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Globalization and Financial Dispute Resolution: Examining Areas of Convergence and Informed Divergence in Financial ADR

Shahla F. Ali*

INTRODUCTION: A FINANCIAL CRISIS WITH GLOBAL PROPORTIONS

Beginning in early 2007, indicators of what would soon become the most severe financial crisis since the Great Depression of the 1930s began to emerge.¹ In the summer of 2007, investment banks, including Bear Stearns and BNP Paribas, warned investors they would be unable to retrieve money invested in sub-prime mortgage hedge funds.² Later, in September, there was a run on the Northern Rock bank – “the biggest run on a British bank for more than a century.”³ By 2008, Northern Rock was nationalized.⁴ Banks such as the Union Bank of Switzerland (“UBS”), Merrill Lynch, and Citigroup also began announcing losses due to heavy investments in sub-prime mortgages.⁵ In response to this growing crisis, central banks in Europe, Canada, the United Kingdom, the United States, and Japan intervened to boost liquidity in the financial markets by reducing interest rates and increasing monetary supply.⁶

Governments across the world implemented economic stimulus packages and promised to guarantee loans. For example, in the United States, a \$787 billion dollar economic stimulus plan was passed.⁷ The International Monetary Fund (“IMF”) estimated that banks, in total, lost \$2.8 trillion from toxic assets and bad loans between 2007-2010.⁸ There was also a severe decline in liquidity as stock indices worldwide fell, along with housing prices in the United States and the United Kingdom.⁹

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1. *Timeline: Credit Crunch to Downturn*, BBC NEWS (Aug. 7 2009, 9:54 AM), <http://news.bbc.co.uk/2/hi/business/7521250.stm>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* For further elaboration, see SHAHLA F. ALI, CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (2013).

7. BBC NEWS, *supra* note 1.

8. David Cutler et al., *U.S., European Bank Writedowns, Credit Losses*, REUTERS (Nov. 5, 2009, 11:44 AM), <http://www.reuters.com/article/idCNL554155620091105?rpc=44>.

9. BBC NEWS, *supra* note 1.

The global reach of the financial crisis calls for renewed investigation on the impact of globalization on international legal practice. Part One of this paper examines the theoretical perspectives on the impact of globalization on international legal practice. Part Two provides a global review of financial dispute resolution programs, including arbitration models and ombudsman systems, developed to address the financial complaints of retail investors that intensified during and after the financial crisis. Australia, the United Kingdom, the United States, Singapore and Hong Kong are featured because they each reflect either the ombudsman or arbitration model of financial dispute resolution. Part Three examines the regulatory response of selected nations to the financial crisis and how such responses have demonstrated patterns of both convergence, and informed divergence, in selected financial dispute resolution reforms.

I. THEORETICAL PERSPECTIVES ON THE IMPACT OF GLOBALIZATION ON INTERNATIONAL LEGAL PRACTICE

In examining the financial governance of diverse societies, it is helpful to review the development of theoretical explanatory systems. This process begins with an examination of legal pluralism, followed by analysis of more dynamic theories such as the impact of globalization on international legal practice. Such dynamic theories can shed light on the mechanisms by which diverse regions select among a range of options to resolve private consumer financial disputes. The theories include financial industry arbitration and government-sponsored ombudsman models.

Addressing the conceptual challenges precipitated by globalization,¹⁰ legal pluralism scholars beginning in the 20th century sought to describe the diverse contexts “in which two or more legal systems coexist in the same social field.”¹¹ Research focused largely on the interaction between European forms of law and the indigenous legal systems of Africa, Asia, and the Pacific.¹² Legal pluralism advanced the idea of the “semi-autonomous social field,” which captures the permeable nature of the social and normative contexts of legal orders.¹³ These fields are not confined to national boundaries, but rather recognize that local, national, transnational, regional, and global orders can all overlap and apply to the same condition or situation.¹⁴

Legal pluralism has contributed to a greater understanding of both the normative and descriptive complexities of multiple legal systems interacting in a global environment.¹⁵ Its descriptive contribution calls attention to the “coexistence and interaction of different forms, and sources of law, within a more or less unified

10. See generally SHAHLA ALI, RESOLVING DISPUTES IN THE ASIA PACIFIC REGION: INTERNATIONAL ARBITRATION AND MEDIATION IN EAST ASIA AND THE WEST (Oct. 2010).

11. Sally Engle Merry, *Legal Pluralism*, 22 LAW & SOC'Y REV. 869, 870 (1988); see also John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLURALISM 1 (1986); Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 LAW & SOC'Y REV. 719 (1973).

12. Merry, *supra* note 11, at 869.

13. Moore, *supra* note 11, at 720.

14. WILLIAM TWINING, GLOBALISATION AND LEGAL THEORY (LAW IN CONTEXT) 47 (William Twining & Christopher McCrudden eds., 2000).

15. See generally Merry, *supra* note 11.

legal order.”¹⁶ It also draws attention to the fact that legislatures and courts are only two legal avenues of many that regulate people’s lives.¹⁷ Legal pluralism’s normative import lies in the focus it places on institutions that are close to the people. These local community-based institutions are said to have a prima facie claim to respect and support because “[t]hey are valued as extensions of personhood, as settings within which social participation is most direct and most effective.”¹⁸

While important insights have been drawn from legal pluralism literature, scholars have recognized conceptual problems with legal pluralism. William Twining has observed that these challenges include conceptual problems associated with drawing distinctions “between legal and non-legal phenomena and between legal orders, systems, traditions, and cultures.”¹⁹ In addition, many legal orders do not have discrete boundaries and “tend to be dynamic rather than static.”²⁰ Many scholars of legal pluralism have observed that legal pluralism has failed to evolve from a descriptive model into a dynamic theory.²¹ Important questions, such as what causes change within a legal system, how this change takes place, and the principles by which norm identification and selection occurs, remain largely unanswered. This is true both at the domestic and international levels as multiple domestic legal systems increasingly operate within global legal institutions. Twining notes that legal pluralism’s primary difficulties are likely not conceptual or semantic, but rather lie in the “sheer complexity and elusiveness of the phenomena themselves.”²² These are inherent challenges that researchers examining the impact of globalization on law will have to deal with.

