

A Study of the Financial Dispute Resolution Mechanism in Hong Kong and the Implications for the Mainland

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Abstract: The establishment of the Hong Kong Financial Dispute Resolution Centre (FDRC) has both enhanced the recognition of Hong Kong financial consumers and increased the dynamism of the Hong Kong financial market. As a new model of financial dispute coordination, this article takes this mediation institution as an example and introduces the operation process of the FDRC in detail, and accordingly briefly introduces the current development of financial dispute resolution in mainland China. On the basis of analyzing the shortcomings revealed in the operation of the financial mediation centre in China's mainland, which are currently in their infancy, this article draws on the relevant practices in Hong Kong, takes the essence of them and combines them with the actual situation in the region, in the hope that it will provide reference for the construction of a diversified and facilitated financial dispute resolution mode in the mainland.

Keywords: Hong Kong, Financial disputes, Operational procedures, Mediation Centre, ADR mechanism, Lessons learned.

1. Introduction

In recent years, China's economic take-off has led to the rapid development of the financial industry, but at the same time, the number of financial entanglements between financial consumers and financial institutions and companies arising from the purchase of financial products has also been on the rise, and the accumulation of a large number of unresolved problems in a timely manner has also stimulated some public discontent with financial institutions and related resolution mechanisms. In response to this, the 20th Party Congress report proposed, "strengthening and improving modern financial supervision and strengthening the financial stability protection system". For strengthening financial regulation, a financial dispute resolution mechanism can restrain financial behaviour, stimulate financial transactions, promote financial growth and maintain financial order^[1]. The Hong Kong Financial Dispute Resolution Centre (FDRC) is Asia's leading out-of-court provider of consumer financial dispute resolution. It has a distinctive operation and in the 2021 satisfaction survey, "92%" of parties said they would recommend the services of FDRC to others in similar disputes. In developing the ADR (Alternative Dispute Resolution) mechanism for financial disputes in mainland China, Hong Kong's practice should be tailored. For China's mainland region, which is continuously promoting the ADR mechanism for financial disputes, the construction of the Hong Kong Financial Dispute Resolution Centre has certain significance and inspiration^[2].

2. Background to the Establishment of the Financial Dispute Resolution Centre

As a world-renowned financial centre, Hong Kong has seen an increasing number of financial disputes in the aftermath of the 2008 sub-prime mortgage crisis, and the emergence and development of new financial products and services has led to a trend of more complex and diverse disputes. In the process of dispute resolution, apart from the high cost of

litigation, Hong Kong's financial dispute regulatory authorities are also faced with inconsistent standards of compensation, confusing processes, doubtful validity and lack of uniform management, making it difficult to truly resolve conflicts between parties and disputes continue.

At that time, the relevant dispute resolution mechanism in Hong Kong was no longer able to cope with the needs of the emerging financial industry development trend, and the community's willingness to strengthen financial consumer protection and financial dispute handling mechanism reform was prominent. Against this background, the Hong Kong Government responded to the strong calls from the community by introducing a new financial dispute mediation scheme^[3] and issued a relevant consultation paper in 2010, advocating the creation of a unified dispute resolution mechanism. In 2012, the Financial Dispute Resolution Centre (FDRC) was established, and its front-loaded mediation process, which operates independently and efficiently, has expanded new dispute resolution options for Hong Kong's financial market and to a certain extent relieved the pressure of ponderous financial disputes.

3. Positioning and Principles of the Hong Kong Financial Dispute Resolution Centre

3.1. Positioning of roles

The FDRC was originally set up as a limited company, a non-profit, non-governmental organization, overseen and operated by a Board of Directors. This form of incorporation is straightforward in terms of registration under the existing Companies Ordinance, and in terms of operation, it allows for the unique governance structure of a company to balance the interests of all parties and, more importantly, to maintain the Centre's independence from the government, financial regulators and other relevant industry bodies, and to apply its own financial dispute resolution scheme in an impartial and independent manner, primarily through the efficient and affordable alternative method of "mediation followed by arbitration" allows for the timely resolution of monetary

disputes between investors and financial institutions [4].

