

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

Consultation Conclusions

BACKGROUND

1. On 9 February 2010, the Financial Services and the Treasury Bureau (“FSTB”) launched a public consultation on proposed establishment of an Investor Education Council (“IEC”) and a Financial Dispute Resolution Centre (“FDRC”) in Hong Kong.
2. The proposals covered the establishment of an IEC to holistically oversee the delivery of investor education. IEC helps empower the public in making financial decisions. The proposed FDRC, on the other hand, helps consumers resolve monetary disputes with financial institutions when problems occur.

OUTCOME OF CONSULTATION

3. After the issue of the consultation document, we have offered 17 briefings to industry groups and professional bodies. On the consumer side, we have organised three forums, as well as attended an electronic discussion platform hosted by the Hong Kong Economic Journal, for more than 200 consumers to exchange views on the key proposals.
4. The consultation ended on 8 May 2010. We have received a total of 115 submissions from a diverse group of stakeholders. Their views are reflected in this document. A list of the respondents is at Appendix. Copies of submissions received are available at the website of FSTB at http://www.fstb.gov.hk/fsb/ppr/consult/consult_iec_fdrc.htm.
5. In finalising the proposals, we also held discussions with industry participants, professional mediators and arbitrators, academics, as

well as regulators. We have incorporated their views into these Consultation Conclusions as appropriate.

General Comments

6. The response we received reflected various perspectives on the proposals themselves. These ranged from “yes” to “no” responses to particular proposals, to requests for clarification, to suggestions for further measures to be included or alternative approaches to be adopted.
7. The respondents in general welcomed the establishment of an IEC to holistically oversee the delivery of investor education. They also indicated support in principle for setting up of a one-stop service for resolving financial disputes. We received many detailed comments on specific aspects in relation to FDRC.

Part I – IEC

8. There is a general consensus that provision of financial education is the most effective means to enhance financial literacy of the public, hence help them make informed financial decisions and detect problems such as market scams and malpractices at an early stage. The proposed setting up of an IEC to holistically oversee the needs of investor education and delivery of related initiatives has the support of the vast majority of respondents. Some specific comments in relation to the details of IEC have also been raised and are discussed in paragraphs 9 to 20 below.

The need for a separate body

Respondents’ views

9. The majority of respondents agreed that there is a need to establish a separate body for offering expanded education programmes across the financial services industry. A few respondents questioned whether it is necessary to set up a new body on investor education,

given that many financial services providers and industry bodies have already organised investment education activities. Some suggested that expanding existing investor education work of the Securities and Futures Commission (“SFC”) would suffice.

Our response

10. IEC clearly differentiates itself from the roles of industry associations and financial services providers. IEC will be an impartial body to holistically devise and drive the strategy of improving financial literacy in Hong Kong. It will focus on one’s rights and responsibilities, decision making skills and generic knowledge of financial products. This kind of investor education is not covered by industry associations, professional bodies and market experts that provide investment information which is product and sector specific. Financial services providers, on the other hand, tend to use education forums to facilitate marketing a specific product or service.
11. IEC will collaborate and co-ordinate with industry bodies and financial services providers with a view to bridging any gap and avoiding any overlap. IEC from the outset will carefully place its focus so that it would not duplicate the areas that have been effectively covered by other bodies. The representation of the various regulators and industry experts on the IEC Board and Advisory Groups would assist IEC in this aspect. The education programme will also be under constant review to gauge its effectiveness.
12. As to the suggestion of simply extending SFC’s current investor education effort instead of setting up an IEC, this cannot be effectively done as the SFC’s scope is limited to securities and futures sector under the Securities and Futures Ordinance (“SFO”). We therefore will amend SFO to broaden the statutory investor education ambit of SFC to cover other financial products and services, rather than just those SFC-regulated ones. A separate IEC will be set up as a company wholly owned by SFC, with the investor education responsibilities of SFC delegated to IEC. Within SFC,

there will be no duplication of efforts in future.

Why putting IEC under SFC?

Respondents' views

13. Most respondents either supported putting IEC under SFC or did not hold any specific views. Some respondents questioned why IEC should be put under SFC. They also asked how the structure can ensure that IEC would have an unbiased coverage of the whole financial sector. A few suggested IEC be put under the Education Bureau or FSTB or be set up as an independent entity.