Following efforts made by scholars of legal pluralism, an emerging field of study examining the internationalization of the practice of law has emerged. Scholars in this field have begun to explore the impact of globalization on the legal profession, the changing landscape of the international practice of law, and the impact of globalization on international dispute-resolution mechanisms.²³ The resulting literature on legal globalization provides a foundation for questions regarding global dispute-resolution procedure, the dynamics of global enforcement of international agreements, and the mechanisms that are best suited to resolving particular types of business disputes. For example, John Braithwaite and Peter Drahos investigate global business regulation by examining underlying principles that constitute the global context, in their book *Global Business Regulation*.²⁴ Such principles are not exclusively legal principles, but rather reflect community values and practices. Through this lens, Braithwaite and Drahos examine how “the

16. Philip Selznick, *Communitarian Jurisprudence*, in *TO PROMOTE THE GENERAL WELFARE: A COMMUNITARIAN LEGAL READER* 34 (David E. Carney, ed., 1999) (alteration in original).

17. PHILIP SELZNICK, *THE MORAL COMMONWEALTH: SOCIAL THEORY AND THE PROMISE OF COMMUNITY* 468 (1992).

18. Selznick, *supra* note 16. Examples of such institutions include community boards, neighborhood emergency response and town hall meetings.

19. TWINING, *supra* note 14, at 85.

20. *Id.*

21. *Id.*

22. *Id.* at 88.

23. *THE INTERNATIONALIZATION OF THE PRACTICE OF LAW* (Jens Drolshammer & Michael Pfeifer eds., 2001).

24. JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION* (2000).

regulation of business [has] shifted from national to global institutions” in the areas of contract, intellectual property, and corporate law.²⁵ They also examine “the role played by global institutions ... as well as various NGOs and significant individuals.”²⁶ Braithwaite and Drahos’ contribution to the study of private global business regulation provides a framework for examining private international regulation and its implementation.

Despite these advances in the scholarship of legal pluralism, scholars have yet to address how globalization and legal diversity impact methods of dispute resolution. Additionally, literature has not addressed different norms are reconciled in the international context.

Yves Dezalay and Bryant Garth are among the first social science scholars to examine norms in international arbitration practices, in their book *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*.²⁷ Dezalay and Garth describe how symbolic capital influences how individuals select particular arbitrators.²⁸ These findings are based on over 300 interviews with practitioners largely from Europe and the United States.²⁹

Scholars such as William Twining and Philip Selznick have emphasized the need for a global theoretical approach.³⁰ Twining argues that analytical jurisprudence should “broaden its focus not only geographically, but also in respect of the range of concepts, conceptual frameworks, and discourses it considers.”³¹ Scholars such as Philip Selznick have called for an inward examination of those underlying norms that guide dispute-resolution processes.³² In his book *The Moral Commonwealth*, Selznick cites the reconciliation of specific with universal values as the primary challenge of theoretical scholarship and policy.³³ He observes that the capacity of law to deliver justice depends on the range of interests the law recognizes and protects.³⁴ Therefore, the present challenge is to examine how emerging global legal norms respond to national diversity while crossing international borders.

Finally, addressing this challenge of examining how global norms respond to national diversity in the context of international judicial practice, Anne Marie Slaughter has described how international legal networks have proliferated in recent years.³⁵ Slaughter explains that these networks offer “a flexible and relatively fast way to conduct the business of global governance, coordinating and even harmonizing national government action while initiating and monitoring different solutions to global problems.”³⁶ These networks simultaneously promote

25. *Id.*

26. *Id.*

27. YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (1998).

28. *Id.* at 8, 18 (discussing how the symbolic capital is the result of academic scholarship, and social and business connections).

29. *Id.* at 9.

30. See William Twining, *Have Concepts, Will Travel: Analytical Jurisprudence in a Global Context*, *INT’L J.L. IN CONTEXT*, 1, 5-40 (2005). See also SELZNICK, *supra* note 17.

31. Twining, *supra* note 30, at 5.

32. Selznick, *supra* note 17, at 400.

33. *Id.* at ix – xiv.

34. *Id.* at 468.

35. ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 11 (2004).

36. *Id.*

“convergence,” while allowing for “informed divergence.”³⁷ Such interactions are founded on “global deliberative equality,” a concept established by Michael Ignatieff.³⁸ The concept is derived from the moral precept that “our species is one, and each of the individuals who compose it is entitled to equal moral consideration.”³⁹

In promoting convergence, legal networks “bring together regulators, judges, or legislators to exchange information and to collect and distill best practices.”⁴⁰ Interestingly however, “those who would export—not only regulators, but also judges—may also find themselves importing regulatory styles and techniques, as they learn from those they train.”⁴¹ This leads to the second process at work, “legitimate difference.”⁴² The principle of legitimate difference allows for diversity within certain boundaries. This principle’s solutions conflict with fundamental principles or values, such as those contained in the Constitution in the case of the United States.⁴³

Therefore, in exploring the impact of globalization on international arbitration practice, two forces – principally those of “harmonization” and “legal diversity” – provide a helpful lens to observe the dynamic nature of international arbitration in the context of diverse societies.⁴⁴

Assessment of Literature in Light of Methods Used

Legal pluralism scholarship has provided a foundation for examining the diverse contexts “in which two or more legal systems coexist in the same social field”⁴⁵ and has contributed to a greater understanding of the complexities that arise when multiple legal systems interact in a global environment.⁴⁶ Contemporary researchers that have contributed insights on the interaction of regulations, laws, and legal systems across national boundaries have advanced the conversation started by scholars of legal pluralism. In particular, Slaughter has contributed insights on the interaction of “convergence” and “informed divergence” in the global legal sphere.⁴⁷ Selznick has considered how to reconcile particularity with universal values,⁴⁸ and how legal structures are a reflection of underlying social values.⁴⁹ These findings are helpful in framing the question of how regional diversity interacts with global values in the realm of financial regulation.

37. *Id.* at 24.

38. *Id.* at 29.

39. MICHAEL IGNATIEFF, HUMAN RIGHTS AS POLITICS AND IDOLATRY 3-4 (Amy Gutmann ed., 2001).

40. SLAUGHTER, *supra* note 35, at 19.

41. *Id.* at 172.

42. *Id.* at 272.

43. *Id.* at 247-48.

44. See generally Shahla F. Ali, *Approaching the Global Arbitration Table: Comparing Advantages of Arbitration as Seen by Practitioners in East Asia and the West*, 28 REV. LITIG. 791, 793 (2009).