3.2. Key principles

The Financial Mediation Centre is guided by five main principles, including

1. The principle of independence, i.e. the establishment and management of the Mediation Centre and the coordination scheme for financial disputes are independent of traditional government departments and free from outside interference in order to provide an independent dispute resolution service to financial institutions and their clients.

2. The principle of parity: this means that financial institutions and their clients are treated fairly in the proceedings of the conciliation body.

3. The principle of expediency: this means developing and providing simple, clear and easily understood dispute resolution procedures and services that are understandable to both parties.

4. The principle of effectiveness: this ensures that financial disputes are resolved as quickly and effectively as possible, and the "documents-only" approach to arbitration ensures that the process is effective.

5. Principle of openness: i.e. maximum openness and transparency in the handling of disputes and observance of confidentiality and data protection[5].

4. Dispute Resolution Mechanisms of the Financial Dispute Resolution Centre

4.1. Jurisdiction of the case

Under the revised licensing conditions and related guidelines of the Hong Kong Monetary Authority and the SFC, financial institutions approved or regulated by them are required to join the Mediation Centre's mediation scheme and become its members subject to the Mediation Centre's mediation arrangements. This will also facilitate the functioning of the FDRC, effectively expand the channels for financial dispute resolution and enhance customers' trust in the financial market.

The Mediation Centre's remit includes

1. involves an eligible claimant and a financial institution that is a member of the Scheme, where the eligible claimant is an individual, a sole proprietor or a small business (meaning a limited company or a partnership, where the annual turnover of the small business or its group does not exceed HK\$50 million; and its total assets do not exceed HK\$50 million; and the number of its employees in Hong Kong does not exceed 50).

2. Pecuniary in nature, i.e. involving monetary issues; before the establishment of the Financial Mediation Centre, there were already various financial dispute resolution channels in Hong Kong. In order to avoid conflict of functions and to highlight and bring into play the functions of the Centre itself in resolving pecuniary disputes between financial institutions and financial consumers, the functions of the Centre are to handle disputes relating to pecuniary compensation, but not those relating to interest rates, bribes and fees.

3. must be caused by any act or omission in the provision of financial services to the eligible claimant under a contract entered into or made between the eligible claimant and the financial institution in Hong Kong or when the financial institution is acting as an agent, which cannot be resolved

internally by the financial institution.

In addition, in accordance with the newly revised Terms of Reference in 2018, the Mediation Centre can handle claims from a maximum of HK\$500,000 to a maximum of HK\$1 million (for claims with first knowledge of loss on or after 1 January 2018, except for the application of the small business provisions after 1 July 2018). With the consent of both parties, the FDRC may handle some cases exceeding HK\$1 million or the 24-month limitation period for claims. The limitation on the maximum amount of claims also enhances the success rate of the FDRC in resolving conflicts through mediation.

4.2. Financial Dispute Resolution Centre (FDRC) first handling procedures

The Hong Kong Financial Mediation Centre (HKFMC) was established in the aftermath of the 2008 financial crisis to address the growing number of financial disputes between financial institutions and financial consumers in the financial market, which are large in number and small in value, with a disparity in strength between the parties and similar cases. The Mediation Centre is therefore highly efficient in handling cases.

The Mediation Centre's approach to dispute resolution is "mediation first, then arbitration", with mediation being the main tool. Mediation is voluntary, guided by a neutral mediator and conducted in private. Once arbitration proceedings have been initiated, the result of the arbitration is final and means that the case is closed and there is no need to litigate the case or the validity of the arbitration. In addition to this model, if a claimant applies for mediation directly after a dispute has arisen without having negotiated with the financial institution, the Mediation Centre will normally require him/her to contact the financial institution to negotiate a settlement before the application can be accepted, and a fee of HK\$100 will be charged for submitting the application to reduce frivolous applications and optimize mediation resources[6]. In addition, the Mediation Centre provides an advisory service before the application is processed. In addition to explaining the scope of the Mediation Scheme to the enquirer, the Mediation Scheme Officer will assist the enquirer by providing information on ways to further address the enquiry, which is completely free of charge. (See Figure 1, Dispute Resolution Process) In 2021, the Mediation Centre provided 288 instances of assistance to enquirers, offering them good alternatives to dispute resolution. It is evident that the Mediation Centre has taken efficiency into account in its procedural arrangements by providing a variety of ADR procedures and diverse remedies to reduce friction between the parties and facilitate a satisfactory outcome for both parties. In the 2021 satisfaction survey, "89%" of the parties were satisfied with the mechanism and "92%" of the parties said they would recommend the Centre's services to others in similar disputes. (See Figure 2, Figure 3)

