

CONSULTATION PAPER

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Financial Industry Disputes Resolution Centre (FIDReC)

MAS

Monetary Authority of Singapore

PREFACE

In May 2004, MAS formed an Integration Steering Committee¹ (the Committee) to facilitate the creation of a one-stop centre for the resolution of all retail disputes with financial institutions. This paper describes the Committee's proposals for the setup of such a company to be known as the Financial Industry Disputes Resolution Centre (FIDReC). FIDReC will be governed by an independent Board of Directors and funded through contributions from the financial sector.

2 MAS has been providing the Committee with Secretariat support. On behalf of the Committee, MAS now invites interested parties to forward their views and comments on the issues outlined in this consultation paper. Written comments should be submitted to:

Market Conduct Policy Division
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117
Email: fidrec@mas.gov.sg
Fax: (65)6225-9766

MAS would like to request all comments and feedback by 26 November 2004.

3 Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

¹ Members of the Integration Steering Committee are:

- Mr Goh Joon Seng (Chairman);
- Mr Yeo Guat Kwang;
- Mr Gerard Ee;
- Professor Mak Yuen Teen;
- Mr Terence Tan;
- Mr Raymond Kwok;
- Mrs Elsie Foh;
- Mr Daniel Chan;
- Mrs Hauw Soo Hoon.

BACKGROUND

4 An integral part of ensuring consumers obtain a fair deal involves making available mechanisms that provide them with an independent and affordable avenue for resolving disputes with their financial institutions.

5 Thus far, dispute resolution mechanisms are in place for the banking and insurance sectors, namely Consumer Mediation Unit (CMU) and Insurance Disputes Resolution Organisation (IDRO), respectively. Last year a working group of capital markets representatives decided that it would be more cost-effective to leverage off the resources of existing schemes rather than establish a new scheme for the capital markets, given the relatively small number of complaints in the capital markets sector.

6 In May 2004 MAS formed an Integration Steering Committee (ISC) to facilitate the move towards an integrated dispute resolution scheme for the financial sector. The Committee has decided, in the spirit of starting things afresh, that the scheme will have a new corporate and brand identity. It will be set up as an independent company (limited by guarantee), under the name of FIDReC. To minimize disruption to the operations of existing schemes, the Committee has agreed to adopt a phased approach towards integration with physical relocation of CMU and IDRO, and full integration of the back-office occurring in the final phase.

7 In deciding on the eventual setup of FIDReC, the Committee has been guided by the underlying principles shown on the next page.

UNDERLYING PRINCIPLES

Accessibility

The centre should make itself readily available to consumers by being affordable and easy to use, and by promoting awareness of its availability.

Independence

The governance, policies & procedures of the centre should be independent from influence by the centre's members.

Fairness

The centre should produce decisions that are fair, and seen to be fair, through decision-making that is based on the information presented, using clearly articulated criteria, without bias to consumers or the centre's members.

Accountability

The centre should account for its operations by making public statistics and analyses of complaints on a regular basis, and by providing clear mechanisms for stakeholder involvement.

Efficiency

The centre should operate quick and cost-effective procedures and should be prudently run so it can be sustained by the industry in the long run.

Effectiveness

The centre should have sufficient expertise to resolve complaints satisfactorily, and should have in place appropriate remedies and sanctions for enforcing decisions. It should conduct periodic independent reviews to assess its performance.

Completeness

The centre should adequately address the majority of retail consumer complaints in the financial sector.

GOVERNANCE STRUCTURE

8 FIDReC will be governed by a Board of Directors (the Board) responsible for overseeing its operations, and preserving the independence of its dispute resolution procedures. While all major stakeholders should be represented on the Board, the need for representation must be balanced by the importance of ensuring the Board is able to perform its functions efficiently. The Committee proposes that membership of the Board comprises of no more than seven Directors as shown in the table below. All Directors are expected to act in the best interest of FIDReC.

TABLE 2 – COMPOSITION OF DIRECTORS

Independent Chairman	1
Consumer Directors	3
Industry Director (Banks and Finance Companies)	1
Industry Director (Life & General insurers)	1
Industry Director (CMS Licensees & Financial Advisers)	1
Total number of Directors	7

9 Directors will be selected based on their knowledge of the financial sector as well as expertise in consumer affairs. The independent Chairman and consumer directors should not be employed in a management or executive capacity by a financial institution and should be free from interest in any business or other relationship that could materially interfere with his ability to act in the best interests of the company.