Our response

14. From international experience it is more cost effective and creates the most synergy for an investor education body to be organisationally established under a conduct regulator, working with the regulator to achieve the aim of protecting investors, instead of as an independent entity¹. IEC may leverage fully the regulatory experience of SFC in identifying common problems and gaps in investors' knowledge. Resource wise, IEC can leverage SFC's back office support, e.g. finance, human resources, information technology and premises, hence reduce the total operational costs. Relevant financial regulators, Government bureaux and industry experts will be represented on the IEC Board to maintain a strategic oversight, and to ensure the initiatives by IEC will not be biased towards any specific sector.

¹ The Australian government established in 2005 the Financial Literacy Foundation. Since 2008 the Foundation has been transferred to the Australian Securities and Investments Commission, the regulator for conduct of business in Australia. In Singapore, the Monetary Authority of Singapore has been responsible for leading a coherent national financial literacy strategy "MoneySENSE" since 2003. In the United Kingdom, a new Consumer Financial Education Body ("CFEB") was established as an independent body by the Financial Services Authority ("FSA") (which regulates financial services) in 2010. CFEB assumed FSA's responsibilities to enhance public understanding of financial matters and ability to manage financial affairs and FSA staff from the Financial Capability Division were transferred to CFEB.

The role and focus of IEC

Respondents' views

15. The majority of respondents agreed that IEC should aim at improving the financial literacy and capability of the public by educating on their fundamental financial attitude and generic product knowledge. A respondent raised that IEC should not predict market movement or provide financial advisory services to the public or arouse the public's interest in investing. A respondent raised quite an opposite view saying that IEC should provide financial advisory services to the public.

Our response

16. The proposed IEC is meant to be an educational body. It is not an investment advisory body. The financial literacy programme aims to help people make informed financial decisions relevant to their own circumstances rather than helping them to time their entry to or exit from the financial market. It is neither appropriate nor justified for IEC to attempt to give any investment advice directly or indirectly by rating and reviewing investment products.

The funding arrangement of IEC

Respondents' views

17. A few industry bodies expressed concern that operational costs of IEC would be funded by an additional levy to be collected from market players.

Our response

18. Under the current proposal, IEC as an SFC subsidiary charged with SFC's statutory investor education duty will have its costs fully funded by SFC's reserves. This is a commitment made by SFC which means that IEC's work will be continuous without being

affected by the market turnover. It has been made clear upfront that no extra levies and charges will be imposed on investors and the industry for funding IEC.

The governance structure of IEC

Respondents' views

19. Some respondents pointed out the importance of putting in place sufficient checks and balances to ensure that the interests of financial sector are comprehensively covered.

Our response

20. The IEC Board should be sufficiently represented by relevant financial regulators, Government bureaux and industry experts so that it can give a balanced strategic oversight. The IEC Board is also tasked to ensure the initiatives pursued are comprehensive and responsive to market needs. Two Advisory Groups comprising industry representatives will be set up to advise the Board on the needs of different target groups.

Part II – FDRC

21. Since the global financial crisis there is a global move towards more protection for financial consumers. The Government proposed earlier this year to set up an FDRC to promote greater accountability and transparency in the financial sector. FDRC will administer an independent disputes resolution scheme for consumers to use when they are unable to resolve monetary disputes with financial services providers.
22. We have received very diverse comments on the proposed establishment of an FDRC. While consumers generally supported the proposal, reactions from industry associations ranged from qualified support to opposition.

Areas that have general support

23. There is a clear strand of consensus on the points summarised in paragraphs 24 to 30 below.

The need for an additional dispute resolution mechanism

24. While acknowledging that financial services providers have their internal complaints handling mechanisms, the majority of respondents considered an additional channel which is independent, impartial and affordable should be made available to resolve monetary disputes between consumers and financial services providers. The establishment of an FDRC to administer a financial dispute resolution scheme is a welcomed move. There is particularly clear support for the Government, together with the Hong Kong Monetary Authority (“HKMA”) and SFC, to fund the set-up costs and operation costs of FDRC in the first three years.

The overarching principles of FDRC

25. There is general support for the overarching principles of FDRC, which include impartiality, accessibility, affordability, speediness, cost effectiveness and confidentiality.

