

Advocating for Establishing a “Consumer Dispute Resolution Centre” to Enhance Consumer Protection

31st August 2016





Agenda

1

Discuss the feasibility of introducing Consumer Arbitration

- Demand
- Readiness
- Overseas Experience

2

Advocate for a new "Consumer Dispute Resolution Centre"

- Idea
- Advantages

3

Recommendations in the proposal

4

Q&As





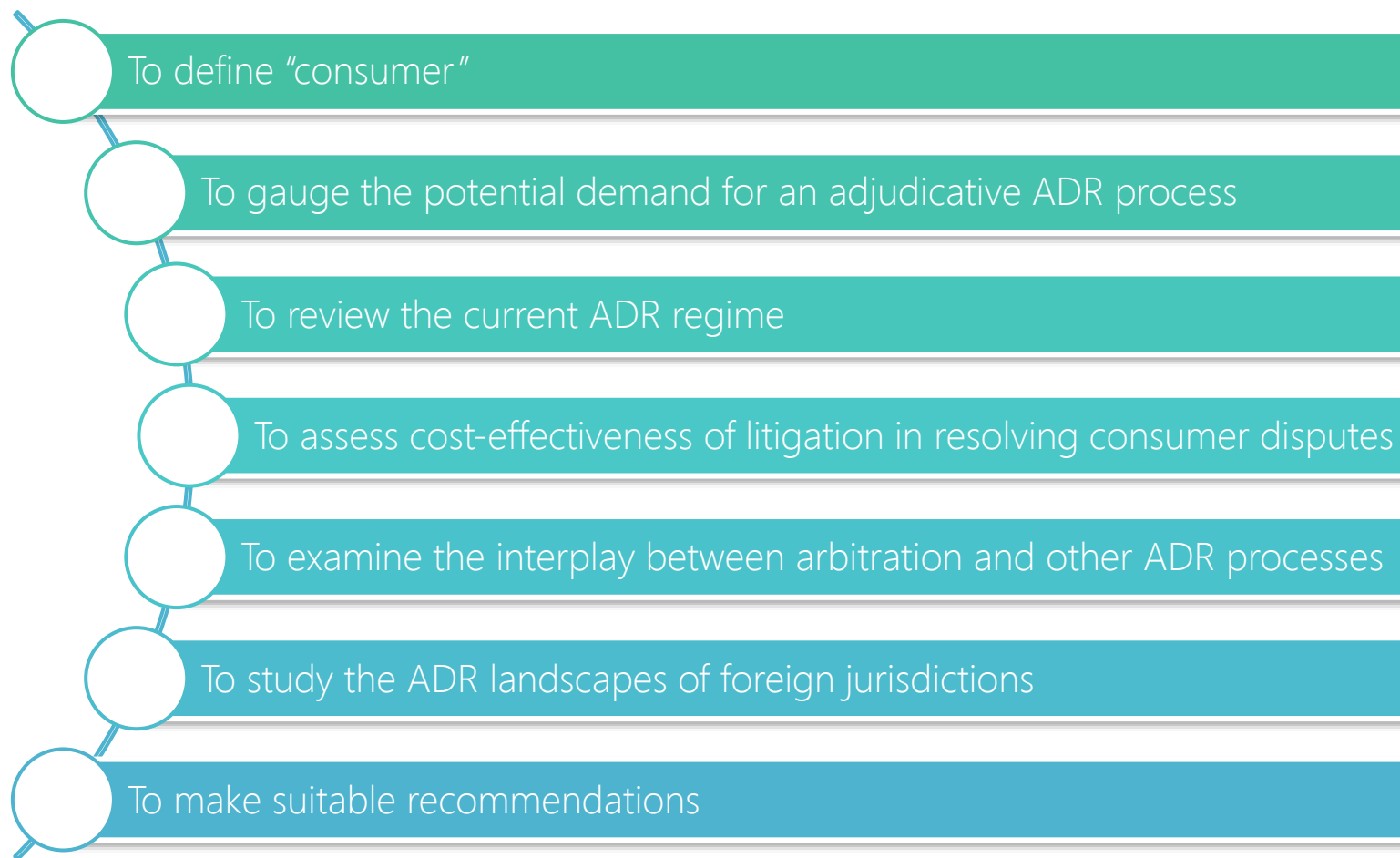
Terms of Reference

To study the role of arbitration in the regime of
Alternative Dispute Resolution ("ADR")
for consumer protection
and make suitable recommendations



