commence and conduct mediation and conclude the case within 21 calendar days. If mediation is not successful, the parties involved may consider whether to go to the arbitration process. The arbitration process also involves the appointment of a mutually agreed arbitrator from a list provided by HKIAC. Under the Scheme, the arbitrator conducts a “documents-only” arbitration, i.e. the arbitrator decides the claim on the basis of the forms and documents submitted. No legal representation is allowed to act on behalf of either party. The arbitrator also aims to conclude the process within 21 calendar days, and this award is binding on both parties.
- 2.12 Under the Scheme, mediation is at a fixed fee of HK\$11,200 per case, whereas arbitration is at a fixed fee of HK\$16,200 per case. The fees are normally shared between the parties seeking mediation or arbitration, but the HKMA undertakes to pay the part for investors if their complaints have already been referred to SFC for considering further actions or when the complaints have resulted in a finding against a relevant individual or executive

officer of the banks by either the HKMA or SFC. The other half of the fees are borne by the banks.

- 2.13 According to information from the HKIAC, as of 31 December 2009, a total of 86 cases have gone through mediation with 76 achieving settlement, giving a settlement rate of 88%. In addition, 37 cases have been settled by direct negotiation between the parties after mediation was requested. So far no case has been referred to arbitration.

#### *New Insurance Mediation Pilot Scheme*

- 2.14 The insurance industry is another field that has engaged the mediation service. The Hong Kong Federation of Insurers has since 2007 funded a pilot mediation project, New Insurance Mediation Pilot Scheme (“NIMPS”) for operation by the Hong Kong Mediation Council. NIMPS was derived in view of the dispute-intensive nature of the insurance industry and the high litigation costs involved. It aims to help settle work-related personal injuries claims between insurance companies and injured workers. A total of 28 cases have come to NIMPS for mediation. Among them, 10 cases have been successfully settled either by mediation or under direct negotiation after mediation requests have been made. The settlement rate for the mediation cases so far is 100%. Experience shows that mediation has brought about mutual satisfaction of both parties.

#### **ADR over Litigation**

- 2.15 Both overseas and local experience shows that there are several benefits to both clients and financial institutions if they can have an upfront meeting at the beginning of a dispute to encourage collaborative problem solving in order to achieve some agreed goals. With the help of a mediator, the parties can build and reinforce relationship based on trust and consensus instead of having litigation and adversarial communication adding fuel to the dispute.



2.16 The aim of mediation is to reach an accommodation, which may not necessarily reflect the exact legal standing of the parties but is a solution which the parties can accept. The settlement to be reached in a monetary dispute can go beyond the money issue. It can be, as often is, highly imaginative and can have the effect of bringing the parties back into a good relationship. As to the financial institutions, protected by confidentiality, commercially sensitive information remains undisclosed and reputations are kept intact. Long term relationships with consumers are maintained and this should be in the best interests of the business. The cost of mediation and arbitration is generally much lower, and the time involved generally much shorter when compared to litigation.

## **Proposal**

2.17 We propose the introduction of a financial dispute resolution scheme for selected financial services sectors by way of primarily mediation, and failing which, arbitration. The current proposal differs from the dispute resolution schemes in some overseas jurisdictions in that arbitration, instead of a panel of adjudicators, is used for making a final decision on the disputed matter. While the decision process of arbitration and adjudication can be largely similar, an arbitration award has the advantage of finality as explained in paragraphs 2.8 and 2.9 above, whereas an adjudication decision can be challenged in courts. This may give rise to uncertainty on the cost and time required to settle the dispute for both parties. In addition, the Hong Kong Arbitration Ordinance provides the legislative support for arbitration procedures. Hong Kong also has a strong and a large pool of arbitrators.

2.18 We propose that the scheme be administered by a Financial Dispute Resolution Centre (“FDRC”). A major feature of the scheme is to require all financial services providers in selected sectors to join the scheme as members, such that they will enter into mediation and arbitration at times of a monetary dispute if (a) the consumer so wishes, and (b) the dispute cannot be resolved

directly between the parties. The objective is to help consumers settle monetary disputes quickly by an independent and affordable procedure. The following chapters look into the proposal in detail.

#### Consultation Questions

1. Do you agree that we should strengthen the current channels for financial services providers and their consumers and investors to resolve monetary disputes relating to the provision of financial services?
2. Do you support the idea of putting in place a dispute resolution scheme for financial services by way of mediation and arbitration?

## Chapter 3 Financial Dispute Resolution Centre

This chapter sets out the scope and process of the proposed FDRC.

### Underlying Principles

3.1 We propose the establishment of an FDRC based on the following guiding principles –

- (a) Independence – The resolution procedures should be independent.
- (b) Impartiality – The process of the FDRC should ensure that both complainants and the parties being complained against are treated equally. The process should also be transparent.
- (c) Accessibility – The FDRC should be user friendly. The resolution procedures are clear and easy to understand, and informal.
- (d) Efficiency – The disputes should be settled quickly vis-à-vis the lengthy process before the courts.

### Scope of the FDRC

3.2 We propose that the FDRC should handle disputes which –

- (a) arise in respect of the services provided by a financial institution to individual consumer(s) or sole proprietor(s);
- (b) are of a monetary nature; and