Another advantage of the FDRC is that it balances the asymmetrical relationship between financial consumers and financial institutions with asymmetrical rules, thus protecting the weaker party and effectively resolving disputes[7]. Specifically, in terms of procedural arrangements, the subject entitled to bring a claim must be a financial consumer, and financial institutions can only compulsorily participate in mediation and arbitration and are bound by the final outcome; in terms of sharing of costs, financial institutions are required to pay much higher fees than financial consumers, as shown in Table 1 for mediation (4 hours), for example.

Table 1. Fee rates for different claim amounts based on mediation (4 hours) Mediation (4 hours) as an example of a fee for different claim amounts

Amount claimed	Applicant/Claimant	Financial institutions
Less than \$200,000	1000	50,000
200,000 to \$1,000,000	2000	10,000

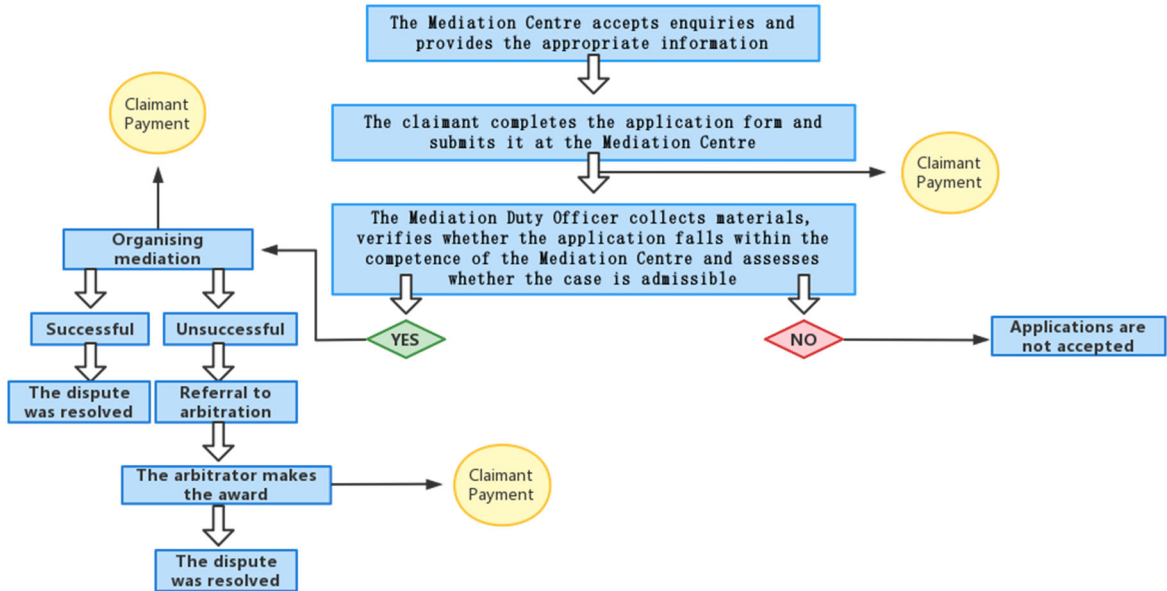


Figure 1. Hong Kong Financial Mediation Centre Dispute Resolution Operational Procedures