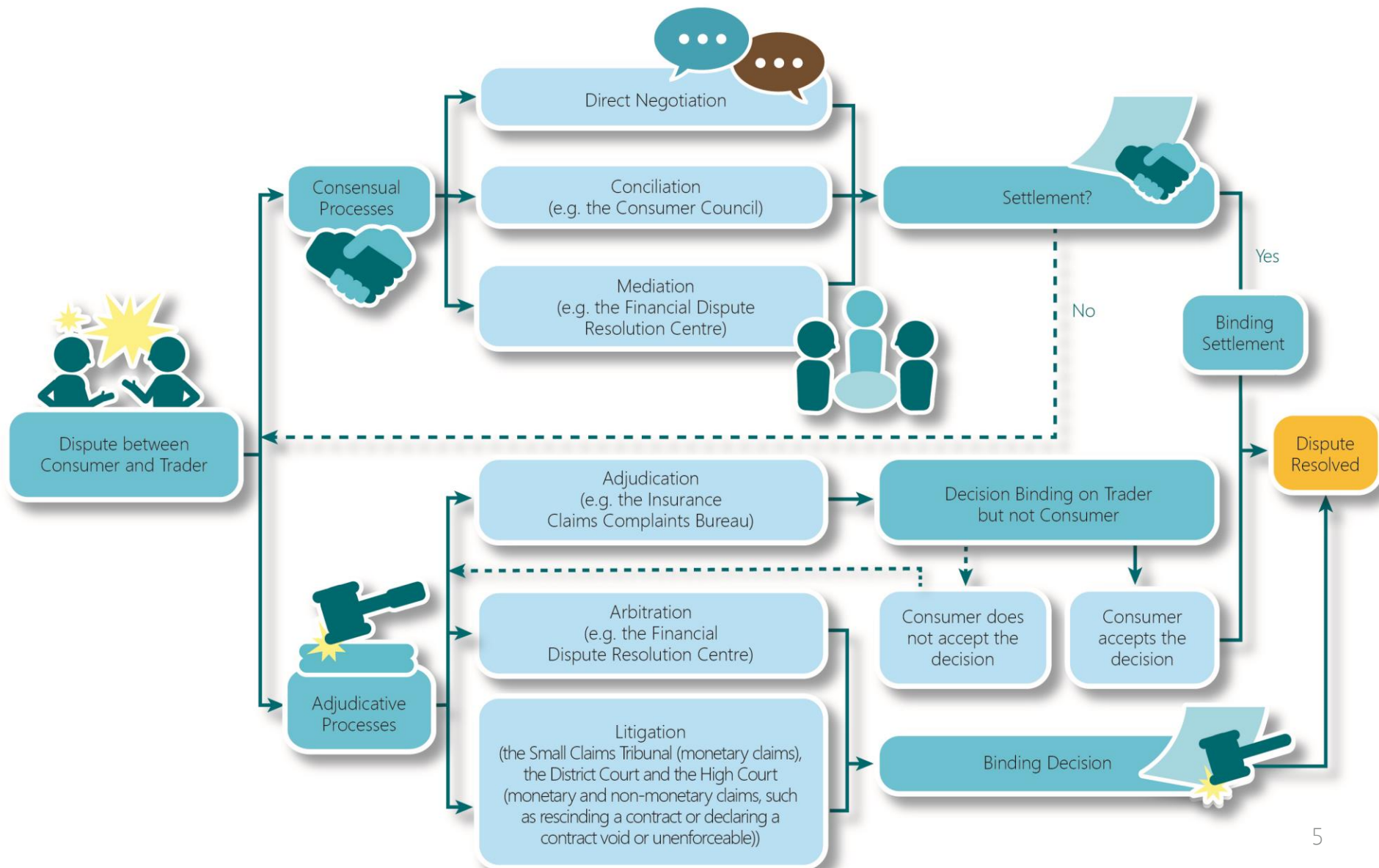


Methodology





Consumer Dispute Resolution





Consumer Dispute Resolution

Consensual Processes

Direct Negotiation

- Without third party assistance
- Parties resolve dispute between themselves

Conciliation

- Voluntary participation
- With third party assistance, e.g. the Council
- Settlement terms agreed between the parties

Mediation

- Voluntary participation
- Structured process under Mediation Ordinance
- With mediator's assistance, e.g. Financial Dispute Resolution Centre
- Settlement terms agreed between the parties





Consumer Dispute Resolution

Adjudicative Processes

Adjudication

- Parties submit dispute to adjudicator for a decision on the merits
- Binding decision on traders, e.g. Complaints Panel of Insurance Claims Complaints Bureau
- Consumers can go to court if they disagree with the decision

Arbitration

- Arbitrator appointed by the parties under the Arbitration Agreement decides on the merits, e.g. Financial Dispute Resolution Centre
- Confidential arbitral award and process
- Arbitral award is normally final and binding, and can be directly enforceable in court