- (c) involve a financial institution which is a licensee or a regulatee of the HKMA or SFC.
- 3.3 We propose that only individual consumer(s) and sole proprietorship(s) having an individual customer relationship with a financial institution should be regarded as “eligible” claimants to the FDRC. Whether the scope should be enlarged to include small business could be reviewed based on experience gathered in the initial years of operation of the FDRC.
- 3.4 We propose that to start with, the FDRC should cover only financial institutions which are licensees or regulatees of the HKMA and SFC, given that most disputes of monetary nature involve the services in these two sectors. We propose that only those financial institutions having an individual customer relationship with individual consumer(s) or sole proprietorship(s) should be members of the dispute resolution scheme to be operated by the FDRC. Those who do not conduct retail business or do not deal with individual consumer(s) or sole proprietorship(s), will not be included.
- 3.5 We propose that the insurance and MPF sectors be carved out for the time being. The insurance sector is relatively advanced in its dispute resolution with the establishment of a self-regulatory initiative, the Insurance Claims Complaints Bureau (“ICCB”) in 1990. The ICCB handles complaints about insurance claims arising from all types of personal insurance policies taken out by residents in Hong Kong. The ICCB’s jurisdiction limit is HK\$800,000. The establishment of NIMPS as mentioned in paragraph 2.14 also shows the initiative of the Hong Kong Federation of Insurers in helping resolve disputes.
- 3.6 We propose that the financial institutions mentioned above should join as members of the dispute resolution scheme to be operated by the FDRC, under a new regulatory requirement to be imposed by the HKMA and SFC respectively. Mandatory membership means that the financial institutions are obligated to follow the procedures

to be prescribed by the FDRC for the scheme, i.e. mediation and arbitration, when the institutions cannot reach a bilateral agreement with a consumer.

- 3.7 The coverage of the FDRC may be evolving. We are open-minded about the ultimate scope, which could be reviewed over time.
- 3.8 The FDRC would not become involved in the processing of claims in relation to commercial decisions such as provision of credit or margin facilities to clients. Pricing-related disputes such as whether interest rates and fees are set at appropriate levels should not be brought before the FDRC either. Cases which have been the subject of court proceedings will also fall outside the scope of the FDRC.

### **Process Governing the Financial Dispute Resolution Scheme**

- 3.9 A proposed framework for the operation of the financial dispute resolution scheme is as follows –
- (a) Initial enquiries – to come in by phone, letters or emails or in person etc. Intake officers of the FDRC would answer enquiries, and explain to consumers what channels are available for taking forward the enquiries;
  - (b) Making claims – consumers would fill in and submit to the FDRC claim forms against financial institutions;
  - (c) Processing of claims – intake officers would gather information from both claimants and financial institutions. Financial institutions should be invited to give a response to the issues of disputes. Intake officers would decide if the FDRC should accept the case for mediation;
  - (d) Mediation – both parties would have to agree on the appointment of a mediator before mediation session would

begin. A mediation settlement is private, confidential and the terms must be agreeable to both parties.

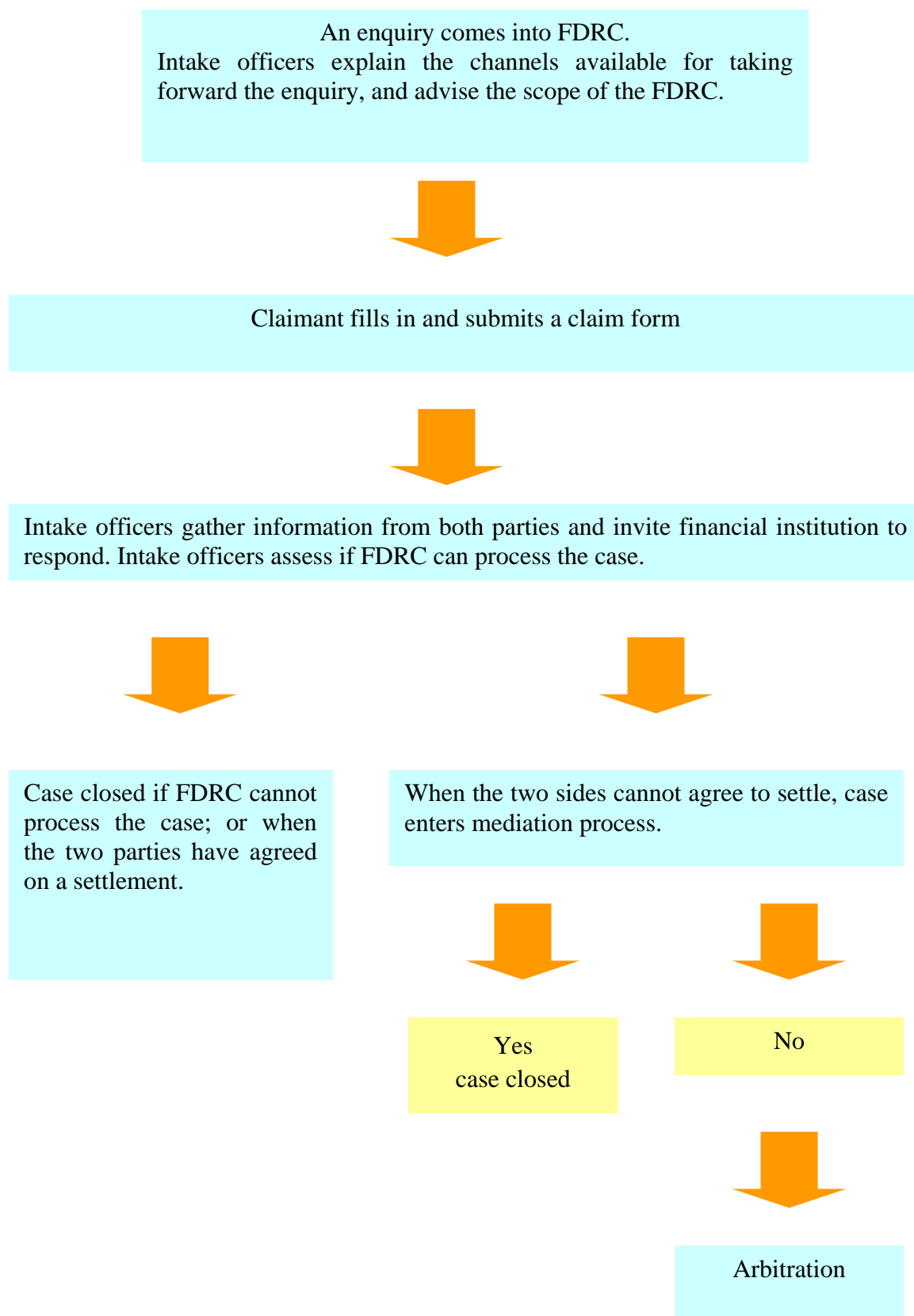
- (e) Arbitration – if mediation is unsuccessful, claimants could choose to bring cases further to arbitration. If arbitration is opted for<sup>1</sup>, an independent arbitrator agreed by both sides would make an award. Arbitration awards are final and binding on both sides.

