



Increasing Access to Consumer Financial Dispute Resolution in Hong Kong

Dr. Shahla ALI
Department of Law
Faculty of Law

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Summary of the Impact

Dr. Ali's research has provided valuable support to policy recommendations under the Consultation Paper of Proposals to Enhance the Financial Dispute Resolution Scheme (October 2016) of the Hong Kong Financial Dispute Resolution Centre ("FDRC"). The Proposal has led to reform measures in the subsequent Consultation Conclusions in August 2017.

- Dr. Shahla Ali's research supported the enhancement of access to justice for aggrieved financial investors in Hong Kong by informing the development of revised rules for the Hong Kong Financial Dispute Resolution Centre ("FDRC").
- In August 2017, the FDRC adopted new rules enhancing services through raising the maximum claimable amount for aggrieved consumers to HK\$1,000,000, extending the limitation period for lodging claims, as well as broadening the scope of FDRC. On a public policy level, the enhancement in the accessibility and flexibility of the FDRC contributes to investor protection, thereby reinforcing Hong Kong's status as an international financial centre. Most of the amended rules have taken effect since 1 January 2018.
- Dr. Ali has been an appointed member of the FDRC since 2014.

Underpinning Research

- In the wake of the global financial crisis of 2008 when major financial centres began a process of reform of financial dispute resolution centres, Dr. Ali suggested a set of relevant principles for programmatic reform by drawing on a set of global soft law models.
- The principles include:-
 - Independence;
 - Impartiality;
 - Accessibility;
 - Efficiency;
 - Fairness; and
 - Equity.

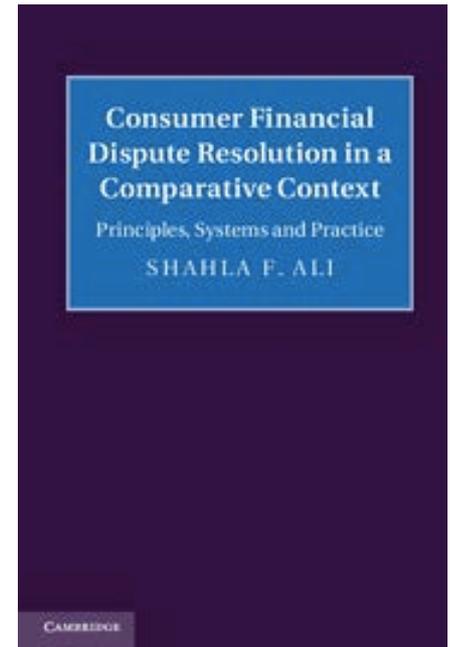


Underpinning Research

- These principles informed policy recommendations including:-
 - expanding access to the services of financial dispute resolution centres through raising the maximum claimable amount beyond £50,000; and
 - expanding the range of eligible complainants beyond individuals to enterprises.
 - extending the limitations period beyond 12 months.
- Dr. Ali published the book *Consumer Financial Dispute Resolution in a Comparative Context: Principles, Systems and Practice* in 2013 with Cambridge University Press based on the research.

Underpinning Research

- The country case studies involve seven jurisdictions, including:
- Ombuds Models:
 - the UK;
 - Australia;
 - Japan
- Arbitration Models
 - the United States;
 - Singapore;
 - Hong Kong
 - New Models: mainland China
- The book suggested that enhancing accessibility through expanding the range of eligible complainants and reforming maximum claimable amounts is a key driver for improving the efficacy of such services.



Underpinning Research

The research was evaluated favourably.

- As noted by Professor Stephanie Smith of Stanford Law School, the underpinning research “is of great value to anyone analyzing or designing dispute resolution systems for consumer disputes” (Reviews, CUP).
- The underpinning research went through a rigorous peer review process by Cambridge University Press, and was also assessed by the Hong Kong research grants council public policy research grants reviewer as follows:
 - Review: “One of the best I have reviewed in recent years in terms of the importance of the topic, the methodology, [and] the ...impact”
 - Ratings: Scholarly merit (Excellent); Research design (Excellent)

Underpinning Research

The research was evaluated favourably.

- Research grants council: “The policy component of PPT is met..., given the vital relevance of financial dispute resolution to HK... Very strong and impressive work, all the more so for a principal researcher so early in her career.”
 - Ratings: significance of publication (high); potential value of results (excellent); relevance to HK (excellent); publicity value (yes)

Engagement



FDRC is a company limited by guarantee

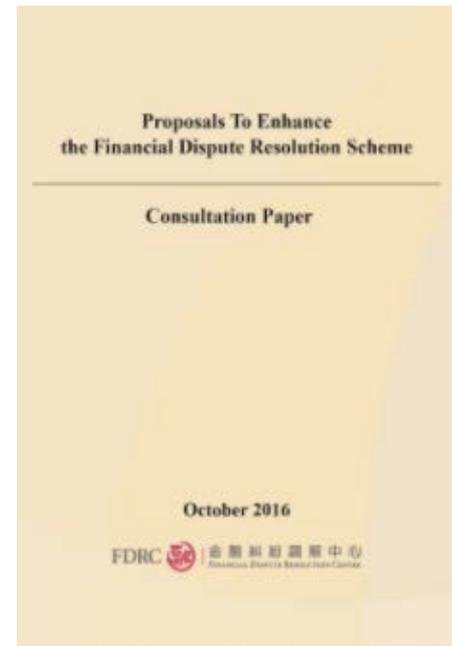
- Dr. Ali's research was recognised by the FDRC and she has been appointed as a member of the Hong Kong Financial Dispute Resolution Centre Appointments Committee since 2014 shortly after the publication of her book.
- Dr. Ali contributed to ongoing discussions regarding the enhancement of the Centre and its services.