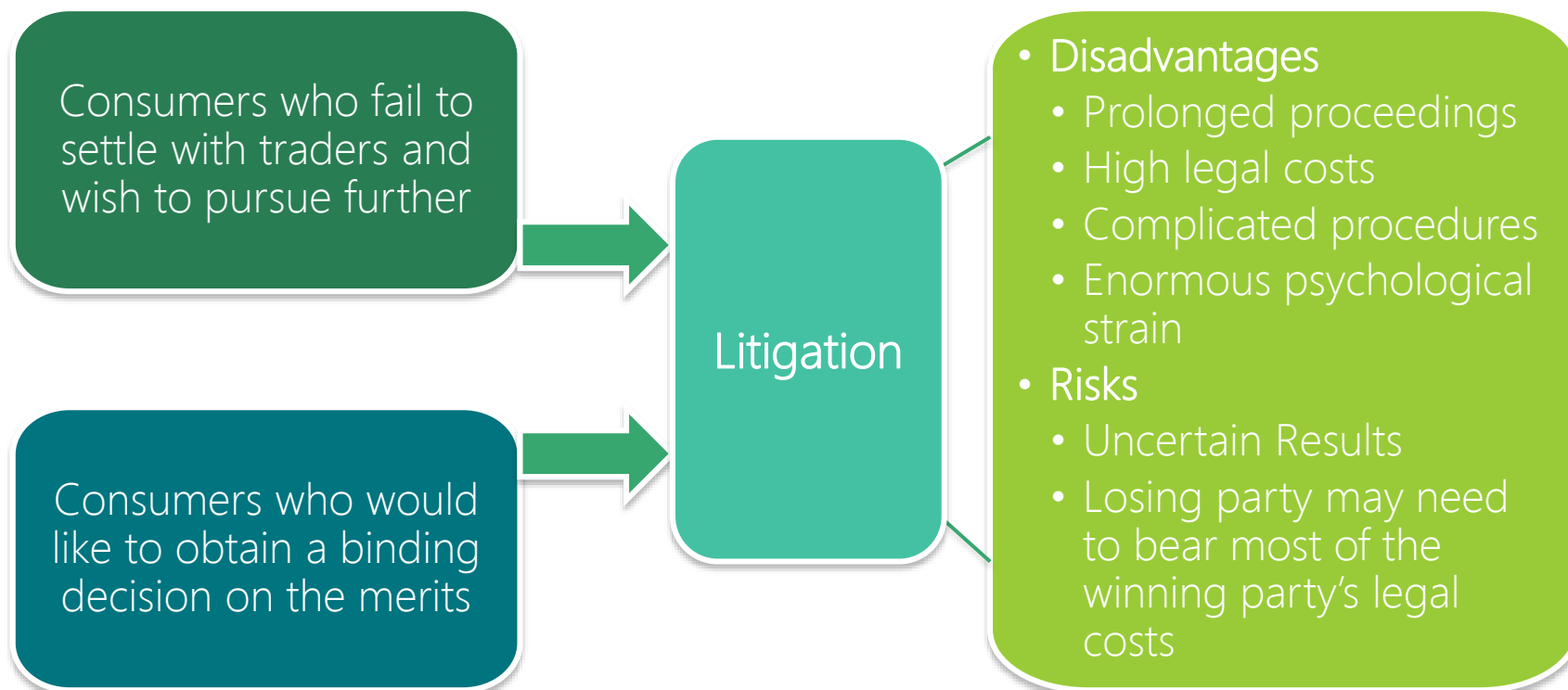
Litigation

- Legal proceedings in court
- Designated judges rule on the merits
- Hearing is usually conducted in open court