Fees

26. There should be a balance between deterring frivolous and vexatious claims and encouraging the honest majority to use FDRC. The services provided by FDRC should not be free of charge to consumers. It is justified to impose a fee for initiating and then going through the FDRC process. The level of fees should not be set too low nor too high.

Intake of cases

27. There should be stringent control of the intake process. The

qualification and training of intake officers are of particular importance. A set of criteria for taking up cases should also be clearly laid down.

The quality and qualification of mediators and arbitrators

28. The proposed mediation and arbitration process should be independent. Mediators and arbitrators should be objective and impartial and have the necessary knowledge to enable them to deal with financial disputes.

Disclosure of information

29. FDRC should regularly publish summary information about cases on an unnamed basis. This sharing of information will help to educate consumers, provide information to financial services providers about common problems, and alert regulators to issues that may have wider implications for their regulated sectors.

A non-statutory body

30. It is appropriate for FDRC to be set up in the form of a company limited by guarantee, which will stay independent of Government, regulators, industry and consumer bodies.

Discussion on specific aspects

31. Respondents have offered us many useful comments on the operational details of FDRC. Paragraphs 32 to 75 below summarise these views and our responses.

(A) Scope of FDRC

Eligible claimants

32. We proposed in the consultation document of February 2010 that only individual consumer(s) and sole proprietorship(s) having a

customer relationship with a financial services provider should be regarded as “eligible” claimants to FDRC.

Respondents’ views

33. There are two broad views on whether claimants should be restricted to individuals. Some respondents suggested including small companies. Others considered that individuals are more likely to be in need of the dispute resolution service and they should therefore be the primary target group.

Our response

34. It is our intention for FDRC to take care of the group who would need the service most and our view therefore remains that FDRC claimants should be limited to individuals and sole proprietors, at least during the initial years of operation. We will remain open to the possibility of extending the scope, based on the experience gathered over time.

Insurance and MPF sectors

35. We proposed that the insurance and Mandatory Provident Fund (“MPF”) sectors to be carved out for the time being. Only financial institutions regulated or licensed by HKMA and SFC would be required to join the scheme.

Respondents’ views

36. Our proposal is supported by the Mandatory Provident Fund Schemes Authority (“MPFA”) and insurance professional bodies, while some other respondents expressed a preference for including insurance and MPF sectors from the outset.

Our response

37. Our proposal is to cover SFC-licensed corporations and authorized

institutions of HKMA. FDRC will handle disputes that involve a monetary element arising from the dealing of these financial institutions with their individual consumers. In other words, insurance and MPF products sold via these financial institutions will be covered by FDRC. The insurance industry has at the same time taken a self-regulatory initiative in dispute resolution. An independent panel comprising experts within and outside the insurance industry is in place to adjudicate disputes between insurers and their policyholders. Moreover, the Government consulted the public in July 2010 on proposals to establish an independent Insurance Authority. The landscape of the insurance sector is evolving.

38. The MPFA has received very few cases on monetary disputes since the MPF system, which is established under trust arrangements, commenced operation in December 2000. MPFA receives complaints mainly from employees who suspect that their employers might have violated their MPF rights and benefits. A small number of complaints related to MPF trustees. MPFA conducts investigations in all complaints received, follows up the issues with the employers concerned and notifies 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.
39. We see that the ultimate scope of FDRC should be as comprehensive as possible and we shall review the coverage of FDRC over time.

(B) Process of FDRC

Mediation and arbitration vs ombudsman model

40. We proposed the introduction of a financial dispute resolution scheme by way of mediation first with arbitration in cases where disputes cannot be resolved through mediation. Financial services providers will be mandated to join the scheme. Our proposal differs from some overseas models in that arbitration rather than a

panel of adjudicators is used for making a final decision on the dispute.

Respondents' views

41. Some respondents doubted whether the mandatory mediation plus arbitration model is as effective as setting up an ombudsman, who plays the role of an adjudicator. Some respondents however held the view that the proposed FDRC model could be as powerful as, if not more than, an ombudsman. The Law Society of Hong Kong has in its submission particularly analysed the difference between the arbitration and ombudsman systems, and takes the view that the current proposal on FDRC is a better option than setting up a Financial Ombudsman.