45. Merry, *supra* note 11, at 870. See also Griffiths, *supra* note 11; Moore, *supra* note 11.

46. Merry, *supra* note 11, at 893.

47. SLAUGHTER, *supra* note 35, at 24.

48. See generally SELZNICK, *supra* note 17.

49. *Id.*; see also Lawrence M. Friedman, *Legal Culture and Social Development*, 4 LAW & SOC'Y REV. 29 (1969).

II. THE GLOBAL REACH OF ADR TO RESOLVE FINANCIAL DISPUTES

In response to recent worldwide recession, governments have increasingly employed alternative dispute resolution (ADR) to address consumer financial complaints against banking and financial institutions.⁵⁰ Existing and emerging financial dispute resolution centers have examined methods of dispute resolution employed in a number of countries. What follows is an examination of financial ADR efforts in these countries.

In the United States, the use of alternative dispute resolution in the financial arena developed around securities negotiations.⁵¹ The Financial Industry Regulatory Authority (FINRA) offers investors the option to resolve disputes through mediation or arbitration; arbitration is the more popular choice.⁵² FINRA handles a variety of cases, such as unauthorized trading, failure to supervise, negligence, breach of contract, misrepresentation, and breach of fiduciary duty.⁵³ As of August 2010, 3778 arbitration cases had been filed in the United States, and 562 parties had agreed to mediation.⁵⁴

In Singapore, the Monetary Authority of Singapore (MAS) established the Financial Industry Disputes Resolution Centre (“FIDReC”).⁵⁵ Between 2007 and October 2008, FIDReC received 530 complaints regarding failed investment products linked to the United States financial crisis, 422 of these pertaining to the Lehman Brothers Minibond Program.⁵⁶ By April 2009, the number of claims

50. See generally SHAHLA F. ALI, CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (2013).

51. In addition, many states have increased their focus on mediation and arbitration in foreclosure filings to cope with a growing caseload. In Florida, foreclosure filings increased 400% over 3 years thus placing an increasing burden on the limited resources of the courts. *Interim Report, FLORIDA SUPREME COURT TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES*, May 28, 2009, at 1, available at http://www.floridasupremecourt.org/pub_info/documents/05-08-2009_Foreclosure_TaskForce_Interim_Report.pdf. Consequently, the Florida Supreme Court created a Task Force on Residential Mortgage Foreclosures which is currently developing a proposed statewide process (particularly mediation and other forms of ADR for foreclosure cases). *In re: Task Force on Residential Mortgage Foreclosure Cases*, FLORIDA SUPREME COURT NO. AOSC09-8 (March 27, 2009), available at <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-8.pdf>. In February, the court also established a foreclosure mediation program. *Id.*; see also Hui Hang & Shahla Ali, *Financial Dispute Prevention and Resolution in China: Synthesizing Global Experience*, available at <http://www.sef.hku.hk/aslea2011/private/paper/32.%20Shahla%20Ali%20full%20paper.pdf>. Other states such as New Mexico, Connecticut, Oregon, Rhode Island and Missouri are also considering similar legislation that will give homeowners facing foreclosure access to alternative dispute resolution options. *Court ADR Connection*, RESOLUTION SYSTEMS INSTITUTE (Apr. 2009), <http://aboutsri.org/newsletters/?id=37>.

52. *Dispute Resolution Statistics*, FINRA (Sept. 2013).

<http://www.finra.org/ArbitrationMediation/AboutFINRADR/Statistics/> (last visited Mar. 17, 2014).

53. Lief Soreide, *Statistics Reveal Chances of Recovering in a FINRA Arbitration*, FREE PRESS RELEASE (Feb. 2010) <http://www.free-press-release.com/news-statistics-reveal-chances-of-recovering-in-a-finra-arbitration-1266711057.html> (last visited Nov. 4, 2013). The three most common claims made by investors in FINRA arbitrations in 2009 were: Breach of Fiduciary Duty (2,836), Misrepresentation (2,005), Breach of Contract (1,658), Negligence (1,602) and Failure to Supervise (1,029). *Id.*

54. See SELZNICK, *supra* note 17.

55. MONETARY AUTHORITY OF SINGAPORE, INVESTIGATION REPORT ON THE SALE AND MARKETING OF STRUCTURE NOTES LINKED TO LEMAN BROTHERS 4-5 (July 7, 2009), available at <http://www.lioninvestor.com/code/uploads/structured-products-investigation-report.pdf>.

56. Valerie Tan, *530 Complaints Filed at FIDReC on Failed Investment Products*, CHANNEL NEWS ASIA (Oct. 24 2008),

relating to Lehman Brothers had increased to 561, with 34 claims resolved at the mediation stage, 485 pending mediation, and 42 undergoing adjudication.⁵⁷

In the United Kingdom, the Financial Ombudsman Service (FOS), which was established by Parliament as an independent public body in 2006, has also received an increase in complaints due to the recent financial turmoil.⁵⁸ The FOS provides free and independent advice to consumers regarding the resolution of disputes with financial companies.⁵⁹ If the FOS determines that a case is meritorious, it will attempt to resolve the complaint through mediation.⁶⁰ If an informal settlement fails, the FOS may set up more detailed investigations, including appealing to a panel of ombudsmen for a final decision.⁶¹ In the 2008-2009 financial year, 51% of complaints were resolved by mediation, 41% by adjudication, and only 8% by a formal review by an ombudsman.⁶² Complaints regarding investment disputes increased by 30% in 2008 from the previous year, while disputes in unsecured loans and mortgages increased by 44% and 11% respectively.⁶³

The Australian Financial Ombudsman Service recorded a 52% increase in disputes between January 2008 and April 2009.⁶⁴ In light of the recent financial crisis, the Australian Securities and Investment Commission (ASIC) has revised its early dispute resolution scheme (EDR) and increased the upper limit of compensation to AUS \$500 000.⁶⁵ ASIC has also implemented changes to improve consumer access, such as giving EDR schemes the power to award interest, in addition to compensation awards, where appropriate.⁶⁶

Building on a review of how governments have increasingly employed alternative dispute resolution (ADR) to address consumer financial complaints against banking and financial institutions, the next section examines how convergence, and informed divergence have responded to the development of financial dispute resolution mechanisms following the financial crisis, drawing on global experience.

<http://www.channelnewsasia.com/stories/singaporelocalnews/view/385200/1/.html>; see also Shahla F. Ali, *Globalization and Financial Dispute Resolution: Examining Areas of Convergence and Informed Divergence in Financial ADR*, ASIAN SOC'Y OF INT'L L. WORKING PAPER NO. 2012/15 (May 2012), http://www.asiansil.org/publications/YSW%202012_15.pdf.