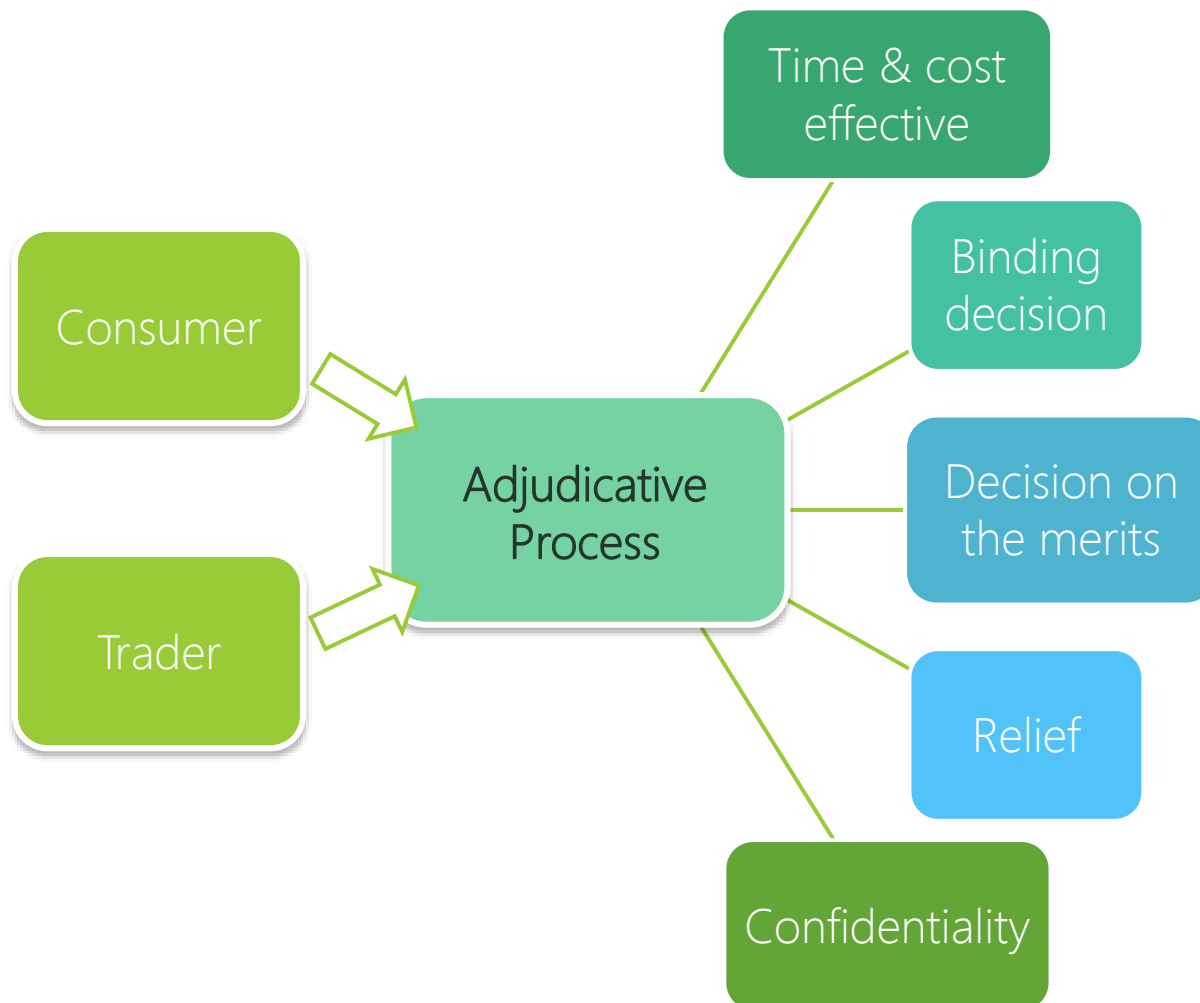


Potential Demand for Arbitration by Consumers





