

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

Executive Summary of the Consultation Paper

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.

Consultation Questions

Part I – Investor Education Council

- 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 in the consultation document? 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 the consultation document? Please explain.
- Question 4 Do you agree to the proposed phased development strategy of the IEC in paragraphs 2.12 and 2.13 the consultation document? 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 the consultation document; and have any other views on the institutional set-up of the IEC? Please elaborate.

Part II – Financial Dispute Resolution Centre

- 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 in the consultation document? 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?

Remarks

1. The public may also view / download this consultation document on FSTB's website <http://www.fstb.gov.hk/fsb>.
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:

By mail to: Division 1, Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Tower I, Admiralty Centre
18, Harcourt Road, Hong Kong

By fax to: (852) 2294 0460

By email to: iec_consultation@fstb.gov.hk (for IEC)
fdrc_consultation@fstb.gov.hk (for FDRC)

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 (email).
4. 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.
5. 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).