Our response

42. Our proposed model of mandatory mediation plus arbitration is in line with the international practice in similar mechanisms. A claim always goes through a “soft” channel where mutual agreement is sought from both parties first, and only when this fails would a third party step in to impose a final determination. In some jurisdictions this third party is an ombudsman as in the United Kingdom and Australia; in some others like the United States it is an arbitrator as in our proposed FDRC. As the Law Society of Hong Kong has pointed out, there is no difference in terms of functions between an arbitrator and an ombudsman as both are acting as an umpire to decide a dispute based on the parties' submissions. Their approaches to dispute resolutions are very similar. In terms of power, however, an arbitrator enjoys much wider power than an ombudsman as stipulated in the respective legislations. Unlike an ombudsman's determination, which is non-binding until the applicant accepts it, an arbitral award is final and binding on all parties and it is an alternative to lengthy and costly litigation. In Hong Kong the Arbitration Ordinance (Cap. 341), which will be repealed and substituted by the new Arbitration Ordinance

(Cap. 609)², governs the procedural issues. Arbitral awards are enforceable through the courts. Hong Kong also has a strong and a large pool of arbitrators.

Arbitration made compulsory or not

43. We proposed that financial services providers regulated or licensed by HKMA and SFC must be members of FDRC. In other words, both mediation and arbitration (when mediation failed and claimants so wish) are made compulsory to the financial services providers.

Respondents' views

44. There is general support by both consumer and industry groups for mediation as an effective means in resolving disputes. Industry groups especially banks are opposed to compulsory arbitration as financial services providers cannot initiate arbitrations. They considered it unfair that financial services providers can only passively respond to claimants' wish to arbitrate and that the costs are not even equally shared. They suggested that arbitration should be made optional.
45. They also suggested that financial services providers should be given an opportunity to make representations if they consider that it is not appropriate for a case to proceed to arbitration. There should be a control point where failed mediation cases would be reviewed before being put forward to arbitration. A case may not be handled by arbitration if it (a) is frivolous or vexatious; (b) concerns complex or novel legal issues; (c) involves multiple-party claims; or (d) has any precedential value or significant legal principles.
46. There are however opposite views from consumers pointing out that

² The new Arbitration Ordinance (Cap. 609) was passed in the Legislative Council on 10 November 2010. It will come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. The Ordinance introduces a unitary regime for all types of arbitration on the basis of the United Nations Commission on International Trade Law Model Law on international Commercial Arbitration. It will make the arbitration law more user-friendly to the international business community. The existing right of appeal against an award on a question of law is retained (Details are set out in section 5 of Schedule 2 and Sections 99-102 of the Ordinance).

in the absence of an enforceable final decision by an arbitrator, financial institutions would not have an incentive to resolve the cases at the mediation stage. Consumers are worried that once mediation has failed, they would be left with no alternative but litigation, which is inaccessible to most of them as litigation can be disproportionately costly and protracted.

Our response

47. We have considered the concerns of industry groups and also the worries of consumers. We expect that most cases would have been resolved at the stage of mediation and only a small proportion would go further to arbitration. From overseas experience, the settlement rate of mediation is about 80%.
48. As to the suggestion of a pre-arbitration gatekeeping, we have looked into overseas practice and found that this is practically non-existent. A dispute by nature means that one side does not see eye to eye with the other, and no agreement could be reached. There is no objective means for a third party to judge how likely the dispute can be resolved without really going through the process. Putting in place a pre-arbitration checkpoint is no different from asking someone to play the role of an arbitrator at a premature stage.

(C) FDRC's interface with regulators

49. We proposed that FDRC would not have any investigation or disciplinary powers as the regulators. The regulators deal with regulatory breaches while FDRC deals with monetary disputes. For cases involving both monetary disputes and regulatory concerns, the intake officers of FDRC 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. In the exceptional event that the regulators suspect that a systemic case has occurred, FDRC will direct all relevant complaints to the regulators for investigation as prescribed in their respective

legislations.

Respondents' views

50. One industry group suggested that any disputes involving allegations of regulatory breaches should be removed from the scope of FDRC. This view was shared by some respondents, who believed that if a claimant suspects any regulatory breaches, he/she should be advised to make a separate complaint to the regulators. Consumers on the other hand are worried that some financial services providers would use the confidentiality built in the FDRC process as a hideaway of their wrongdoings. FDRC should avoid giving the impression that financial institutions can buy off their mistakes with money.