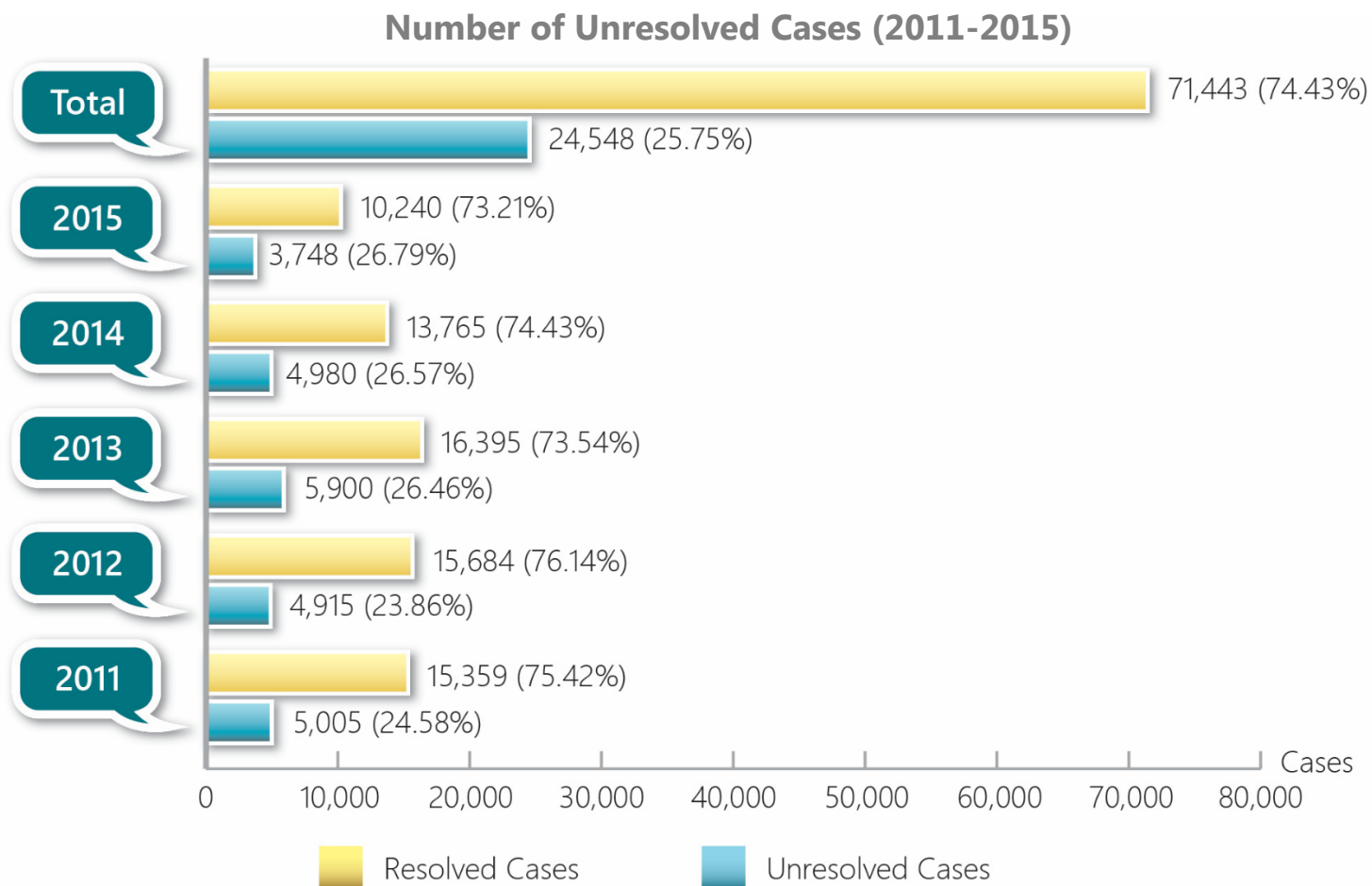
Potential Demand for Arbitration by Consumers