57. Ali, *supra* note 44, at n.52.

58. *Annual Review: Financial Year*, FINANCIAL OMBUDSMAN SERVICE 7 (2008-2009), <http://www.financial-ombudsman.org.uk/publications/ar09/ar09.pdf>.

59. See FINANCIAL OMBUDSMAN SERVICE, *supra* note 54 (*Key Facts About the Financial Ombudsman Service*).

60. *Information for Businesses Covered by the Ombudsman Service: How the Ombudsman Service Reaches Decisions*, FINANCIAL OMBUDSMAN SERVICE (Jan. 8, 2013), http://www.financial-ombudsman.org.uk/faq/businesses/answers/decide_cases_a1.html.

61. *Panel of Ombudsmen*, FINANCIAL OMBUDSMAN SERVICE (Oct. 2013), <http://www.financial-ombudsman.org.uk/about/panel-ombudsmen.html>.

62. See *supra* note 52.

63. See *supra* note 58; see also *Annual Review: Financial Year*, FINANCIAL OMBUDSMAN SERVICE (2007-2008), <http://www.financial-ombudsman.org.uk/publications/ar08/ar08.pdf>.

64. Jeremy Cooper, *Financial Ombudsman Service 2009 National Conference Financial Services – the Changing Landscape*, AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION [at] 2 (Jun. 11-12, 2009), [http://www.asic.gov.au/asic/pdf/lib.nsf/add907be1c708f42ca256aca0007f465/dde0857fa789274cca2575d2001bdf4/\\$FILE/FOS_speech-11Jun09.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/add907be1c708f42ca256aca0007f465/dde0857fa789274cca2575d2001bdf4/$FILE/FOS_speech-11Jun09.pdf).

65. *Id.* at 3.

66. *Id.*

III. GLOBAL RESPONSE TO THE FINANCIAL CRISIS: CONVERGENCE AND INFORMED DIVERGENCE

Shortly after the fall of Lehman Brothers, financial institutions throughout the world began to explore possible regulatory responses to address complaints.⁶⁷ The experiences of the United Kingdom, the United States, Australia, Singapore, the Netherlands, and Germany served as models.⁶⁸ Demonstrating the application of both convergence in the global approach to financial disputes, as well as informed divergence, a number of global best practices were integrated into emerging institutional financial ADR mechanisms.

A. Regulatory Convergence

A number of areas of regulatory convergence exist in global financial ADR institutional design. These include: a three stage process, the encouragement of direct settlement negotiations, robust development of a preliminary ADR stage, the general exclusion of cases touching on systemic financial regulatory issues, and cases already subject to court proceedings.⁶⁹

Direct Settlement Negotiations

Direct settlement negotiations, mediation, and arbitration have been used extensively to resolve commercial and financial disputes. The United Kingdom's FOS, for example, encouraged parties to attempt direct negotiations with financial institutions.⁷⁰

Many investors worldwide have approached banks directly, seeking to negotiate a settlement; for example, in Hong Kong, aggrieved investors of the failed Lehman "mini-bonds" have the option of pursuing mediation or arbitration through the Hong Kong International Arbitration Centre (HKIAC), or to engage in direct settlement negotiations.⁷¹ Such alternatives to filing suit against banks ap-

67. *Report of the HKMA on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies*, HONG KONG MONETARY AUTHORITY, <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090109-2.shtml> (last updated Aug. 1, 2011).

68. *Id.* Among the existing ADR models and procedures examined were disclosure requirements, supervisory measures, cooling off periods and dispute resolution mechanisms. *Id.*

69. Shahla F. Ali & Antonio Da Roza, *Alternative Dispute Resolution Design in Financial Markets—Some More Equal Than Others: Hong Kong's Proposed Financial Dispute Resolution Center in the Context of the Experience in the United Kingdom, United States, Australia, and Singapore*, 21 PAC. RIM. L. & POL'Y J. 485, 509 (2012).

70. *Our Consumer Leaflet: Your Complaint and the Ombudsman*, FINANCIAL OMBUDSMAN SERVICE, <http://www.financial-ombudsman.org.uk/publications/consumer-leaflet.htm>. The United Kingdom's FOS website states:

Before we look into your problem, try first to sort it out yourself with the business you're unhappy with. If it's difficult for you to do this, or you're not sure about anything, please contact us. The business has eight weeks to sort out your complaint with you. If after eight weeks you're still not happy, you can ask us to get involved. We will explain what you should do next.

Id.

71. See *infra*, note 73; Chapter 2 – *Lehman Brothers-related Minibonds and structured financial products sold in Hong Kong*, LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE

peal to consumers because claims that exceed \$50,000 are required to use lengthy and costly court proceedings.⁷² Furthermore, given the unavailability of class action rights and contingency fees in Hong Kong's legal system, aggrieved investors who take their claims to court face even higher costs.⁷³

Banks have proactively identified, and settled, some individual cases to reduce the likelihood of successful suits against them.⁷⁴ Unfortunately for aggrieved investors who lack the resources to litigate, banks have generally refused negotiation.⁷⁵ In other words, while direct settlement negotiation may be the most "cost-effective" way to seek compensation, without external pressure and influence, retail banks are seldom willing to negotiate with investors.

A Three Stage Process

In the majority of jurisdictions, the resolution of financial disputes involves three stages.⁷⁶ First, the center of dispute resolution with which a complaint is filed must determine whether it has jurisdiction over the claim.⁷⁷ Second, if the center does have jurisdiction over the claim, it will be mediated or negotiated.⁷⁸ Finally, if mediation fails to resolve the dispute, the dispute will be referred to either an arbitrator or ombudsman⁷⁹.

REGION OF THE PEOPLE'S REPUBLIC OF CHINA (Jun. 2012), http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs01/report/ch2-e.pdf. The Legislative Council report further provides: Minibonds were unrated structured debt instruments linked to the credit of a basket of six to eight reference entities, mostly well-known listed corporations. The proceeds from the sale of Minibonds would be used by the issuer to purchase collateral. The collateral held by a trustee was segregated for each series. For the earlier series (up to Series 9), the collateral comprised debt obligations of Lehman Brothers Treasury Co. B.V. (LBTC) while the collateral for later series (from Series 10 onwards) were AAA-rated collateralized debt obligations (CDO). For most series, the issuer also entered into swap arrangements with a swap counterparty, which was also an LB entity, whose obligations were in turn guaranteed by LBHI. In order to meet its obligations to note-holders, the issuer would have to rely on receiving from the swap counterparty money or securities due under the terms of the collaterals. Since the swap counterparty was an LB entity and the swap guarantor was LBHI, the insolvency of LB meant that the issuer would not receive what was due to it under the swap agreements and would in turn default which constituted a termination event under the swap arrangements entitling the issuer to terminate the swaps and triggering early redemption of the Minibonds. In the event of an early redemption of the Minibonds, the recourse of the note-holders would be limited to the proceeds of realization of the collateral (net of costs and expenses) which could be less than the principal amount invested. *Id.* at 24-26.