The flow chart below illustrates the above process.

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<sup>1</sup> Alternatively, claimants may choose to bring the case to court at their own expense. When that happens, the FDRC process would cease.

## Proposed Process Governing the Financial Dispute Resolution Scheme



3.10 Consumers could enquire by phone, letters or emails, or in person whether their disputes could be handled by the FDRC. The intake officers, who shall be professionally trained with mediation knowledge, would address the enquiries, and decide if the disputes raised by the consumers falls under the scope of the FDRC having regard to whether –

- (a) the dispute is raised by an individual consumer or a sole proprietor rather than a company;
- (b) the financial institution involved in the dispute is a regulatee or licensee of the SFC or HKMA;
- (c) the subject of the dispute is of monetary nature. If the dispute also relates to other areas such as concerns about a misconduct of the financial institution and/or its staff, the intake officers would explain to the consumer what other channels are available for taking the case forward. The consumer could then decide if he/she wishes to pursue his/her case in parallel with regulators for the part of “alleged breach of regulatory requirement” or first let the FDRC resolve the part of “monetary dispute”; and
- (d) the financial institution has been provided with an opportunity to attempt to resolve the dispute. If no, the case would be referred back to the financial institution for its due consideration.

3.11 Should a consumer wish to file his/her case with the FDRC, he/she could complete a claim form listing out the issues under dispute and the claimed amount of financial loss, as well as attaching the relevant correspondence with the financial institution.

3.12 The FDRC intake officers, upon receipt of the claim form, should conduct some fact finding from both parties and invite a response from the financial institution. The intake officers should also explore if the dispute could be settled before going to mediation. The intake officers should have discretion not to process a case



where the claim appears to be frivolous or vexatious. We propose that the intake officers' decisions should be final and conclusive.

- 3.13 When the case enters the mediation process, a mediator agreed by both sides would be appointed to facilitate the dispute to be resolved amicably and voluntarily. If the two parties could not agree on a mediator, a mediation services provider would appoint a mediator for the parties.
- 3.14 The mediator should commence and conduct the mediation as soon as possible. In general, a mediator would conclude the mediation within 21 days of his/her appointment. We propose that mediation meeting(s) in respect of a claim under the FDRC should not last longer than a total of four hours. The mediation process should come to an end upon the signing of a settlement agreement by the parties. The parties and the mediator should also agree to keep the settlement terms confidential, unless agreed by the mediator and the parties or compelled by law.
- 3.15 Where mediation is unsuccessful, the claimant could choose to bring the case further to arbitration. We propose that for cases under the FDRC, the parties should commence the arbitration on a "documents-only" basis. Both parties should be entitled to submit further response/documents within a certain number of days. An arbitrator agreed by both parties should decide the claim on the basis of the documents submitted and evidence provided. However, when a case involves too many complex issues and could not be sufficiently handled by way of "documents-only" arbitration, the arbitrator can determine that a hearing is necessary. A hearing could take the form of teleconference, videoconference or in person. In general, an arbitrator should render an award within 21 days from the date of his/her appointment.
- 3.16 The settlement of mediation would be voluntary and mutually agreeable, whereas the decision of arbitration would be binding and final. If a consumer opts for the path of arbitration, he/she would not be able to further pursue the case in court even if he/she does not agree with the arbitration award.

## **Maximum Claimable Amount**

- 3.17 Bearing in mind the FDRC's purpose of providing quick resolutions with minimum formality, we consider it prudent to impose a limit on the maximum amount that a consumer can claim. Setting a limit of the maximum claim will increase the ability of the FDRC to achieve mediated settlements more expeditiously. The cap may also suit the FDRC users who are individual customers and whose claims are likely to be comparatively modest. The UK, Singapore and Australia, have all imposed an upper limit, but the amount differs from products to products. These are set out at **Annex A**.
- 3.18 We propose that HK\$500,000 be set as the maximum claimable amount under the financial dispute resolution scheme. This covers over 80% of the monetary disputes handled by the HKMA and about 80% of stock investors. The maximum claimable amount could be reviewed over time.

## **FDRC Charges**

- 3.19 We propose that the FDRC service be offered at a charge to both the consumers and financial institutions, under a "pay-as-you-use" principle. The revenue from the fees could cover part of the operation costs of FDRC. The fee structure would be designed according to the guiding principle that consumers should on the one hand have an affordable avenue for resolving their disputes, and financial institutions on the other hand should have enough incentive to resolve the disputes at an early stage.
- 3.20 Consumers are welcome to make enquiries and seek information from the FDRC when they are not sure if their cases would fall within the scope of the financial dispute resolution scheme, or how they should take forward their cases. Such an enquiry service is free of charge. When a consumer subsequently files a claim form against a financial institution with the FDRC, we propose that a

non-refundable administrative fee of HK\$100 be introduced for each claim by the consumer. Experience of overseas mediation services suggests that such a charge would serve to deter vexatious complaints while encourage the honest majority to use the service.