Our response

51. Our guiding principle in the interface between FDRC and regulators is very clear: not to burden financial institutions with excessive requirements on the one hand; and not to compromise regulators' powers and duties to investigate alleged regulatory breaches on the other.
52. We agree that FDRC should not be, or give the impression that its confidentiality would become a regulatory blind spot. FDRC should share observations and information with regulators, for example when there are a number of similar disputes that may indicate the existence of wider implications for the regulated sector.
53. We acknowledge that some disputes which give rise to monetary losses inevitably involve allegations by consumers of misconduct of the financial institutions. In practice, most complainants are likely to bring such cases to both FDRC and regulators. A parallel handling by both FDRC and regulators is inevitable. In fact, "parallel run" by a dispute resolution mechanism and regulators is a prevalent practice in overseas jurisdictions. The FDRC process has the advantage of allowing monetary disputes to be dealt with separately from and more quickly than the regulators' investigation

and disciplinary processes, which will inevitably take some time to complete. Regulators will have regard to relevant FDRC outcomes, where appropriate.

54. The FDRC process should not undermine regulators' statutory power to investigate alleged regulatory breaches. The obligations of financial institutions in responding to regulators will remain the same.
55. For cases with wider implications, we originally proposed that FDRC should put them on hold while regulators are investigating into the matters and have finally carried out disciplinary actions. Having regard to regulators' practical experience and consumers' wish to have at least part of their monetary concerns resolved at an early stage, we suggest that FDRC should, unless advised by regulators otherwise, proceed with those cases in parallel.
56. We will work closely with regulators on drawing up a memorandum of understanding ("MoU") between FDRC and regulators to spell out clearly the delineation of their respective roles and duties.

(D) Claimable Amount

57. We asked whether a cap on the maximum claimable amount should be imposed and if in the affirmative, whether the suggested level of HK\$500,000 is appropriate.

Respondents' views

58. There are divergent views on the need of setting a maximum claimable amount. Opponents to the cap considered that it would limit the full potential of the FDRC process. Some suggested that the cap of HK\$500,000 is too low and should be lifted to as much as HK\$2.5 million. One industry association suggested that a floor of HK\$50,000 be set as the Small Claims Tribunal could handle claims of this amount or less.

Our response

59. We have proposed a cap of HK\$500,000 as it covers over 80% of the monetary disputes handled by HKMA and about 80% of stock investors. The cap is applicable to each individual claim. It is not the aggregate amount that an individual could claim over different financial services providers in various products. In fact, a consumer may claim over HK\$500,000 if he or she submits claims for more than one case. One can also bring to FDRC a claim that involves more than \$500,000, but the maximum claimable limit still applies. We shall review the maximum claimable amount over time to keep abreast of evolving market developments.
60. FDRC as an alternative to court actions will not deal with any claims that are being or have been considered by Small Claims Tribunal. We do not consider it fair to deprive some consumers of an alternative dispute resolution channel simply because their claimed amount is of not a big sum. Such claimants may very well be those who need the FDRC service most. Moreover, nowhere in overseas have we seen similar practice of setting a floor of the claimable amount.

(E) FDRC Fees

61. We asked whether it is agreeable to charge consumers an administrative fee of HK\$100 when they file a claim form. We also invited views on the proposed fee schedule.

Respondents' views

62. The suggestion of charging consumers an administrative fee at the outset is supported by almost all respondents, including consumers. Some industry groups and individual respondents suggested that the charge should be increased to a substantially higher amount for deterring vexatious claimants. A few respondents also suggested adopting a sliding scale of administrative fee with the level linked to the claimable amount.

63. Professional mediators and arbitrators felt that the proposed fees for mediation and arbitration tend to be on the low side and may not cover the cost. An industry association raised that the proposed fee structure would effectively impose a forced settlement on financial services providers for any claims less than HK\$5,000 as the minimum cost for them to go to FDRC would be HK\$5,000. There were also concerns that our proposals would increase compliance costs for the industry.