72. See Ali & Da Roza, *supra* note 69, at 492.

73. *Proposal for Resolution of Mini-bond Issue*, HONG KONG DEMOCRATIC FOUNDATION (Nov. 2008), <http://www.hkdf.org/pr.asp?func=show&pr=178> [hereinafter *Proposal*].

74. *Id.*

75. *Id.*

76. Ali & Da Roza, *supra* note 69, at 509.

77. *Id.*

78. *Id.*

79. *Proposed Establishment of an Investor Education Council and a Financial Dispute Resolution Center*, FIN. SERVICES & THE TREASURY BUREAU 38 (Feb. 2010), http://www.fstb.gov.hk/fsb/ppr/consult/doc/consult_iec_fdrc_e.pdf.

Preliminary Stage

The preliminary stage of the financial dispute resolution process, the initiation of preparatory meetings, has been effective and therefore widely adopted in several jurisdictions.⁸⁰ The purpose of the meetings is to familiarize parties with the ADR process, explore settlement possibilities, and to exchange information.⁸¹ A large number of cases have been settled at this stage.

This preliminary stage allows important information to be gathered before the dispute resolution process begins.⁸² Singapore's case management intake process, introduced in 2007, has been very successful.⁸³ Between July 1, 2007 and June 30, 2010, FIDReC's Counseling Service amicably resolved 1,634 cases.⁸⁴ This Service was designed specifically to aid FIDReC's dispute resolution processes. The Counseling Service is especially suitable for resolving simple disputes and helps consumers to better understand the dispute and relevant issues, and in considering settlement offers.

Exclusion of Cases Already Subject to Court Proceedings

In the majority of jurisdictions examined, the dispute resolutions systems do not have jurisdiction over cases that have already been the subject of court proceedings.⁸⁵ Such jurisdictional limits were observed in Australia, Singapore, and the United Kingdom.

B. INFORMED DIVERGENCE: UNIQUE DEVELOPMENT OF A FINANCIAL SECTOR DISPUTE RESOLUTION SCHEME

While convergence in global financial ADR approaches can be seen in the increased use of direct settlement negotiations, mediation, and arbitration to resolve consumer financial disputes, processes of divergence are also at work. Diversity is reflected in unique developments across regions including differences in jurisdiction, cost structure, variations in center's ability to deal with important cases, and distinctions between arbitration and ombuds models.

Disputes Subject to ADR Jurisdiction

The jurisdiction of all ADR models studied encompasses all disputes brought by individuals and sole proprietors against financial institutions that are members

80. Ali & Da Roza, *supra* note 69, at 509-11.

81. *Id.* at 511.

82. Gary Soo, Yun Zhao & Dennis Cai, *Better Ways of Resolving Disputes in Hong Kong—Some Insights from the Lehman-Brothers Related Investment Product Dispute Mediation and Arbitration Scheme*, 9 J. Int'l Bus. & L. 137, 146-47 (2010).

83. Ali & Da Roza, *supra* note 69, at 511.

84. *Id.*; 2009-2010 Annual Report, FINANCIAL INDUSTRY DISPUTES RESOLUTION CENTRE [hereinafter "2009-2010 Annual Report"] (on file with author).

85. Ali & Da Roza, *supra* note 69, at 512; 2009-2010 Annual Report, *supra* note 84.

of the financial dispute resolution service.⁸⁶ For example, the FINRA Code of Arbitration Procedures for Customer Disputes “applies to any dispute between a customer and a member of FINRA ... that is submitted to arbitration.”⁸⁷

However, the programs varied regarding jurisdiction over insurance complaints. The United Kingdom and Australian financial ombudsman services, FOS, both have jurisdiction over insurance complaints since both FOS programs were created when two pre-existing ADR programs, both of which provided resolution of insurance claims, were combined. The activities to which the compulsory jurisdiction of the FOS applies are regulated activities.⁸⁸

Eligible Parties

Among the jurisdictions studied, there is wide variation in the definition of “eligible complainants.” Complainants are restricted under the Hong Kong Financial Dispute Resolution Center government proposal to individual consumers and sole proprietors.⁸⁹ There are a number of reasons for restricting eligible complainants. In the United States, the FINRA arbitration process is entirely paid for by the parties, making jurisdictional limits unnecessary. By contrast, the dispute resolution schemes in common law jurisdictions are largely funded through government subsidies, requiring that jurisdiction be limited to the claims of only those complainants with the greatest need.⁹⁰

A unique arrangement was made for eligible complainants in Hong Kong under the Investment Products Disputes Mediation and Arbitration Scheme (IPDMAS) following the devaluation of “Lehman Mini-Bonds” in Hong Kong.⁹¹ The IPDMAS was created in October, 2008, when the Hong Kong International

86. *Financial Industry Disputes Resolution Centre—Consultation Paper*, MONETARY AUTHORITY OF SINGAPORE 8 (Oct. 2004), http://www.mas.gov.sg/~media/resource/publications/consult_papers/2004/Public_Consultation_Paper_FIDReC.pdf.

87. CODE OF ARBITRATION PROCEDURES FOR CUSTOMER DISPUTES, FINANCIAL INDUSTRY REGULATORY AUTHORITY § 12101(a), *available at* <http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbrul/documents/arbmed/p117546.pdf>.

88. *See* Financial Services and Markets Act, 2000, cl. 8, § 22 (U.K.), *available at* <http://www.legislation.gov.uk/ukpga/2000/8/section/22>. These activities include: payment services, consumer credit activities, lending money secured by a charge on land, lending money, paying money by plastic card, providing ancillary banking services or any ancillary activities including advice. *Id.* In Australia, the jurisdiction of the FOS includes: complaints against financial service providers from individual(s), partnerships, corporate trustees of self-managed superannuation funds or family trust, small businesses, clubs or incorporated associations, policy holders of group life or group general insurance policy relating to the payment of benefits; disputes arising from a contract or obligation in provision of financial service, a guarantee or security for financial accommodation, entitlement or benefits under life insurance or general insurance policies, legal or beneficial interests from financial investment or a financial risk facility, claims under motor vehicle insurance policies. *See generally Terms of Reference*, FINANCIAL OMBUDSMAN SERVICE (Jan. 2010), *available at* [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/FOS-terms-of-reference.pdf/\\$file/FOS-terms-of-reference.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/FOS-terms-of-reference.pdf/$file/FOS-terms-of-reference.pdf).