- 3.21 A non-refundable charge will be imposed on both the claimant and the financial institution when a case goes to mediation and arbitration. We propose a higher fee for financial institutions so as to encourage them to invest in and make best use of their own complaint handling system, and not simply passing the work to the FDRC.
- 3.22 We propose that the level of charges be linked to the amount claimed. When the claimed amount is less than HK\$100,000, we suggest a fixed charge of HK\$500 per case for the claimant, and HK\$5,000 per case for the financial institution when the case goes to mediation. Currently such claims account for about 80% of the monetary disputes received by the HKMA. When the claimed amount is between HK\$100,000 and HK\$500,000, the fixed charge is suggested at HK\$2,000 for the claimant, and HK\$10,000 for the financial institution. The above fixed charges are for the first four hours of mediation service as we believe most of the disputes could be resolved within four hours. For any extra hours involved, the two parties will have to equally share out the extra charges incurred. The current market rate for engaging a mediator ranges from HK\$2,000 to HK\$6,000 per hour. We propose that a fixed charge be determined in future for any extra hour of mediation services under the financial dispute resolution scheme.
- 3.23 We expect a large proportion of the disputes could be resolved by mediation. For those that have to go to arbitration, we propose a fixed charge of HK\$5,000 for the claimant, and HK\$20,000 for the financial institution. Any extra cost incurred from a prolonged arbitration session will have to be borne by the two parties equally. Noting that the current market rate for engaging an arbitrator ranges from HK\$2,500 to HK\$10,000 per hour, we propose that for the financial dispute resolution scheme, a fixed charge be determined in future for any extra hour of arbitration services.

3.24 The proposed schedule of fees is summarised below (in Hong Kong dollar) –

	<b>Claimant</b>	<b>Financial Institution</b>
Making enquiries	Nil	Not Applicable
Filing a claim form	\$100	Not Applicable
Mediation	(Case fees)	(Case fees)
Amount of claims		
- less than \$100,000	\$500	\$5,000
- between \$100,000 and \$500,000	\$2,000	\$10,000
Arbitration (regardless of the amount of claims)	(Case fees) \$5,000	(Case fees) \$20,000

We propose that the levels of various fees should be reviewed regularly.

### Consultation Questions

3. Do you have any views on the scope of the financial dispute resolution scheme to be operated by the FDRC?
4. Do you have any views on the proposed process of the FDRC?
5. Do you agree that to start with, financial services providers regulated by SFC and HKMA should be obligated to be members of the scheme to be operated by the FDRC? If not, please give reasons.
6. Do you agree that a cap on the maximum claimable amount be imposed? If so, do you agree with the suggested level of HK\$500,000?
7. Do you agree that an administrative fee of HK\$100 be charged to consumers when they file a claim form?
8. Do you agree to the proposed fee schedule in paragraph 3.24? Please give your views.

## **Chapter 4 Relationship with Regulators**

This chapter looks at the power of the FDRC and its relationship with the financial regulators.

### **Power of FDRC**

- 4.1 The FDRC administers a financial dispute resolution scheme for settling monetary disputes between financial institutions and individual consumers. It is not a regulator and will not take on any regulatory role that is already the responsibility of regulators. In particular, the investigation of regulatory breaches and any subsequent disciplinary action is the statutory duty of a regulator.
- 4.2 The FDRC would not have any investigation powers as the regulators. This is to avoid any duplication of effort and blurring of their respective roles. As such, the FDRC will not issue fines, impose penalties, or take disciplinary actions. Those are the duties and powers of the regulators. The regulators deal with regulatory breaches while the FDRC deals with monetary disputes.
- 4.3 The FDRC should be able to publish data about the disputes it has dealt with. Given that the agreements reached between parties are both private and confidential, the FDRC will publish summary of statistics by sectors and synopsis of cases on an anonymous and aggregate basis. This would help the public understand the nature of FDRC cases.

### **Cases Involving Both Monetary Disputes and Regulatory Concerns**

- 4.4 We acknowledge that some disputes which give rise to monetary losses inevitably involve allegations by consumers of misconduct of the financial institutions, e.g. mis-selling, mis-handling of client's securities, collateral or money and failure to keep proper

records of and adhere to client's instructions. When the FDRC receives such enquiries, its professionally trained intake officers will explain to the consumers the options they may have and how they may take their cases forward. It would be up to the consumers to decide if they should refer their cases to regulators to follow up on the part of alleged misconduct, or they would rather let the FDRC deal with the monetary disputes first. There should be a straightforward division of labour between the FDRC and the regulators in their respective roles. The FDRC should only address the "monetary disputes" but not the part relating to "regulatory breaches".

- 4.5 For cases that have gone to both the FDRC and the regulators, the FDRC would only address a consumer's monetary dispute by means of mediation and arbitration. For cases that involve monetary disputes, the regulators would encourage the complainant to go to the FDRC. At the same time, the regulators would undertake investigation into any regulatory implications of the complaint and decide if disciplinary actions are necessary. Given that mediation itself is not an investigation or fault-finding process, we do not expect there would be a duplication of efforts by the FDRC and regulators.

### **Cases Involving Systemic Concerns**

- 4.6 There are times that the FDRC may perceive a pattern of behaviour in an individual firm that may imply the presence of systemic regulatory breaches. The FDRC should alert the regulators in these circumstances. The FDRC is not equipped either in its resources or skills, nor has it the power, to investigate these issues. The regulators should then step in and carry out enforcement investigations.
- 4.7 When the regulators come to a view that a suspected systemic case has occurred, the FDRC should direct all relevant complaints to the regulators. The FDRC will not initiate mediation and arbitration on individual claims in the event that systemic problems are

suspected. The FDRC would not be able to deal with a large number of individual cases quickly. It shall put such cases on hold while the regulators are investigating into the matters and finally carry out disciplinary actions that will aim to achieve the best outcome for consumers.

4.8 As both the SFC and HKMA are charged with the statutory regulatory objectives of maintaining a fair, transparent and orderly market and also helping to reduce systemic risk in the industry, they should make a decision as to when certain cases may involve large-scale systemic issues and the FDRC should no longer handle these cases under the dispute resolution scheme. Any large-scale systemic issues would need to be dealt with by regulators through investigation of the activities either within a single financial institution or across the industry more generally.