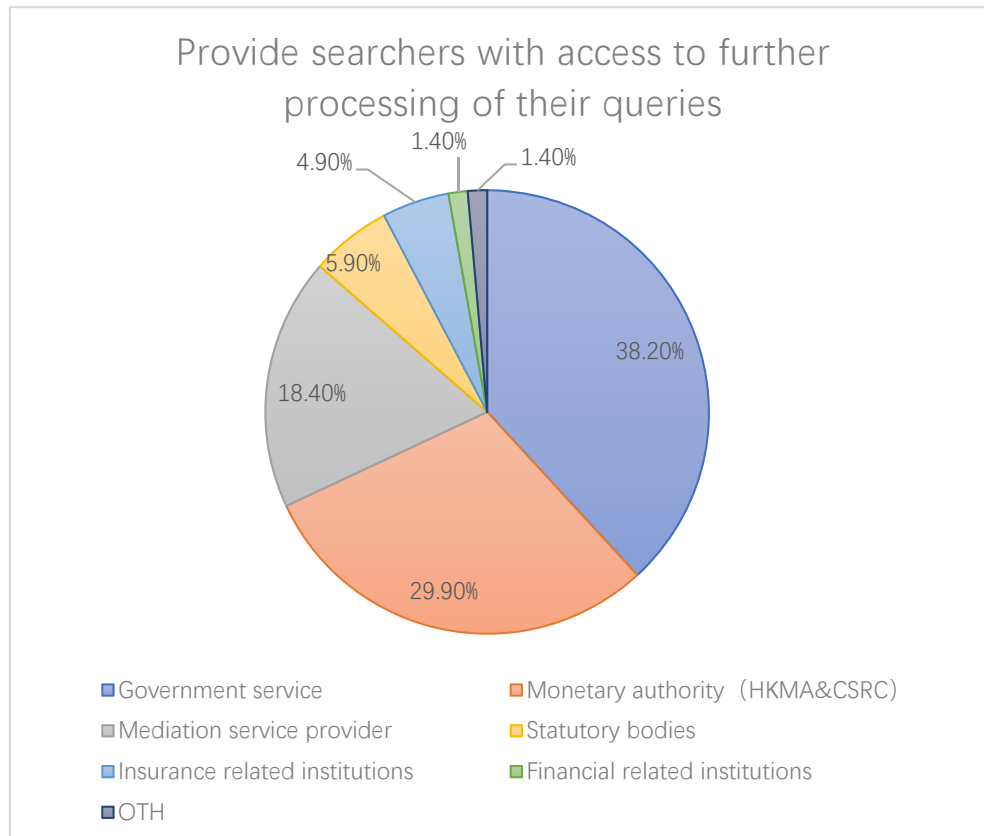


Figure 2. Provide searchers with access to further processing of their queries

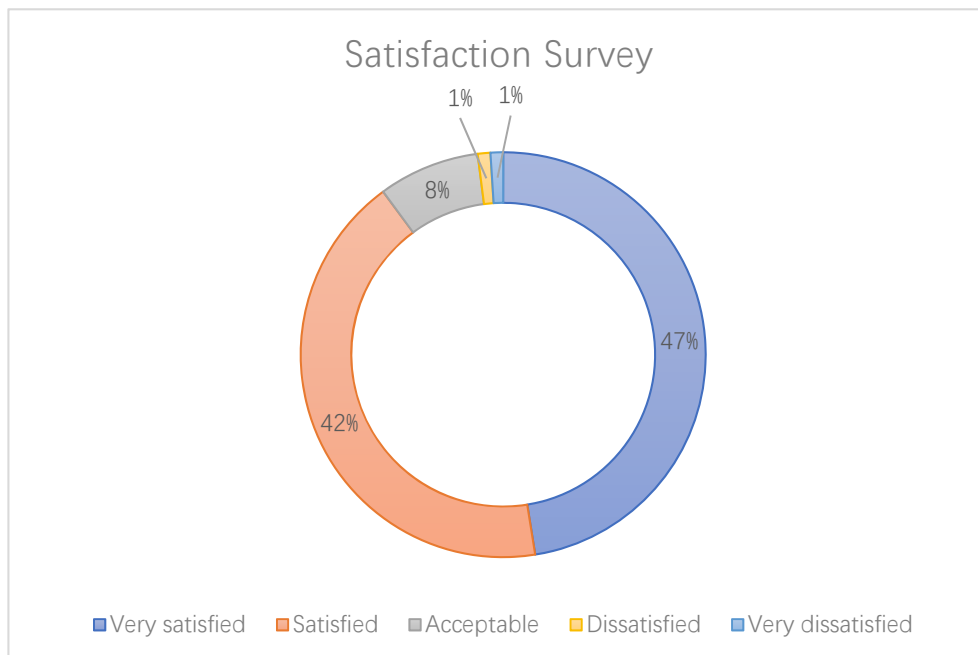


Figure 3. Satisfaction Survey for the Hong Kong Financial Mediation Centre (2021)

5. Current Developments in Financial Dispute Resolution Mechanisms in Mainland China

5.1. Current status of litigation of financial disputes in the Mainland

With the booming financial market in the Mainland, the proliferation and variety of financial products, coupled with the increased awareness of financial investment among the public, the volume of financial product transactions has increased significantly, and with it, the number of financial disputes with individual investors and small enterprises as one of the main parties has climbed; in Shanghai, for example, the total amount of financial and commercial cases of first instance received by the Shanghai courts in 2019 has exceeded the 200 billion mark; in 2021, the Shanghai courts received a total of 197,484 first instance financial and commercial cases were received by Shanghai courts in 2021, up 10.16% year-on-year (Table 2 Chart of first instance financial and commercial cases received by Shanghai courts over the past five years); 3,348 second instance financial and commercial cases were received by the city's courts in 2021, the highest number of cases received in the past five years^[8]. The increase in the number of financial dispute cases and the difficulty of new types of cases both put enormous pressure on the trial activities of the courts and adjudicators. Even in Shanghai, which is the financial centre of the mainland, the court system has less than 300 financial and commercial adjudicators, and in the face of nearly 200,000 financial dispute cases throughout the year, it is inevitable that other adjudicators with no educational background or trial experience in financial and commercial matters will be In the face of nearly 200,000 financial disputes throughout the year, it is inevitable that such cases will be tried by other