10 Other than the duties prescribed in law, duties of directors of FIDReC will include the following:

- Appointing persons to act as adjudicators;
- Conducting the affairs and business of the FIDReC for the year concerned in accordance with the financial budget adopted by the Board;

- Making bye-laws relating to the rights and privileges of members² of FIDReC, conditions of membership to FIDReC, the terms on which members of FIDReC may resign or have their membership terminated, entrance fees and annual subscriptions, and the conduct of members of FIDReC in relation to one another, and to the Company's employees;
- Entering into co-operative arrangements with the MAS including arrangements for the sharing of information.

11 Further details regarding FIDReC's governance structure are located in the draft Memorandum and Articles of Association shown in **Annex 1**.

Q1. Do you agree with the proposed governance structure, including the number of Directors, appointment criteria and duties outlined?

² For the avoidance of doubt, the word 'member' does not carry the definition it has under the provisions of the Companies Act (Cap. 50). The word is intended to refer to financial institutions who are mandated to subscribe to and do in fact subscribe to be subjected to the dispute resolution process of FIDReC. See further Paragraph 12 below.

MEMBERSHIP

12 As stated in the underlying principles, FIDReC aims to provide coverage for most retail consumer complaints in the financial sector. MAS will require all regulated financial institutions that have dealings with retail consumers to subscribe as members of FIDReC. Mandatory membership will ensure that FIDReC's funding is shared by all relevant institutions, and sustainable on a long-term basis. Financial institutions that are not permitted to conduct retail business, or have no reasonable likelihood of conducting such business, will not be expected to subscribe to FIDReC.

Q2. Do you agree with the proposal for MAS to make membership mandatory for all financial institutions with retail dealings? If not, how could MAS ensure completeness of coverage, and optimise the sharing of funding for institutions participating in FIDReC?

Q3. Do you have any suggestions for what should constitute "retail business" for the different industry sectors involved in FIDReC?

13 Subscription agreement – All members of FIDReC will be required to enter into a subscription agreement by which they agree:

- To be bound by the Terms of Reference of FIDReC;
- Not to take legal action against FIDReC, its officers and employees, or any member of the Board, for any conduct done in order to comply with any requirement of MAS or other Government agency or to meet any obligations under any written law; and
- To honour the payment of all subscriptions, levies and fees to FIDReC.

14 In addition, all members will be expected to further the objects of FIDReC, and should observe all its bye-laws. Grounds for expulsion include the following:

- Derogatory or defamatory conduct;
- Failure to comply with the Terms of Reference;

- Failure to make full payment of any subscriptions, levies or fees within a specified period of time.

15 No action to remove a member will be taken without the prior consent of MAS.

Q4. Do you agree with the proposals regarding membership, including the criteria for expulsion of a member from FIDReC?

TERMS OF REFERENCE

16 Jurisdiction – FIDReC’s jurisdiction will extend over all disputes brought by individuals and sole proprietors against financial institutions who are members of FIDReC except for:

- Commercial decisions including pricing policies and other policies such as interest rates and fees;
- Cases under investigation by any law enforcement agency;
- Cases which have been subjected to a court hearing, for which a judgment or order has been passed.

17 Dispute resolution process - There is to be a two-stage process to the settlement of disputes. At the first stage, a case manager will mediate a settlement between the consumer and the financial institution. Disputes that cannot be resolved at this stage can be escalated to the second stage, where an adjudicator or panel of adjudicators with relevant expertise will be called in to decide in favour of either the consumer or the financial institution.

18 Referral to financial institutions - All financial institutions will be given an opportunity to resolve a dispute before a case manager proceeds with investigation. Consumers who approach FIDReC without having first attempted to resolve their problem with the financial institution involved will be referred to the financial institution.

19 Case Managers – Case managers are employees of FIDReC assigned to assist in the mediation of disputes. Case managers have no jurisdiction to make monetary awards, and can only seek to reach a settlement that parties to a dispute are agreeable with.

20 Adjudicators – Adjudicators are experts appointed by the Board and called in to decide in favour of either the consumer or financial institution in situations where a case manager is unable to resolve a dispute through mediation. Adjudicators may award compensation up to the monetary limits specified below.

21 Limits on Monetary Awards – The maximum monetary awards for compensation are:

- S\$100,000 per claim for all disputes involving claims between insureds and insurance companies; and
- S\$50,000 per claim for all other disputes.

These limits have been set bearing in mind that FIDReC has been designed to assist retail consumers in the resolution of their financial disputes.