4.9 This suggestion is in line with the practice in the UK. The FOS in the UK is subject to the “Wider Implications” process (“WI process”<sup>2</sup>), which is intended to bridge potential regulatory gaps or remove overlaps between the FOS and regulators on “significant issues”, including those that may give rise to widespread consumer detriment. Under the WI process, the FOS would defer its consideration of such complaints while the FSA is conducting its investigation. For example, FSA and the FOS in the UK agreed in May 2009 that the issue relating to Lehmans-backed structured products should be considered under the WI process, so as to allow the FSA to explore all options to achieve the best outcome for consumers.

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<sup>2</sup> The “Wider Implications” process in the UK is intended to flag up newly-occurring issues that relate to or affect (a) a large number of consumers; (b) a large number of business; (c) the financial integrity of a large business; (d) interpretation of FSA rules or guidance from the FSA (who regulate financial services) and the Office of Fair Trading (who regulate consumer credit and competition); or (e) a common practice by business.



## Cooperation with Regulators

4.10 The FDRC should feed lessons emerging from its casework into development of regulatory practice by the regulators as well as policy formulation by the Government. We propose that the FDRC should enter into cooperative arrangements with the regulators including arrangements for the sharing of information and handling of significant issues.

### Consultation Questions

9. Do you agree that the FDRC should regularly disclose summary data in relation to the cases it has handled without naming the relevant parties?
10. Do you consider that the proposed roles of the FDRC and regulators are clearly delineated?
11. Do you agree that the FDRC should refer suspected systemic cases to the regulators and refrain from handling such cases upon referral?

## Chapter 5      **Set-Up of the Financial Dispute Resolution Centre**

This chapter looks into a number of specific issues in relation to the establishment, funding, governance and transparency of the FDRC.

### **Legal Form**

- 5.1 We propose that the FDRC be set up as a company limited by guarantee. Incorporation procedures are straight forward and no legislation is needed. A memorandum and articles of association will be formulated to define the terms of reference, scope, funding arrangements, etc. This has the advantage of keeping the FDRC independent from Government, regulators, industry and consumer bodies alike. The financial dispute resolution schemes in the UK, Australia and Singapore are operated by guarantee companies. These schemes derive their authority from statute to enable a decision of the ombudsman to be binding on the financial services providers without the need for their consents.
- 5.2 The authority of the FDRC ultimately derives from statute. We propose making it a mandatory requirement that regulated or licensed financial institutions that fall under the purview of the SFC and HKMA and have dealings with individual consumers should be members of the financial dispute resolution scheme to be operated by the FDRC. Institutions that do not have a retail business or do not deal with individual consumers would not be expected to join the scheme. For the authorised institutions (“AIs”) regulated by the HKMA, the licensing condition applied to AIs may be amended but it would be subject to the statutory consultation requirements under the Banking Ordinance. The Banking Ordinance would not need to be amended. For SFC’s licensed institutions, the SFO will have to be amended to achieve this. Mandatory membership of financial institutions ensures that the financial dispute resolution scheme can widely apply.

## **Funding**

### *Long-term funding strategy*

- 5.3 The FDRC should ultimately be funded by the financial industry as part of the industry's commitment to the general public to resolve disputes in a fair and efficient manner. This is based on the principle of fairness and goes in line with the practice of overseas jurisdictions. Mandatory membership of the financial dispute resolution scheme will ensure that FDRC's funding is shared by all relevant institutions, and sustainable on a long-term basis.
- 5.4 The costs of the FDRC will be borne by financial institutions in a fair and equitable manner, taking into account their level of usage of FDRC's resources. For the variable costs that are dependent on the number of disputes handled, we propose that they should broadly be recovered via case fees to be shared by both claimants and financial institutions. The amount each party pays will have to take into account the size of a case and the amount of resources required to see it through to mediation and arbitration.
- 5.5 For the fixed costs which refer to the minimum cost necessary to keep the FDRC in operation, e.g. staff and rental, we propose that it should be recovered via contributions by the industry collected through, for example, a scheme membership fee to be collected by the FDRC. For this purpose, financial institutions will be grouped into various sectors, which correspond to the main industry sectors participating in the scheme. Fixed costs will be shared among the sectors on the basis of the amount of resources required to deal with the disputes generated by that sector (proxied by the sector's share of total disputes over say, a moving 3-year period). In this way, institutions of a particular sector will not end up cross-subsidising another sector's use of the FDRC.
- 5.6 The level of scheme membership fee of an institution is related to the number of disputes arising from the sector it belongs, because a higher number of disputes will increase that sector's share of the total operating costs of the FDRC. At the same time the more

disputes an institution generates, the more it will have to pay in terms of case fees.

- 5.7 Within each sector, the financial institutions may split their share of fixed costs according to a number of factors such as company size, retail market share, share of disputes, etc.

#### Funding for the Initial Three Years

- 5.8 The number of disputes that would go through the FDRC would form an important basis upon which to calibrate the funding formula. Different from overseas experience, we do not have many sector-specific dispute resolution schemes (apart from the one in the insurance sector) that would provide a reliable estimate for the patterns and number of total disputes. Acknowledging that the FDRC is contributing to an important public policy function of investor protection, the Government plus the two regulators, namely the HKMA and SFC, are prepared to provide the set-up costs and operation costs of the FDRC in the first three years. Based on the caseload of the first three years of operation, financial institutions will be grouped into sectors and an agreed portion of the recurrent budget will be allocated among sectors on the basis of the amount of resources required to deal with complaints generated by that sector.
- 5.9 We propose adopting a lean staffing structure in the FDRC to contain costs. The FDRC could engage professional bodies to provide some rosters of mediators and arbitrators in operating the scheme. The annual budget is estimated to be at about HK\$55 million a year. The set-up costs are estimated to amount to HK\$15 million. The following chart illustrates our proposed funding method –