adjudicators without financial and commercial education or experience, resulting in lower quality decisions and repeated litigation.

In addition, financial litigation disputes, like other litigation, have long trial periods, strict procedural restrictions on all aspects and high time costs. For financial consumers, they are in a weak position to prove their case, which is not conducive to a fair decision; for financial institutions on the other hand, a public trial is also not conducive to the protection of their trade secrets.

5.2. Current status of ADR in financial disputes in the Mainland

In Shanghai, for example, the number of cases received by the Shanghai Financial Arbitration Court reached 2,029 in 2021, an increase of 41.5% year-on-year; the Shanghai Financial Mediation Centre successfully mediated 3,537 cases, an increase of 42.56% year-on-year. Although the number of cases settled by ADR has gradually increased in recent years, the impact is still far from that of financial litigation.

In addition, the ADR system in the Mainland is not perfect and has little influence. On the one hand, various settlement methods are more fragmented and difficult to interconnect, making it difficult for consumers to find the best solution for their situation; on the other hand, the lack of mandatory mediation agreements in the Mainland, which often require judicial confirmation, coupled with the fact that financial mediation centre is currently operating one after another in different places, with different specific procedures and methods, which have a strong administrative overtone, has a certain impact on the convenience of financial consumers' rights protection and the This has had an impact on the ease of access for financial consumers and the efficient resolution of disputes [9].