Our response

64. The fee structure is set 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. We have also proposed a higher fee for financial institutions so as to encourage them to invest in and make best use of their own complaint handling system. We have reviewed and revised the proposed fee structure against the above principles with a view to minimising abuse by either party.
65. We have also looked into the concern whether the proposed fee is rewarding enough to attract good mediators and arbitrators. For claims less than HK\$100,000, we originally proposed a total fee of HK\$5,500 for a mediation of four hours. We are aware that this proposed fee is lower than market rates of mediators (the current market rate for engaging a mediator ranges from HK\$2,000 to HK\$6,000 per hour). We are however confident that the proposed fee (subject to minor amendment as suggested in paragraph 66) is at an appropriate level as FDRC will deploy in-house mediators to deal with these claims. It has the advantage of not only lowering the costs, hence affordability for small claimants, but also facilitating FDRC to accumulate experience for the majority of cases. About 80% of the claims received by HKMA now involve an amount less than HK\$100,000. Having said the above, FDRC shall review the levels of various fees regularly.

66. On balance, we suggest slightly revising the proposed fees as summarised in the following table (in Hong Kong dollar) –

	Claimant	Financial Institution
Making enquiries	Nil	Not Applicable
Filing a claim form	\$200	Not Applicable
Mediation	(Case fees)	(Case fees)
Amount of claims		
- less than \$100,000	\$1,000	\$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

(F) Other issues

Intake process

Respondents' views

67. There is a general consensus that the intake criteria are of the utmost importance. Industry groups, in particular, put emphasis on the importance of clear and acceptable vetting criteria. Such criteria should be clearly defined and robust to ensure that only claims properly falling within the agreed scope of FDRC should be entertained. The point that is open to debate is whether the merit of the case should be assessed at the intake stage. Some respondents suggested setting a time limit for filing an application with FDRC, i.e. after a certain amount of time when a financial institution has given a final reply, a claimant can no longer bring the case to FDRC.

A few respondents raised that intake officers should not be the only decision-makers of taking up/rejecting a case. Proper checks and balances and perhaps appeal channel should be in place.

Our response

68. We agree that there is a need to provide a set of intake criteria to decide if the case should be accepted for mediation. For example, FDRC will not handle claims concerning the performance of financial investments; the general policies and practices, or fees charged by financial services providers; or a claim that has been the subject of court actions; or if FDRC decides the claim is frivolous or vexatious. We also agree that there is a need to set a time limit for filing an application with FDRC. The decisions on whether to take up or reject a case should be made by the intake officers. An internal review committee could be set up within FDRC to review the decisions made by intake officers.

69. We attach great importance to the quality and training of intake officers. They as the first point of contact for the public should have good human skills. They should also be equipped with mediation knowledge and have a general overview of the regulatory landscape. On-the-job training should be provided to help them identify vexatious and frivolous cases.

Mediators and arbitrators of FDRC

Respondents' views

70. Some respondents were concerned about the qualifications of mediators and arbitrators. A few other respondents raised concerns on how to maintain a proper roster of mediators and arbitrators to ensure their quality.

Our response

71. While the mediators and arbitrators currently being panel members

of well recognised professional bodies could form a good basis for inclusion into the FDRC's rosters of mediators and arbitrators, training on knowledge and skills to handle financial disputes would be required as a pre-condition. We are developing the details of training modules for mediators and arbitrators. FDRC should be the sole authority to –

- (i) maintain a roster of mediators and a roster of arbitrators;
- (ii) decide the entry and exit of mediators and arbitrators on the list; and
- (iii) appoint mediators and arbitrators in case that the parties could not agree on one.

Governance and independence of FDRC

Respondents' views

72. A few respondents pointed to the need for FDRC to be independent of the influence of regulators and the industry. Industry groups considered that FDRC should be widely representative of the interests of stakeholders.

Our response

73. We have proposed that the FDRC 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. It is important that sufficient checks and balances should be put in place to ensure the efficient operations of FDRC and that the interests of all parties concerned are covered and balanced.

Speedy establishment of FDRC

Respondents' views

74. Some respondents were keen to see FDRC being set up as soon as

possible. They were concerned about the long lead time that would take for introducing legislative amendments to SFO to make it an obligatory requirement for financial services providers under SFC to enter into the financial dispute resolution scheme operated by FDRC.