	<b>Fixed Costs</b>	<b>Variable Costs</b>
1 <sup>st</sup> 3 years	<ul style="list-style-type: none"> <li>• Government</li> <li>• SFC</li> <li>• HKMA</li> </ul>	Case fees shared by <ul style="list-style-type: none"> <li>• Claimants</li> <li>• Financial institutions</li> </ul>
Thereafter	Shared amongst various financial sectors (e.g. banks, brokers, fund houses) depending on the sector-specific caseload in the past three years	Case fees shared by <ul style="list-style-type: none"> <li>• Claimants</li> <li>• Financial institutions</li> </ul>

## **Governing Board**

5.10 Proper checks and balances should be put in place to ensure the efficient operations of the FDRC. We propose that the FDRC should be governed by a Board of Directors to be appointed by the Government, responsible for overseeing its operations, and ensuring the independence and impartiality of its dispute resolution procedures. The role of the Board is crucial in giving stakeholders assurance about rigour and efficiency in the governance of the FDRC. We propose that the Board should be broadly based and representative of the major stakeholders, with well-regarded community personalities equipped with knowledge of financial services and consumer protection. The Board could comprise of seven to 11 independent non-executive members, including the Chairman.

## **Way Forward**

5.11 Should the proposal receive public support, we would introduce legislative amendments to make it an obligatory requirement for financial services providers under the SFC and HKMA to enter

into the financial dispute resolution scheme to be operated by the FDRC. This would pave the way for establishing the FDRC.

#### Consultation Questions

12. Do you have any views on the legal form of the FDRC?
13. Do you agree that the funding responsibility of the FDRC should be ultimately taken up by the financial industry?
14. Do you agree to the proposed funding strategy for the financial industry in the long run?
15. Do you consider it justified for the Government, SFC and HKMA to take up the set-up costs and the operational costs of the FDRC in the first three years?
16. Do you have any views on the governance of the FDRC?

## List of Questions for Consultation of Part II

- Question 1 Do you agree that we should strengthen the current channels for financial services providers and their consumers and investors to resolve monetary disputes relating to the provision of financial services?
- Question 2 Do you support the idea of putting in place a dispute resolution scheme for financial services by way of mediation and arbitration?
- Question 3 Do you have any views on the scope of the financial dispute resolution scheme to be operated by the FDRC?
- Question 4 Do you have any views on the proposed process of the FDRC?
- Question 5 Do you agree that to start with, financial services providers regulated by SFC and HKMA should be obligated to be members of the scheme to be operated by the FDRC? If not, please give reasons.
- Question 6 Do you agree that a cap on the maximum claimable amount be imposed? If so, do you agree with the suggested level of HK\$500,000?
- Question 7 Do you agree that an administrative fee of HK\$100 be charged to consumers when they file a claim form?
- Question 8 Do you agree to the proposed fee schedule in paragraph 3.24? Please give your views.
- Question 9 Do you agree that the FDRC should regularly disclose summary data in relation to the cases it has handled without naming the relevant parties?
- Question 10 Do you consider that the proposed roles of the FDRC and regulators are clearly delineated?

- Question 11 Do you agree that the FDRC should refer suspected systemic cases to the regulators and refrain from handling such cases upon referral?
- Question 12 Do you have any views on the legal form of the FDRC?
- Question 13 Do you agree that the funding responsibility of the FDRC should be ultimately taken up by the financial industry?
- Question 14 Do you agree to the proposed funding strategy for the financial industry in the long run?
- Question 15 Do you consider it justified for the Government, SFC and HKMA to take up the set-up costs and the operational costs of the FDRC in the first three years?
- Question 16 Do you have any views on the governance of the FDRC?



## Financial Dispute Resolution Schemes in Overseas Jurisdictions

	Australia	Singapore	United Kingdom	United States
<b>Body</b>	Financial Ombudsman Service (“FOS”)	Financial Industry Disputes Resolution Centre (“FIDReC”)	Financial Ombudsman Service (“FOS”)	Financial Industry Regulatory Authority (“FINRA”)
<b>Year of Establishment</b>	2008 by merger of sector specific dispute resolution schemes covering banking, insurance and investments	2005 by merger of a consumer mediation unit and an insurance dispute resolution organisation	2001 by consolidating the complaints handling and ombudsman services formerly provided by eight statutory and voluntary schemes	2007 by consolidation of a self-regulatory organisation of securities dealers and some operations of the New York Stock Exchange
<b>Obligation on Financial Industry</b>	The Australian Securities and Investments Commission (“ASIC”) requires all financial services providers to have membership of one or more ASIC-approved External Dispute Resolution (“EDR”) schemes. FOS is one of the EDRs approved by ASIC. About 80% of the financial services providers are members of FOS.	The Monetary Authority of Singapore (“MAS”) requires all financial services providers which have retail customer relationship to be members of FIDReC.	The Financial Services Authority (“FSA”) requires that all regulated financial institutions to be under the jurisdiction of FOS.	FINRA is the largest self-regulatory organisation in the US securities industry. FINRA members are required to arbitrate disputes with their customers, if the customer chooses to arbitrate.
<b>Sector coverage</b>	Across the financial sector, covering banking, insurance, financial planning, investments and superannuation. 3 385 effective members	Across the financial sector, covering banking & finance, insurance and capital market transactions. 467 members	Across the banking, insurance and investment sectors. 21 000 FSA-regulated retail firms	Securities firms doing business with the US public. 4 750 brokerage firms and 633 000 registered securities representatives
<b>Dispute Resolution Process</b>	Finding / Recommendation / Ombudsman determination	Mediation; failing which, adjudication	Mediated settlements after adjudicator assessment / formal conclusions after adjudicator investigation / ombudsman final decisions	Mediation / Arbitration
<b>Who can complain?</b>	Individuals and small businesses	Individuals and sole proprietors	Individuals and small businesses (with an annual turnover less than £1 million).	Individual investors, securities firms and employees of securities firms