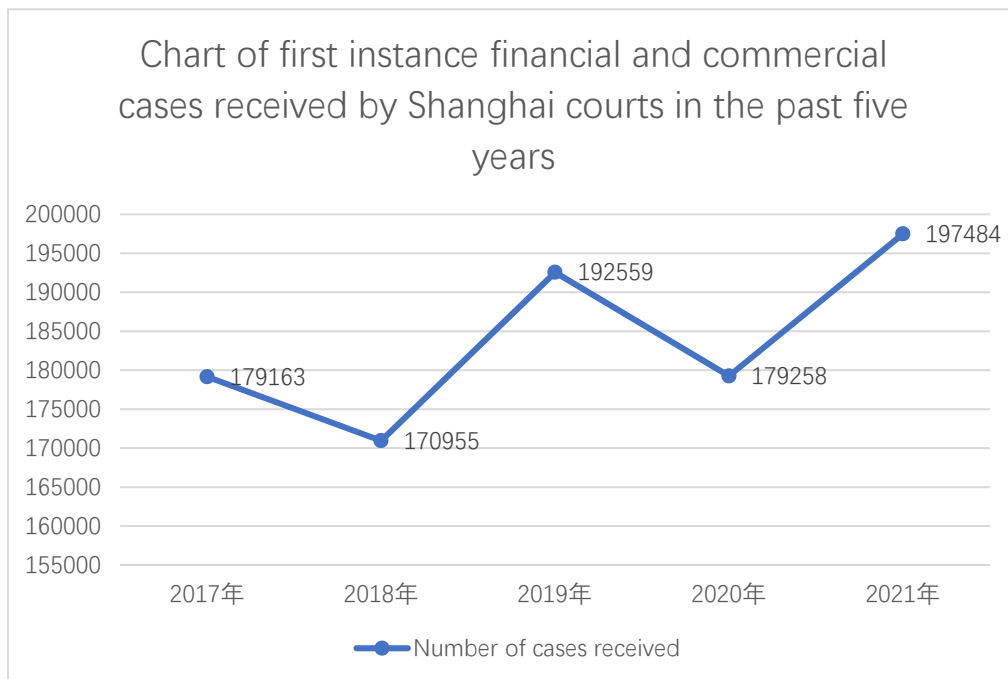


Table 2. Chart of first instance financial and commercial cases received by Shanghai courts over the past five years

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6. Implications of the Setting up of the Hong Kong Financial Mediation Centre for the Mainland

6.1. Accelerating the application and improvement of ADR resolution mechanisms

The emphasis on alternative mechanisms for resolving financial disputes is also a reflection of the ancient Chinese moral culture of peace and harmony in law enforcement and governance, which is conducive to the reconciliation of social relations and the maintenance of long-term interests. More importantly, the court system is currently under great pressure in financial and commercial matters, and the efficiency of trials is inevitably declining. ADR is more in line with the booming financial market and the actual situation, and can not only provide a platform for both parties to fully express their claims, but also meet the requirements of both parties for cost-effectiveness and saving public resources through its convenience and efficiency.

To balance the asymmetrical position between financial consumers and financial institutions, the cost burden should be shared by both parties, and the proportion of burden should be much higher for institutions than for financial consumers; in terms of procedures, the voluntary principle of mediation should be broken, and the focus should be on protecting the weaker party, with the right to initiate and withdraw from mediation belonging to financial consumers only, while institutions should be compelled to participate in mediation, so as to reverse the asymmetrical position of both parties and achieve substantive equality. This will reverse the asymmetry between the two parties and achieve substantive equality.

Integrating ADR resources and bridging multiple dispute resolution methods. On the one hand, it is necessary to unify the operating rules and processes of mediation centres around the China.[10], on the basis of other experiences, innovate

according to the actual situation and retain special processes that match the local situation, so as to facilitate financial consumers' familiarity with the processes and enhance their confidence in ADR; on the other hand, although a variety of ADR methods already exist in the Mainland, they are less interconnected and operate in a single way. On the other hand, despite the existence of various ADR methods in the Mainland, they are not well connected and operate in a single way. The Hong Kong Mediation Centre's approach of "mediation first, arbitration later" can be used to optimize the mix of dispute resolution methods, coordinate and interact with the different elements of ADR[11], and first provide financial consumers with a combination of remedies or remedy options suitable for the case in their consultations. other remedies in that portfolio should be mobilized immediately to effectively resolve the dispute and maintain the stability of the financial markets.