Potential Demand for Arbitration by Consumers

On average 5,000 unresolved cases per year, representing 25% of the total number of complaint cases.

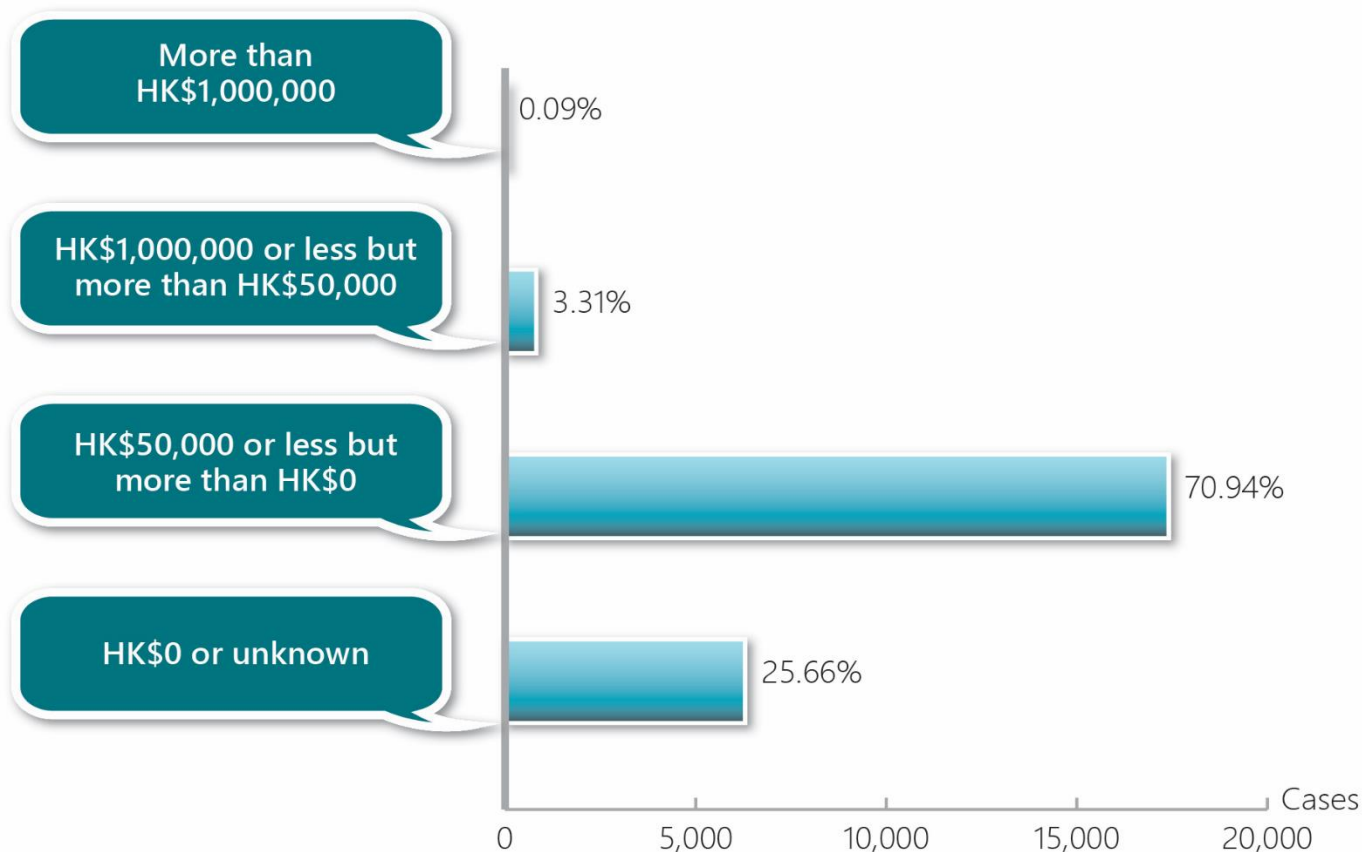




Potential Demand for Arbitration by Consumers

About 97% of the unresolved cases involved an amount of HK\$50,000 or less.

Amount Involved in Unresolved Cases (2011-2015)





Potential Demand for Arbitration by Consumers

The Council considers that the following 4 industries are suitable for consumer arbitration.



Beauty
Service



Electronic
Devices
and
Electrical
Appliances



Decoration/
Renovation



Retail



Example 1 (Beauty Service):

- Consumer purchased laser treatment
- After receiving treatment, there were redness, swelling and pain in her face, and required immediate medical care.