	Australia	Singapore	United Kingdom	United States
<b>Funding</b>	Members pay a participation fee and are levied an additional amount based on the number and complexity of disputes considered by the Ombudsman about that member.	Recurrent cost borne by the industry – payment by subscriber institutions of annual levy and case fees.	FOS is funded by an annual levy paid by the businesses they cover (which can range from around £100 a year for a small firm of financial advisers to over £300,000 for a high-street bank or major insurance company), and by case fees (£400 per case) for the third and any subsequent disputes settled during the year. FOS does not charge businesses a case fee for the first two disputes each year.	Funded by collection of a mixture of regulatory fees from members, dispute resolution fees from users, and other fees received by it in carrying out its regulatory role.
<b>Final Decision Binding</b>	Binding on financial institutions	Binding on financial institutions	Binding on financial institutions	Arbitration binding on both parties.
<b>Claims limit</b>	AUD280,000	S\$50,000 (banking and finance related) S\$100,000 (insurance related)	£100,000	None
<b>Caseload for 2008/09</b>	19 107 new disputes received. 17 007 cases closed or resolved.	Received 2 969 new cases. Resolved 485 complaints by mediation. Another 91 cases were adjudicated. .	Received 124 471 new cases. Resolved 113 949 cases, among which 51% through mediation and recommended settlements; 41% through a more formal adjudication; 8% by formal decision by an ombudsman.	7 137 new cases filed. 684 mediation cases closed, of which 82% settled. 4 571 arbitration cases closed, 25% of which were decided by arbitrators, 47% by direct settlement between parties.
<b>Relationship with Regulator</b>	Required to provide ASIC with quarterly reports about the operations, and to report all systemic issues and serious misconduct to ASIC.	FIDReC submits to MAS on a quarterly basis a categorised summary report of all disputes received.	FSA has statutory oversight of FOS and appoints its Chairman and directors, but the FOS is operationally independent. FSA and FOS have signed a memorandum of understanding which provides for information sharing and co-operation – routinely, FOS will give FSA regular information about the number and types of complaints handled; if issues arise, FOS will give FSA information about those issues that may require regulatory action by the FSA.	FINRA is a self regulatory organisation supervised by the Securities and Exchange Commission (“SEC”). All brokers-dealers in the US must register with the SEC and one of the registration requirements is that an applicant must be a member of FINRA, unless it qualifies for exemption under certain circumstances.

	<b>Australia</b>	<b>Singapore</b>	<b>United Kingdom</b>	<b>United States</b>
<b>Legal Form</b>	Company limited by guarantee	Company limited by guarantee	Company limited by guarantee	Not-for-profit membership corporation with no capital stocks
<b>Governance</b>	Overseen by a Board of Directors which has 3 industry and 3 public interest representatives, and an independent Chairperson.	Governed by an independent Board of 7 directors, comprising 3 industry directors, 3 non-industry directors and an independent Chairman and directors appointed by the Board subject to the approval of MAS.	Governed by a board of 9 non-executive, public interest directors appointed by the FSA under the Financial Services and Markets Act 2000. The chairman of the board is appointed by the FSA with the approval of HM Treasury.	Governed by a Board of Governors elected by FINRA members. Currently there are 23 Governors.

## **Existing Avenues for Complaints**

### *The Securities and Futures Commission (“SFC”)*

1. The SFC, being the statutory regulator of the Hong Kong securities and futures markets, accepts complaints from investors within the SFC’s jurisdiction including unlicensed activities, misconduct by SFC licensees, market manipulation and insider dealing, sale of “unauthorised” investment products, etc.
2. The SFC has set up an internal Complaints Control Committee to conduct preliminary assessments of complaints from the public to determine if the complaints warrant further action by the SFC. The SFC can investigate complaints and penalise wrongdoers, such as by prosecuting them or taking disciplinary action against them if they are SFC licensees. The SFC cannot order the wrongdoers to pay compensation to a complainant.
3. The SFC’s Code of Conduct requires regulated persons to ensure that complaints filed with them are handled in a timely and appropriate manner; steps are taken to investigate and respond promptly to complaints; and complainants are given further advice as to further steps that can be taken if the complaints are not remedied promptly.
4. During the period from September 2008 to December 2009, the SFC received around 8 900 complaints about the mis-selling of Lehman Brothers Minibonds related products and around 2,700 non-Lehman Brothers related complaints. The SFC has since the collapse of the Lehman Brothers Holding in September 2008 issued a circular to remind its regulated persons to review their existing systems for complaints handling to ensure that their systems are both in order and ready to deal with potential complaints from clients.

*The Hong Kong Monetary Authority (“HKMA”)*

5. The HKMA receives complaints against banks. Under the Banking Ordinance, the HKMA does not have any power to arbitrate or intervene in customer disputes, or to require banks to pay compensation. The HKMA has a limited role in monitoring the handling of customer complaints by banks. Its focus is to ensure that banks handle their customers’ complaints in a fair and efficient manner. The HKMA follows up complaints which raise issues of supervisory concern, but will not be involved generally in the commercial decisions of individual banks.
6. In 2002, the HKMA issued a guideline to require banks to put in place effective internal procedures for handling customer complaints. Banks should have systems to ensure that customer complaints are fully and promptly investigated and resolved in a satisfactory manner. Banks should also make available details of their internal complaint handling procedures, and should be able to advise customers of the contact details of the person for handling customer complaints within the institution.
7. The Banking Services Complaint Unit within the HKMA reviews all complaints received by the HKMA to decide whether and how they can be taken further. Upon receipt of a written complaint, the HKMA will examine it and the written response from the bank concerned. The focus is on whether the bank’s complaint handling procedures are working properly. Should there be concerns about the bank’s handling of the complaint, the HKMA will refer the complaint to the bank for re-investigation and a further reply to the complainant. It will monitor the bank’s handling process and review the reply to the complainant to check that the bank’s complaint handling procedures are appropriate and working properly. If the matter of complaint is purely commercial, such as cost or quality of banking services, and the bank has handled the complaint in full, the HKMA will not take any further action.