6.2. Promoting the principle of free consumer complaints in the existing handling mechanism

At present, the main problem faced by consumer protection associations or mediation centres, which are more commonly found in mainland China, is that a large number of financial consumers do not have confidence in the mediation and handling mechanisms, which has led to an embarrassing situation where consumer protection associations or mediation centres are "closed" and receive fewer cases. If fees were to be charged to financial consumers at this stage, it would increase the distrust of those who seek help in mediation and severely restrict the subsequent development of the Mainland's financial dispute mediation mechanism. The previous study on the fees charged by the Hong Kong Mediation Centre shows that its dispute resolution procedures and fee system are not sufficiently favourable to consumers, but the quality and reputation of its mediators and arbitrators are high and they have a high reputation in the industry. On the other hand, in mainland China, the professionalism of mediators and arbitrators in local consumer protection associations or mediation centres differs greatly from that of

the Hong Kong Mediation Centre. If the fees charged by the Hong Kong Mediation Centre are adopted, the development of financial dispute mediation centres in China will continue to decline or even die out. In the light of the actual situation on the mainland, with the development of the mediation mechanism and the improvement of the professionalism of the mediators concerned, appropriate fees can be considered for consumers in the event of abusive litigation. The Financial Industry Disputes Resolution Centre Ltd (FIDRC) in Singapore can be used to promote the development of the Mainland's financial dispute resolution mechanism.

6.3. Promoting financial education to enhance the quality of financial consumers

The basis for protecting financial consumers and reducing financial disputes is to equip current and potential financial consumers with a certain level of financial knowledge, to enhance their ability to reasonably assess financial risks and to make wise investments, thereby reducing the occurrence of financial disputes; and to familiarize themselves with the means of redress when their rights are damaged, so that they can better safeguard their legitimate rights and interests.

In Hong Kong, the establishment of the Financial Mediation Centre is complemented by the establishment of the Investor Education Council, which provides an all-round protection system for financial consumers at the "pre-sale", "in-sale" and "post-sale" levels. For the Mainland, while the Government has developed and published a number of publications, the Government has also set up an Investor Education Bureau. For the Mainland, although a number of brochures and books on financial literacy have been produced and published, they are not commensurate with the rapid development of the financial market and the financial activities of financial consumers in practice, and are not effective in educating and protecting financial consumers. Therefore, in addition to issuing educational reading books, it is necessary to mobilize and bring into play the capacities of various social entities, with major universities and colleges undertaking the main education and training, and in addition to providing financial education to school students, joining forces with relevant entities such as grassroots communities, financial institutions, regulatory bodies and social organizations to sink into communities with staff or volunteers specializing in financial literacy to carry out promotional and educational activities, so that financial education involves all age groups and improve the overall financial literacy of the nation. In addition, when consumers purchase financial products or apply for mediation in financial disputes, draw on the enquiry service of the Hong Kong Mediation Centre and arrange for professional financial services staff to introduce financial knowledge, risk analysis and other advisory advice to financial consumers.

7. Summary and Prospect

The operation of the Hong Kong Financial Mediation Centre has been influenced to a certain extent by Europe and the United States, reflecting the concept of fairness, convenience, efficiency and the aim of protecting financial consumers. For example, to ensure independence, the FIDRC is built on the basis of a modern corporate structure; it balances the power disparity between financial institutions and consumers with asymmetrical rights and obligations; and adopts various alternative dispute resolution mechanisms to

guarantee the efficiency of financial dispute resolution. At the same time, compared to the European and American models with strong autonomy, the Hong Kong Financial Mediation Center is more prominent in the mandatory management, which is an innovation of the financial dispute resolution mechanism combined with the actual situation and realistic needs of Hong Kong. Compared with the traditional European and American models, the operation model of the Hong Kong Financial Mediation Center is more suitable for the Mainland to learn and learn from.