- Consumer alleged that it was resulted from the negligence of the therapist and claimed for damages.
- An arbitrator with professional knowledge in medical practice can quickly and effectively comprehend the issues of the dispute and the expert reports. This saves time and costs.





Example 2 (Renovation):

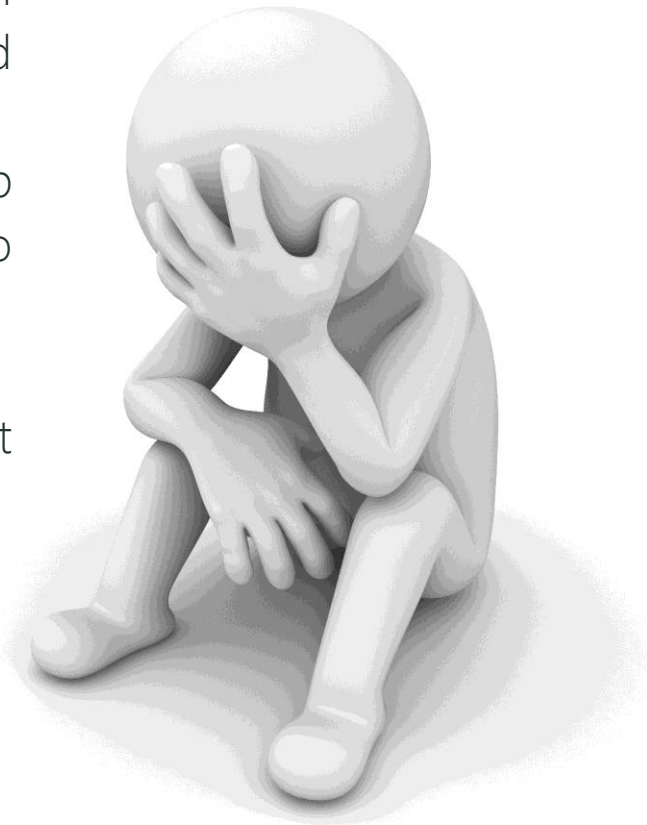
- Consumer entered into home renovation contract with a company.
- Consumer claimed for breach of contract on the grounds of delay in completion, poor workmanship, poor quality of furniture and interior decoration failed to meet his requirements.
- Contract comprised written agreement, supplemental agreement and oral agreement
- Both sides argued on the terms of contract and details of performance.
- Arbitrator with relevant renovation expertise may determine the liability and merits in an efficient manner.