89. Ali & Da Roza, *supra* note 69, at 503.

90. FIN. SERVICES & THE TREASURY BUREAU, *supra* note 79, at 58.

91. *See HKIAC to Provide Mediation and Arbitration Services for Lehman-Brothers-Related Investment Products Dispute*, HONG KONG INTERNATIONAL ARBITRATION CENTRE (Oct. 31, 2008), http://www.hkiac.org/images/stories/mediation/081031_Lehman_E.pdf.

Arbitration Center (HKIAC) was appointed by the Hong Kong Monetary Authority (HKMA), in response to the Lehman Brothers bankruptcy.⁹² The IPDMAS provides mediation and arbitration services to aggrieved investors seeking financial redress from banks.⁹³ With the support and oversight by the HKMA, the Securities and Futures Commission (SFC),⁹⁴ and the Legislative Council, the scheme was successfully launched in October, 2008.⁹⁵ As the result of this program, a dedicated Financial Dispute Resolution Center (FDRC) was established in Hong Kong in 2012.⁹⁶

The Third ADR Tier: Arbitration vs. Ombudsmen Process

A primary area of divergence between the jurisdictions studied is the use of either an arbitration or ombuds process in the third tier of the resolution process. While both arbitrators and ombudsmen serve as independent and impartial umpires in a dispute, their accountability differs significantly. Arbitrators generally are empowered to make binding awards without explaining their decisions, and these awards are only appealable on very limited grounds.⁹⁷ Ombudsmen are generally required to provide reasoned decisions.⁹⁸ Ombudsmen's decisions are susceptible to judicial review, and their awards are not binding unless accepted by the complainant.⁹⁹ The key difference between the ombuds and arbitration processes is that arbitration is adversarial, while the ombuds process is inquisitorial in nature.

Both the United Kingdom and Australia have established an ombuds process.¹⁰⁰ In Singapore has appointed 'adjudicators,' which more closely resemble ombudsmen than arbitrators, given the non-binding nature of their awards.¹⁰¹

92. *Id.*

93. *HKMA Announces Mediation and Arbitration Services for Lehman-Brothers-Related Cases*, HONG KONG MONETARY AUTHORITY (Oct. 31, 2008), <http://www.hkma.gov.hk/eng/key-information/press-releases/2008/20081031-5.shtml>.

94. *About the SFC – Our Role*, SECURITIES AND FUTURES COMMISSION, <http://www.sfc.hk/web/EN/about-the-sfc/our-role/> (last updated Mar. 11, 2013). The Securities and Futures Commission (SFC):

...is an independent statutory body [which regulates] the securities and futures markets in Hong Kong. It derives a broad range of investigative, remedial and disciplinary powers from the Securities and Futures Ordinance (SFO) and a subsidiary legislation. The SFC works to ensure orderly securities and futures market operations, to protect investors and help promote Hong Kong as an international financial centre and a key financial market in China.

Id.

95. HONG KONG MONETARY AUTHORITY, *supra* note 93.

96. FIN. SERVICES & THE TREASURY BUREAU, *supra* note 79.

97. *Id.* at 30. Arbitrators are generally not required to follow strict legal precedent when arriving at their decision and likewise, in many jurisdictions do not need to explain the reasons behind their decisions. This traditional pattern is changing in some regions. In the United States, for example, the FINRA arbitration mechanism provides an option giving parties the right to formally require an arbitrator to provide the reasons behind the arbitral award. *Id.*

98. *See generally Information Note: Financial Ombudsman System in the United Kingdom*, LEGISLATIVE COUNCIL SECRETARIAT (2010), available at <http://www.legco.gov.hk/yr09-10/english/sec/library/0910in15-e.pdf>.

99. *Id.* at 2, 15.

100. FIN. SERVICES & THE TREASURY BUREAU, *supra* note 79, at 57-58.

101. *Id.*

Only in the United States are arbitrators used for dispute resolution in the securities sector.¹⁰²

Variation in Awards

Divergence in the nature and limits on awards was also found across the jurisdictions studied. The maximum award that may be granted by the FDRC in Hong Kong is HK\$500,000.¹⁰³ This amount is said to be inclusive of “over 80% of the monetary disputes handled by the HKMA and about 80% of stock investors.”¹⁰⁴ The maximum monetary award that can be made by ombudsmen in the United Kingdom is £150,000.¹⁰⁵ Additional compensation may be given in special cases.¹⁰⁶ As of January 1, 2012, Australia’s ASIC awards from authorized external dispute resolution schemes are capped at AU\$280,000.¹⁰⁷ Additional compensation may be provided depending on the circumstances.¹⁰⁸ In Singapore, the maximum awards granted are S\$100,000 for claims against insurance companies, and S\$50,000 (approx. HK\$310,000) for all other disputes.¹⁰⁹ In the United States there is no statutory cap on arbitration awards, which must be agreed upon by the majority of arbitrators on an arbitration panel.¹¹⁰

102. *Id.*

103. *Frequently Asked Questions*, FINANCIAL DISPUTE RESOLUTION CENTRE LIMITED, http://www.fdro.org.hk/en/html/faqs/faqs_generalpublic.php?q4 (last updated May 7, 2013).

104. FIN. SERVICES & TREASURY BUREAU, *supra* note 79, at 16.

105. *Awards by the Ombudsman*, FINANCIAL SERVICES AUTHORITY HANDBOOK, DISP 3.7.4 (2012), available at <http://fshandbook.info/FS/html/handbook/DISP/3/7>.