8. For complaints related to the securities and futures business of banks, the HKMA will assess if such complaints relate to misconduct or non-compliance with the rules and guidelines set by the SFC.
9. Some complaints may raise issues of supervisory concern. These would include complaints which indicate that the bank has breached the industry's Code of Banking Practice, or other guidelines or regulations issued by the HKMA. The HKMA has a supervisory interest in cases where a bank may have acted in a way that is improper or imprudent. The HKMA will pursue these issues of supervisory concern with the bank, and where necessary, require remedial action to be taken by the bank. The HKMA's ability to disclose to the complainant the outcome of its investigation and any measures taken against the bank is constrained by the confidentiality provisions of the Banking Ordinance.
10. The HKMA received a large number of complaints from investors who had suffered losses on structured investment products related to Lehman Brothers. The total number of complaints surged to over 21 000 in 2008, compared with only 469 for 2007.

*Office of the Commissioner of Insurance ("OCI")*

11. The OCI has no statutory power to intervene in commercial disputes among insurers, insurance intermediaries and policy holders. The OCI nevertheless maintains a monitoring role to ensure that the complaints are properly handled. The OCI is subject to the secrecy provisions of the Insurance Companies Ordinance which limit the OCI's ability to disclose the monitoring measures imposed upon insurers and the outcome of its investigations.
12. Currently, complaints against misconduct of insurance intermediaries, i.e. insurance agents, insurance brokers, their responsible officers or technical representatives, are to be addressed first to the corresponding self-regulatory bodies, viz., the

Insurance Agents Registration Board, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association. They are the front-line self-regulatory bodies in monitoring insurance intermediaries. Under the self-regulatory system, all these bodies have put in place procedures for proper handling of complaints.

13. Complaints involving personal claims against insurers with amounts not more than HK\$800,000 are handled by the Insurance Claims Complaints Bureau. For other types of complaints against an insurer, e.g. delay in settling claims, mishandling of personal information, non-renewal of insurance by an insurer, pricing of an insurance etc, they are handled by the insurers themselves. The Insurance Authority has required insurers to put in place appropriate and effective procedures for handling customer complaints.

*The Insurance Claims Complaints Bureau (“ICCB”)*

14. The ICCB handles complaints about insurance claims arising from all types of personal insurance policies taken out by residents in Hong Kong. The claims complaints come either from policy holders themselves or their beneficiaries and rightful claimants.
15. An independent Insurance Claims Complaints Panel (“Complaints Panel”) was established by the ICCB to provide independent and impartial adjudication of complaints between insurers and policyholders or their beneficiaries.
16. At present, the Complaints Panel’s jurisdiction limit is HK\$800,000. The Complaints Panel’s decisions are binding on members of the ICCB, without any right of appeal. However, if complainants find the Complaints Panel’s decision unacceptable, they are free to seek legal redress, because their legal rights are not affected by reference to the Complaints Panel.
17. In 2008, the ICCB handled a total of 484 complaints, of which 424 were new cases, representing a 19.8% increase over the previous

year. Of the 298 closed cases, 49 cases were concluded to the satisfaction of the complainants. The aggregate amount of these cases settled totalled HK\$2.14 million. The highest award in a single case was HK\$390,000.

#### *Mandatory Provident Fund Schemes Authority (“MPFA”)*

18. The MPFA receives complaints mainly from employees who suspect that their employers might have violated their MPF rights and benefits. A small number of complaints relate to MPF trustees. The MPFA conducts investigations in all complaints received, follow up the issues with the employers/trustees concerned and notify the complainants of the results. Reminders or warning letters are issued to trustees in case there are breaches of the MPF legislation. Financial penalty may also be imposed on the trustees concerned.

#### *Consumer Council*

19. The Consumer Council was established in 1974. It provides consumer complaint and enquiry services. Over the past two years, there appears to be a growing number of complaints in relation to financial services. In 2007, the Council received a total of 38 521 complaints with 1 181 (3%) in relation to financial services (including banking services, cards, mortgages, loans, insurance, MPF and investment). In 2008, 9 723 complaints (or 23%) in relation to financial services were received out of a total of 42 050 complaints. In the first five months of 2009, financial services related complaints reached 4 194 (or 27%) out of the total of 15 411.
20. A significant proportion of the complaints in relation to financial services received in 2008 and also 2009 is about the mis-selling of Lehman Brothers related products. Although the Council does not have any powers of adjudication or investigation, the Council has followed up the complaints with the relevant financial institutions and at the same time have forwarded the cases to HKMA or SFC for appropriate action.



21. The Council normally can help resolve over 70% of cases with pursuable grounds. If traders refused to co-operate in resolving justifiable complaint cases, consumers may seek redress at the Small Claims Tribunal and the Council will tender advice where appropriate.
22. The Consumer Legal Action Fund was established in 1994 to assist aggrieved consumers in taking legal action. The Council is the trustee of the Fund. So far the Fund has received some 100 applications in relation to Lehman Brothers related products, and so far one case has been filed to District Court for hearing.

### *The Small Claims Tribunal*

23. The Small Claims Tribunal is a court that deals quickly, informally and inexpensively with claims not exceeding HK\$50,000. The rules and procedures of the Tribunal are less strict than in most other courts, and no legal representation is allowed. The main types of claims handled by the Small Claims Tribunal are debts, service charges, damage to property, goods sold and consumer claims.
24. A claimant is not allowed to subdivide his claim exceeding HK\$50,000 to bring it within the Tribunal's jurisdiction. However, he can abandon that part of his claim above HK\$50,000 in order to bring his claim in the Tribunal.
25. A group of 135 investors, whose claims did not exceed HK\$50,000, have sought to recover their money by filing suits against the banks in the Small Claims Tribunal. The Adjudicator, having heard all cases, subsequently came to a conclusion that the claims were to be referred to the District Court. The Adjudicator was of the view that the cases concerned banks' responsibilities and the risks to consumers, of which new and complicated legal points of view involved. These points of law would have an impact on the public banking sector. In addition, there is no precedent case in

this regard and the Tribunal may not have the legal power to handle such cases.