Our response

75. We shall pursue a non-legislative means to establish FDRC with mandatory participation of SFC licensees through amendments to the Code of Conduct promulgated by SFC under SFO. We consider that the Code of Conduct will be an effective tool. A breach of the Code would be relevant for SFC considering whether the licensed corporation remains fit and proper to be licensed. If it does not, it certainly runs the risk of losing its licence. From a pragmatic point of view, it is unlikely that in practice a licensed corporation would refuse to join and be bound by the terms of FDRC.

CONCLUSIONS

76. The set up of an IEC and an FDRC has a significant value in enhancing trust between consumers and financial institutions, which is core to the healthy development of our financial sector. IEC and FDRC, together with enhanced investor protection measures adopted by regulators, provide a comprehensive protection for the interests of the public.

77. We have adopted a balanced approach in coming to our conclusions. The majority of the proposals in the Consultation Paper will be adopted, with some modifications and amendments to take into account responses received during the consultation process. The following is a summary of the proposals that we will adopt.

Part I – IEC

- (a) 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;
- (b) IEC will implement a balanced and pragmatic strategy appealing to the public through a mixture of mass media campaigns, online resources and tailored outreach programmes for different sectors of the community, etc. The aim is to improve the financial literacy and capability of the general public;
- (c) IEC will take up and enhance the current investor education initiatives undertaken by SFC, and on that basis broaden SFC's ambit to other forms of financial products and services, with the ultimate goal of improving the overall quality of financial decisions made by members of the public;
- (d) A phased development strategy will be adopted to allow for gradual development and effective delivery of investor education initiatives. IEC will conduct a comprehensive survey in the first year of operation to help IEC prioritise the direction of its initiatives and shape its strategy;
- (e) To set up an IEC as a company wholly owned and fully funded by SFC. No extra levies and charges will be imposed on investors and industry for the establishment of IEC; and
- (f) An SFC-appointed Board of Directors will be set up to govern IEC. Relevant financial regulators, Government bureaux and industry experts 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 – FDRC

- (a) To set up an FDRC to administer a financial dispute resolution scheme by way of primarily mediation and, failing which and if the claimant so wishes, arbitration;
- (b) FDRC will handle disputes which -
 - (i) arise in respect of services provided by a financial institution to individual consumer(s) or sole proprietors(s);
 - (ii) are of a monetary nature; and
 - (iii) involve a financial institution which is a licensee or a regulatee of HKMA and SFC³;
- (c) Financial services providers regulated by HKMA and SFC will be obligated to be members of the scheme operated by FDRC;
- (d) The insurance and MPF sectors will be carved out at the beginning and the coverage of the financial dispute resolution scheme will be reviewed later. The scope of the scheme will cover SFC-licensed corporations and authorized institutions of HKMA. FDRC will handle disputes that involve a monetary element arising from the dealing of these financial institutions with their individual consumers;
- (e) The maximum claimable amount under the financial dispute resolution scheme will be set at HK\$500,000;
- (f) The FDRC service will be offered at a fee to both the claimants and financial institutions, under a “pay-as-you-use” principle. After taking into account views received, the schedule of fees is slightly revised and summarised in the table at paragraph 66 above. The levels of various fees will be reviewed regularly;
- (g) FDRC will regularly disclose summary data of cases it has handled on an unnamed basis for public education purpose;

³ Credit rating agencies which will become Type 10 licensees under SFO will be excluded from the financial dispute resolution scheme.

- (h) The regulators will continue dealing with regulatory breaches while FDRC deals with monetary disputes. An MoU will be in place to delineate the roles between FDRC and regulators;
- (i) The Government will set up FDRC as a company limited by guarantee;
- (j) The Government, together with HKMA and SFC, will provide the set-up costs and operation costs of FDRC in the first three years. FDRC will be funded by the financial industry, and to a lesser extent the claimants, thereafter; and
- (k) FDRC will 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, etc. It will be broadly based and representative of the major stakeholders, with well-regarded community personalities equipped with knowledge of financial services and consumer protection.