106. *Id.* at DISP 3.7.6. “If the Ombudsman considers fair compensation requires payment of a larger amount, it may recommend that the complainant be paid the balance.” *Id.* In addition to money awards, interest awards and costs awards, the Ombudsman is also empowered to give directions in respect of steps to be taken by the establishment complained against as the Ombudsman considers just and appropriate, regardless of whether or not a court could have made such an order. Where the ombudsman’s decision is accepted by the complainant, it is binding on both parties, but if not, neither party is bound by the decision and the complainant is free to take out court proceedings. *Id.*

107. AUSTRALIAN SECURITIES & INVESTMENTS COMM’N, REGULATORY GUIDE 34 (2013), available at [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/\\$file/rg139-published-13-June-2013.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/$file/rg139-published-13-June-2013.pdf). This excludes general insurance brokers, where the compensation cap is at least AU\$150,000. *Id.*

108. See AUSTRALIAN SECURITIES & INVESTMENTS COMM’N, *supra* note 107. The remedies FOS can provide include: payment of monies; forgiveness or variation of debt, or the release of security for debt; repayment, waiver or variation of fees or other amounts paid or owed to a financial service provider; reinstatement or rectification of contract; variation of the terms of a Credit Contract in cases of financial hardship; and remedies dealing with privacy issues of individuals. Provision is also made for financial compensation on various other bases, including costs and non-financial loss. Provision is also made for the award of interest, but punitive, exemplary or aggravated damages are expressly excluded. If a complainant does not accept a Recommendation or Determination in respect of their dispute, they are not bound by it and may bring an action in the courts. See generally *Terms of Reference*, FINANCIAL OMBUDSMAN SERVICE, *supra* note 88.

109. FINANCIAL INDUSTRY DISPUTES RESOLUTION CENTRE, LTD., ANN. REP. 8 (2005-2006), available at <http://aryme.com/docs/adr/2-2-1104/informe-anual-fidrec-singapur-2006-singapore-fidrec-annual-report.pdf>. Where an award is made by the Adjudicator or Panel, it is binding on the financial institution but not on the complainant. The complainant’s rights are thus not prejudiced in any way. He is free to choose whether or not to accept the award. Where the complainant chooses not to accept the award, he is free to pursue his other remedies such as legal action or arbitration. *Id.*

110. *Decisions & Awards*, FINANCIAL INDUSTRY REGULATORY AUTHORITY (2013), available at <http://www.finra.org/ArbitrationAndMediation/Arbitration/Process/DecisionAwards/index.htm>. The limited scope for judicially reviewing such awards and not having to provide reasons allow arbitrators

The Hong Kong monetary award limit is considerably lower than that of the United Kingdom or Australia, but higher than that of Singapore. The Financial Services and the Treasury Bureau (FSTB) in Hong Kong clarified in its *Consultation Conclusions* that the cap applies to individual claims. Thus, complainants can file several claims, each for \$500,000, if they have more than one dispute.¹¹¹ The FSTB also clarified that claims for amounts greater than \$500,000 may be filed, but awards will not exceed \$500,000.¹¹² This cap is subject to continuing review.¹¹³

Costs

Informed divergence is also apparent in the methods of cost allocation found in each country.¹¹⁴ These approaches vary from complete State funding, to sliding scale payment systems.¹¹⁵

The proposed costs of the Hong Kong Financial Dispute Resolution Center (FDRC) is higher than that of the ombuds systems found in common law jurisdictions. Hong Kong FDRC has proposed a system by which it would charge both consumers and financial institutions on a 'pay as you go' basis for its services.¹¹⁶ In the United Kingdom and Australia, consumer protection regulations mandate that consumers be able to file complaints with the FOS free of charge.¹¹⁷

to reach awards is based on general equitable principles. No statutory cap is imposed on the value of awards, and awards are final and binding, even if new evidence surfaces later. *Id.*

111. *Proposed Establishment of an Investor Education Council and a Financial Dispute Resolution Centre: Consultation Conclusions*, FIN. SERVICES & THE TREASURY BUREAU 16, available at http://www.fstb.gov.hk/fsb/ppr/consult/doc/consult_iec_fdrc_conclusion_e.pdf.

112. *Id.*

113. *Id.*

114. FIN. SERVICES & THE TREASURY BUREAU, *supra* note 79, at 58.

115. *Id.*

116. See *Consultation Conclusions*, *supra* note 11, at 23. Under the Consultation Conclusions, the fee structure was set out as follows:

	Claimant	Financial Institution
Making inquiries	Nil	Not applicable
Filing a claim form	HK\$200	Not applicable
Mediation	(Case fees)	(Case fees)
Amount of claims:		
- less than HK\$100,000	HK\$1,000	HK\$5,000
- between HK\$100,000 and \$500,000	HK\$2,000	HK\$10,000
Arbitration (regardless of amount of claims)	(Case fees) HK\$5,000	(Case fees) HK\$20,000

Id. at 18.

117. *FAQs: The Case Fee*, FINANCIAL OMBUDSMAN SERVICE, http://www.financialombudsman.org.uk/faq/answers/research_a5.html (last visited May 1, 2012). Businesses do not pay case fees in respect of the first three complaints settled during a year, but there is a fee of £500 for the fourth and each subsequent complaint. The FSA Handbook expressly sets out that complainants do not need to have professional advisers to bring complaints, and thus awards of costs should be uncommon. See FINANCIAL SERVICES AUTHORITY HANDBOOK, *supra* note 105, at DISP 3.710. Both FOS and COSL are funded by fees from financial service providers who are members of their external dispute resolution schemes, as well as fees from the resolution of disputes. *Fee Information*, CREDIT OMBUDSMAN SERVICE, available at <http://www.cosl.com.au/Member-Fees>.

In Singapore, under the FIDReC, no fees are charged to consumers if the dispute is resolved through mediation or case management.¹¹⁸ A S\$50 (approx. HK\$300) fee is charged to consumers whose suits reach adjudication, in an effort to deter frivolous complaints.¹¹⁹ Ombudsmen in Singapore's FIDReC system offer their services for free or for a nominal fee.¹²⁰

The fees for arbitration by the United State's FINRA are higher than in other countries.¹²¹ As of April 14, 2011, the arbitration filing charge for a customer of a FINRA member firm is US\$1,250 and the estimated fee for a single day hearing is US\$3,000.¹²² Commentators have argued that the FINRA fees exist to deter frivolous complaints, therefore limiting the need for the jurisdictional prerequisites found in other countries.¹²³

Regulatory Involvement

The extent to which financial dispute resolution programs are regulated varies by jurisdiction. While most such programs defer to the relevant regulatory body for decisions on issues of systematic importance, some programs do address such issues.¹²⁴

The United Kingdom FOS is quasi-regulatory in nature, deciding cases using a "fair and reasonable" standard.¹²⁵ In the United States, FINRA plays a regulato-

118. FINANCIAL INDUSTRY DISPUTES RESOLUTION CENTRE, LTD., *supra* note 109, at 10.

119. *Id.* The financial institution pays a flat case fee of S\$500 per claim. Both parties are afforded adequate opportunity to present their case to the Adjudicator or Panel. The complainant is allowed to be accompanied by his nominee, who would assist him/her in the presentation of his/her claim. *Id.*

120. *Id.* at 13.

121. CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES, FINANCIAL INDUSTRY REGULATORY AUTHORITY, Rule 13900(b), *available at* http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4288.

122. Calculated using the *Arbitration Filing Fee Calculator*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, *available at* <http://apps.finra.org/ArbitrationMediation/ArbFeeCalc/1/Default.aspx>.

123. Cory Alpert, *Financial Services in the United States and United Kingdom: Comparative Approaches to Securities Regulation and Dispute Resolution*, 5 *BYU INT'L L. & MGMT. REV.* 75, 93 (2008).

124. *FIN. SERVICES & THE TREASURY BUREAU*, *supra* note 79, at 58.

125. *Financial Services and Markets Act, 2000*, c. 8, § 228(2) (U.K.). Section 228(2) of the *Financial Services and Markets Act* provides for "[d]etermination under the compulsory jurisdiction" and states:

- (1) This section applies only in relation to the compulsory jurisdiction and to the consumer credit jurisdiction.
- (2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.
- (3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.
- (4) The statement must—
 - (a) give the ombudsman's reasons for his determination;
 - (b) be signed by him; and
 - (c) require the complainant to notify him in writing, before a date specified in the statement, whether he accepts or rejects the determination.
- (5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.
- (6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.
- (7) The ombudsman must notify the respondent of the outcome.

ry role, having taken the place of the regulatory arm of the New York Stock Exchange (NYSE).¹²⁶

The FOS and COSL in Australia, and FIDReC in Singapore, have not taken assumed regulatory responsibility, diverging from the approach taken in the United States.¹²⁷ Rather, the Australian and Singapore programs are limited to dispute resolution without getting involved in financial regulatory oversight functions. Similarly, Hong Kong's FDRC plays a non-regulatory role.¹²⁸ The independent complaint process and the financial regulator's control of the fact-finding process have prevented the FDRC from taking on a regulatory role.¹²⁹

While significant regulatory variation exists worldwide, the regulatory responses of Hong Kong and Singapore to the Lehman mini-bond saga display some unique similarities. Both regions responded to the collapse of Lehman's mini-bonds with government-lead efforts to bolster investor education and disclosure requirements, and to reach collective settlement agreements.¹³⁰ In Hong Kong, the regulators were responsible for coordinating a settlement agreement between several banks, restoring approximately 85 to 95 percent most claimants' initial investments.¹³¹ Similarly, the Monetary Authority of Singapore coordinated with mini-bonds receivers and trustees allowing investors to recover an average of 64.5 percent of their initial mini-bond investment.¹³² Both the FDRC and the FIDReC

(8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.

(9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

Id.

126. *FINRA to Perform NYSE Regulation's Market Oversight Functions*, FINANCIAL INDUSTRY REGULATORY AUTHORITY (May 4, 2010), <http://www.finra.org/Newsroom/NewsReleases/2010/P121365>.

127. *See generally What We Do*, FINANCIAL OMBUDSMEN SERVICE (2012) available at http://www.fos.org.au/centric/home_page/about_us/what_we_do.jsp. For more on the service's purpose, see *Terms of Reference*, FINANCIAL OMBUDSMEN SERVICE 4 (January 2012), available at http://www.fos.org.au/centric/home_page/about_us/terms_of_reference_b.jsp ("The service is conducted by FOS and has been established as an independent forum to resolve Disputes between Applicants and Financial Services Providers. The Services is free of charge for Applicants. The costs of the Service are met by the Financial Service Providers."). For more on underpinnings of FOS operations, see *id.* "In dealing with Disputes, FOS: a) must do what in its opinion is appropriate with a view to resolving Disputes in a cooperative, efficient, timely and fair manner; b) shall proceed with the minimum formality and technicality; and c) shall be as transparent as possible whilst also acting in accordance with its confidentiality and privacy obligations." *Id.* For an example, see *The Jurisdiction of FIDReC*, FIN. INDUS. DISPUTES RESOLUTION CTR. (2005), available at <http://www.fidrec.com.sg/website/jurisdiction.html>. FIDReC provides "[t]he jurisdiction of FIDReC in adjudicating disputes between consumers and financial institutions is as follows: (1) For claims between insureds and insurance companies: up to S\$100,000[;] (2) For disputes between banks and consumers, capital market disputes and all other disputes (including third party claims and market conduct claims): up to S\$50,000[.] At present, FIDReC's services are available to all consumers who are individuals or sole-proprietors." *Id.*

128. FIN. SERVICES & THE TREASURY BUREAU, *supra* note 79, at 46. "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." *Id.* at 5.

129. *Id.*

130. *Id.*

131. Ali & Da Roza, *supra* note 69, at 497.

132. Alan Ewins, Catherine Husted, Juliana Lee, & Joyce Woo, *The Lehman Aftermath: Hong Kong and Singapore Regulatory Reforms in the Structured Product*, 5 CAPITAL MARKETS LAW J. 301, 303 (2010).

continue to empower their financial dispute resolution centers, coordinating dispute resolution with regulatory investigation and oversight.

DISCUSSION

Following the 2008 collapse of Lehman Brothers, financial institutions worldwide have studied the financial dispute resolution models of the United Kingdom, the United States, Australia, Singapore, the Netherlands, and Germany.¹³³ A review of each jurisdiction's dispute resolution systems reveals areas of convergence, including the use of preliminary preparatory stage, a three-tier process of dispute resolution, and the exclusion of cases already subject to court review. At the same time, informed divergence is found in each jurisdiction's unique developments. Divergence is found in the jurisdictional reach of dispute resolution programs, cost structures, authority over issues with larger regulatory implications, and distinctions between arbitration and ombuds models. These unique developments demonstrate successful convergence and informed divergence, in the development of domestic financial dispute resolution programs.

133. *Report of the Hong Kong Monetary Authority on Issues Concerning the Distribution of Structured Products Connected to Leman Group Companies*, HONG KONG MONETARY AUTHORITY 55 (2008), available at http://www.hkma.gov.hk/media/eng/doc/other-information/lehman_report.pdf.