At present, China's mainland has initially formed an alternative dispute resolution mechanism for financial disputes, but in actual operation, some defects are still exposed, such as the large differences in the level of economic development in different regions, the financial dispute resolution model is not uniform; the relief method is based on the intervention of financial regulatory authorities and the reinforcement of post-event compensatory measures, while the construction of the financial dispute resolution mechanism is relatively weak, the influence is not strong, and often with administrative. The construction of the financial dispute resolution mechanism is weak, with little influence and often with administrative overtones. Under the goal of building a modernized economic system as reported in the 20th National Congress, the stability of China's modern financial industry needs to be guaranteed by a perfect financial dispute resolution mechanism. The purpose of the author's study on Hong Kong's financial dispute resolution mechanism is not only to learn from Hong Kong's experience and fill the gap between the development of financial dispute resolution mechanisms in the Mainland and Hong Kong, but also to promote the specialization, integration, diversification and convenience of financial dispute resolution in the Mainland. Based on this analytical perspective, the study establishes a cooperative mechanism for financial dispute mediation under the new situation and constructs a commonly recognized financial dispute resolution method, which helps to safeguard the legitimate rights and interests of the majority of financial consumers and enhance the level of financial service facilitation in the Mainland.

In addition, due to the limitations of the sample and objective factors in this study, the data analysis cannot cover the real situation of all financial mediation centers and courts in the mainland, and the breadth of analysis is insufficient, taking only the data of financial disputes in Shanghai in recent years as an example, thus affecting the comprehensiveness of the research structure to a certain extent. Therefore, in the next study, we should pay attention to the collection and analysis of data, and if necessary, combine natural science research methods such as field surveys and quantitative data analysis in order to obtain more comprehensive, universal and representative rigorous data, further verify the accuracy of the conclusions and show the real situation of financial dispute resolution in the Mainland, so as to learn from Hong Kong's experience in a targeted manner and optimize the relief mechanism of financial rule of law reform. Ultimately, the real development of the modern financial system in the new era will be realized.

8. Author Contributions

This paper was jointly completed by Zhao Xiaochen and Wu Jitong. Each has made almost equal efforts in the research of this topic, and their contributions to this paper are largely evenly split. It is hereby explained.

References

- [1] LIAO Helin. Making financial consumer protection warmer[J]. China Finance, 2022,(23): 86-87.
- [2] XI Tao. Study on Alternative Dispute Resolution Mechanism for Financial Disputes--The Operation of the Financial Dispute Resolution Centre in Hong Kong, China as an Example[J]. The Operation of the Financial Dispute Resolution Centre in Hong Kong, China as an Example[J]. Southwest Finance, 2013, (09): 62-64.
- [3] XIAO Haiyan. Hong Kong' s Financial Regulatory System and Its Implications[J]. Guide to Business, 2012, (07):47.
- [4] DONG Xiuxiu. Dispute-resolving mechanism over financial consumption in Mainland of China --taking Hong Kong D]. Dispute-resolving mechanism over financial consumption in Mainland of China --taking Hong Kong's experience as reference [D]. Chongqing: Southwest University of Political Science and Law, 2015.
- [5] QI Meng. Study on the Financial ADR Mechanism-Taking Hong Kong financial dispute resolution center as the example[J]. Asia-Pacific Economic Review, 2013, (02): 144-148.
- [6] LIU Ruxiang. Recent Developments in Hong Kong' s Financial Dispute Resolution Mechanism and Its Implications[J]. Finance and Economy, 2014, (04): 45-49.
- [7] YANG Dong, HU Yue. New Developments in Hong Kong's Financial Consumer Dispute Resolution Mechanism and Implications for the Mainland[M]. Beijing: Law Press-China, 2014: 37-47.
- [8] LIU Liwen. Shanghai High Court reports on financial and commercial trials in 2021 For the first time, the number of financial loan contract disputes For the first time, the number of financial loan contract disputes topped the list[N]. ShangHai Securities News, 2022-08-05(002).
- [9] PENG Ruisi, SHEN Wei. Optimizing the Financial Dispute Resolution Mechanism in the Context of Financial Regulatory Reform- -lessons from Hong Kong's Experience[J]. -lessons from Hong Kong's Experience[J]. Shanghai Journal of Economics, 2018, (12): 81-88.
- [10] CHOU Zhaoyan. NPC deputy Liu Feng: Regulations on mediation of financial disputes[N]. China's insurance quote, 2022-03-09(001)
- [11] CHE Jingang. Study on the multi-faceted docking mechanism for financial dispute mediation[J]. China Banking, 2022, (03): 68-69.