22 Fee to consumers – No fee will be charged to the consumer if the dispute is resolved at the case manager level. A S\$50 fee will be charged to the consumer if the dispute is escalated to the adjudication stage. This S\$50 fee is to deter frivolous complaints, and has been kept low in keeping with the principle that FIDReC is affordable to consumers.

23 Further details regarding FIDReC's jurisdiction and dispute resolution procedures are located in the Terms of Reference shown at **Annex 2**.

Q5. Do you agree with the proposed Terms of Reference, including the scope of FIDReC's jurisdiction, dispute resolution procedures, limits on monetary awards and fee to consumers?

FUNDING ARRANGEMENTS

24 FIDReC will 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. All MAS-regulated financial institutions with retail dealings will be required to participate in FIDReC, and contribute towards its funding. The cost of funding will be borne by financial institutions in a fair and equitable manner, taking into account the level of usage of FIDReC's resources.

25 MAS will provide some assistance through a grant from the Financial Sector Development Fund (FSDF). The grant will only go towards the financing of start-up costs, in keeping with the principles for disbursement of FSDF funds.

26 The proposed approach towards funding is governed by the following underlying principles:

- To be as fair as possible between financial institutions;
- To be efficient and administratively simple to operate and collect;
- To provide FIDReC and financial institutions with an appropriate degree of certainty and flexibility for budget planning and financial management purposes; and
- To provide firms an incentive to resolve complaints, where possible, at an early stage, without deterring them from using FIDReC, where appropriate.

27 The Committee proposes that FIDReC's fixed and variable costs be recovered through a combination of a general levy and case fees. For the purposes of the levy, financial institutions in different sectors will be grouped into blocks and an agreed portion of the budget will be allocated between blocks on the basis of the amount of resources required to deal with complaints generated by that block. Case fees will be tiered to take into account the level of complexity of a case, and to provide incentives for early resolution of a dispute.

28 Details of the funding arrangements are set out in **Annex 3**. The Committee seek views on the general structure of the proposed funding arrangements. Note that

this paper does not attempt to identify the exact share of FIDReC's costs that each individual participating institution will be expected to bear as these will depend on a number of variables. However, examples of how the funding arrangements will affect financial institutions in the different blocks have been provided for illustrative purposes.

Q6. Do you agree with the proposed funding arrangements, including:

a. The proposal to broadly recover fixed costs through a levy, and variable costs through case fees?

b. The proposal to distribute fixed costs on the basis of the amount of resources required to deal with the complaints generated by that block, proxied by the block's share of total complaints?

c. The proposal to charge a fee for investigated complaints, and the suggested fee?

ADMINISTRATIVE PROCEDURES

29 Information – Financial institutions will be required to furnish FIDReC with information necessary to enable an assessment of its share of total contribution according to the funding bases selected for their block.

30 Method of collection

Levies - Financial institutions will be required to pay levies to FIDReC either on an annual basis at the start of each financial year, or on a quarterly basis (in advance) by direct debit agreement. The option of paying on a quarterly basis will only be made available to institutions whose contributions exceed S\$2,000. This is to minimise the administrative costs of collecting contributions on a quarterly basis for sums of less than S\$2,000.

Case fees - Financial institutions will be charged case fees in respect of investigated and adjudicated disputes. Institutions will not be charged for inquiries or complaints that

fall outside the jurisdiction of FIDReC. Case fees will be charged on a pay-as-you-use basis.

31 Joiners & Leavers - For institutions that become subject to FIDReC partway through a financial year, the levy will be calculated on a pro rata basis.

32 No refunds will be given in respect of the levy to financial institutions which cease to be subject to FIDReC partway through the year. However, exceptions may be made if reasonable notification has been given prior to the year in question. Leavers will also remain liable for any case fees incurred on complaints brought to FIDReC prior to the firm ceasing to become a member.

33 Failure to make payment - Financial institutions which fail to make payment of the levy or case fee in full within 30 days of the due date must pay interest for each day the unpaid part remains outstanding.

34 Annual review - A funding committee will be appointed by the Board annually to agree on the following:

- The budget for FIDReC for the year (including any audited variances between budgeted and actual income or expenditure for the previous year);
- The allocation of the general levy between blocks in proportion to the workload which each block is expected to generate;
- The distribution of the levy within each block according to the selected funding bases.

Q7. Do you agree with the administrative procedures for funding FIDReC? Do you foresee any practical difficulties, e.g. in furnishing FIDReC with information required to assess an institution's contribution?

DOCUMENTATION

Q8. Do you have any other comments on the Memorandum of Association, Articles of Association, Terms of Reference or Funding Arrangements shown in Annexes 1 - 3?



Monetary Authority of Singapore