WAY FORWARD

- 78. To set up IEC, we aim to introduce legislative amendments to SFO in this legislative session to broaden SFC's investor education ambit to cover financial services and products other than those in the securities and futures sector. SFC will form IEC as a wholly owned company with delegated investor education responsibilities from SFC. SFC will set up IEC immediately after the legislative amendments of SFO have been passed.
- 79. To prepare for the establishment of FDRC, HKMA and SFC will respectively consult their licensees and regulatees within the first half of 2011 before amending the licensing conditions for authorized institutions and the Code of Conduct for SFC-licensed corporations to include the requirement to abide by the FDRC procedures. We

will work closely with the regulators and industry in this respect. Moreover, we will continue to engage regulators and the industry in working out the implementation details of FDRC. We expect that FDRC will be set up by mid-2012.

List of Respondents

Organisations

1. Allen & Overy
2. British Chamber of Commerce in Hong Kong, The
3. Caritas Family Crisis Line and Education Centre
4. Chinese General Chamber of Commerce, The
5. Chinese Gold & Silver Exchange Society, The
6. Chinese Securities Association of Hong Kong
7. Clifford Chance
8. Consumer Council
9. DTC Association, The
10. Guotai Junan Securities (Hong Kong) Limited
11. Hong Kong Association of Banks, The*
12. Hong Kong Association of Online Brokers Limited
13. Hong Kong Bar Association
14. Hong Kong Confederation of Insurance Brokers, The
15. Hong Kong Democratic Foundation
16. Hong Kong Economic Journal Online Forum#
17. Hong Kong Federation of Insurers, The
18. Hong Kong General Chamber of Commerce
19. Hong Kong International Arbitration Centre
20. Hong Kong Investment Funds Association
21. Hong Kong Mediation Centre
22. Hong Kong Securities Association
23. Hong Kong Securities & Futures Professionals Association
24. Hong Kong Securities Professionals Association
25. Hong Kong Society of Financial Analysts
26. Institute of Financial Planners of Hong Kong
27. Institute of Securities Dealers Ltd, The
28. Law Society of Hong Kong, The
29. Mandatory Provident Fund Schemes Authority
30. Mediation Offices of Mr Roy CHENG
31. Quam Securities Company Limited
32. Standing Committee on Arbitration of the International Chamber of Commerce – Hong Kong, China, The

Individuals

33. 何國雄
34. 陳少忠
35. 張富山
36. CHAN Kin Wo
37. CHAN Kwok Wing Eddie
38. CHAN Tung
39. CHENG Ka Yan Bobby
40. CHENG Kam Hung Chester
41. CHEONG Cheuk Hin
42. Matthew CHEUNG
43. CHEUNG Sik Ling
44. CHING Tin Kee
45. CHIU Kam Lung
46. Yvonne CHIU
47. CHO Wai Man
48. CHONG Wah Yeung
49. CHU Sui Hong
50. CHUNG Kei Yin
51. CHUNG Tat Chi
52. CHUNG Tat Wah
53. Heather DOUGLAS
54. HO Cheuk Sun Stephen
55. HO Ka Lau William
56. HSU Yau Yau Alfred
57. IP Shu Kin Patrick
58. LAI Suk Yin Alice
59. LAM Yuk Chor
60. LAU Yuk Yu Irene
61. LEE Kwok Ying
62. LEE Tak Wai
63. LEUNG Ka Ying
64. Paul LEUNG
65. Roy LIN
66. LIU Siu Kit
67. LO Tik Fu
68. LUI Chi Tak

69. Ming Rosita LUI
70. LUI Shuk Ching Pina
71. Raymond NG
72. NGAN Lin Chun
73. NGOK Chiu
74. PAK Hing Cheung
75. Alessandro SCHUELI
76. Joe SETO
77. TANG Kwok Fai
78. TING Ping
79. TONG Sau Kan
80. TSANG Sui Chu
81. TSANG Yun Choi
82. TSOI Man Cheong
83. TSUI Wai Sun
84. TUNG Chun Ping
85. WEI Hon Ming
86. WONG Kin Yim
87. WONG King Hang Kenneth
88. WONG Tat Kuen
89. YEUNG Kam Wah
90. YEUNG Sum Leo
91. YUEN See Tung
92. 23 respondents have requested that their names not be disclosed

* Two written submissions.

The written submission enclosing comments received at an electronic discussion platform hosted by the Hong Kong Economic Journal Online Forum on 2 March 2010 (a total of 11 readers).