Impacts achieved

- Dr. Ali contributed to the discussion in two ways:-
- (1) Dr. Ali articulated her view that the FDRC could be improved through expanded access by raising the maximum claimable amount up from HK500,000 and extending the limitation period from 12 months; and
- (2) Her book, which is part of the FDRC library, makes explicit reference to expanding eligible complainants beyond individuals to limited partnerships or companies

Impacts achieved

- The FDRC’s “Proposal to Enhance the Financial Dispute Resolution Scheme” (October 2016) was based *materially* on the policy recommendations formulated in the underpinning research.
- In August 2017, the FDRC published its consultation conclusions (“Consultation Conclusions”), adopting numerous reform measures.



Impacts achieved

In its most recent Consultation Conclusion entitled “Proposal to Enhance the Financial Dispute Resolution Scheme” (August 2017), the Hong Kong Financial Dispute Resolution Centre adopts the following reform measures to enhance the service features of the FDRS:

- The maximum claimable amount under the FDRS will be increased from HK\$500,000 to HK\$1,000,000 (A single maximum claimable amount will continue to be applicable for the banking and the securities industries).
- The limitation period for lodging claims will be extended from 12 months to 24 months from the date of purchase of financial instrument or the date of first knowledge of loss, whichever is the later.

Impacts achieved

Reform measures to enhance the service features of the FDRS (continued):

- The definition of Small Enterprise (“SE”) will be refined as:
- “An SE, which is a limited company or a partnership, has to meet all of the following requirements as per its latest financial statement. If the SE is a subsidiary or a holding company of a group, the group’s consolidated figures will be used instead.
 - SE’s or its group’s annual turnover is not more than HK\$50 million;
 - SE’s or its group’s gross asset is not more than HK\$50 million; and
 - SE’s or its group’s employee number in Hong Kong is not more than 50.”

Impacts achieved

Reform measures to enhance the service features of the FDRS (continued):

- Small financial institutions (“FIs”) qualifying as SEs may file claim as eligible claimants (“ECs”), but the mediation/ arbitration fee will be shared equally by the SE and the other FI.
- The FDRC could deal with cases which are under current court proceedings without the claimant withdrawing the case from the court.
- The maximum claimable amount for PD31 cases is HK\$1,000,000.
- Parties to the Practice Direction 31 (“PD 31”) cases at the FDRC can be legally represented.

Impacts achieved

It also adopts the following measures to broaden the scope of FDRS:

- The FDRC may handle a financial dispute with a claimable amount in and/or exceeding the amended limitation period for lodging claims, subject to prior mutual agreement of the parties involved.
- When there is a financial dispute between an EC and an FI, the FI may lodge the financial dispute to the FDRC, subject to the consent of the EC.
- When there is a claim by an EC against an FI, the FI will have a right to lodge a counter-claim against the EC to the FDRC, subject to the consent of the EC.

Impacts achieved

It also adopts the following measures to broaden the scope of FDRS (continued):

- In addition to the standard FDRS rules and procedures (Mediation First, Arbitration Next), the FDRC will offer two more options below for cases exceeding the amended intake criteria and subject to mutual agreement:
 - Modified FDRS rules and procedures (Mediation only); and
 - Modified FDRS rules and procedures (Arbitration only).
- Cases falling within the amended intake criteria will follow “mediation first, arbitration next”.

Impacts achieved

- The amended terms of reference for the FDRS have taken effect since 1 January 2018, with the exception of the reforms allowing ECs to bring claims, which will take effect on 1 July 2018.
- Overall, the new rules are clearly intended to broaden the FDRC's dispute resolution offering, in turn benefiting a wider number of claimants especially in the context of banking disputes.
- This demonstrates that there is an appetite to make mediation more accessible, and the FDRC aims to establish itself as a specialized alternative dispute resolution destination for a wide range of financial disputes between Financial Institutions and their customers.

Impacts achieved

- Practically speaking, the implementation of new rules means that the FDRC's jurisdiction is likely to be greatly increased, bringing the Hong Kong scheme more in line with financial dispute resolution schemes in other jurisdictions and permitting a greater number of monetary disputes to be handled by the FDRC rather than the courts.
- On a public policy level, the enhancement in the accessibility and flexibility of the FDRC contributes to investor protection, thereby reinforcing Hong Kong's status as an international financial centre.

Impacts achieved

- Overall, the provision of comparative evidence by Dr. Ali to the FDRC in connection with the reform of the eligibility criteria for accessing the services of the FDRC was underpinned by her research.
- The research impacted beyond academia: policy-making by the FDRC; and the exploration of a new policy framework to enhance access to consumer financial dispute resolution services in Hong Kong.

Impacts achieved

- Dr. Ali's contribution in the following areas of the Proposal has been specifically recognised:-
 - Increasing award ceiling;
 - Extending limitation period; and
 - Extending to SMEs with relationship to financial institutions.