Example 3 (Retail):

- Consumer purchased a lady top for several thousand dollars. The salesperson alleged that it was shrink-proof.
- Consumer later found that the lady top shrank after washing and complained to the trader.
- Trader denied any liability.
- Arbitrator could adjudicate “who is right and wrong” on the shrink-proof issue.





Readiness in Applying Arbitration in Conjunction with Mediation to Consumer Disputes

Hong Kong has a robust infrastructure as fertile breeding ground for a “med-arb” model to take root.

Sound Legal
Framework

Adequate and
Competent
Professionals

Proactive Government
Promotion and
Support



Overseas Experience

Common Law Jurisdictions

- Australia: Financial Ombudsman Service
- Canada: Quebec Guarantee Plan for New Residential Buildings
- Singapore: Financial Industry Disputes Resolution Centre
- United Kingdom: Financial Ombudsman Service

Civil Law Jurisdictions

- Portugal: Consumer Arbitration Centre
- Macao: Consumer Arbitration Centre
- South Korea: Consumer Dispute Settlement Commission under the Korea Consumer Agency





Overseas Experience

Government Funding

- **Advantages**
 - ensure fairness, independence, impartiality and neutrality
 - Attract traders' participation from different industries (Portugal and Macau)
- **Disadvantages**
 - Require public funding

Industry Funding

- **Advantages**
 - Can implement by way of participation schemes or the principle of "user pays"
 - Public funding is not required
- **Disadvantages**
 - Mandatory participation requires legislation process which may be time consuming (financial sectors in Australia and the United Kingdom)
 - Risk of domination and control by traders
 - Where traders continually found themselves before the same arbitrators, traders may unfairly acquire knowledge of arbitrators' tendencies.(ADR scheme in Quebec, Canada)



Overseas Experience

In view of the overseas experience, we consider that **"Mediation First, Arbitration Next"** would be the most suitable approach for resolving consumer disputes.



Proposed Dispute Resolution Model

“Mediation First, Arbitration Next”

Consumers

- cheaper and quicker than litigation
- avoid stress brought by litigation

Traders

- save time and costs
- preserve goodwill
- maintain customer relationship

Society

- relieve court caseload
- promote meaningful direct dialogue
- alleviate acceleration of anger and mutual mistrust during litigation antagonism
- foster justice for consumer protection
- enhance business and consumption environment in a virtuous cycle



“Mediation First, Arbitration Next”

Based on the findings of the overseas experiences and to put “Mediation First, Arbitration Next” into practice, we present the following nine recommendations.





Recommendation

Recommendation 1

- The Government to support the establishment of a “Consumer Dispute Resolution Centre” with the procedure of “Mediation First, Arbitration Next” to resolve consumer disputes.

Recommendation 2

- Funding of CDRC covering its initial set up and recurrent operation should be supported by the Government with effective cost control measures, e.g.:
 - remuneration for arbitrators and mediators could be rewarded by the CDRC on an honorarium basis
 - only appropriate cases would proceed to arbitration with a merits test
 - limiting the legal costs recoverable in arbitration



Recommendation

Recommendation 3

- CDRC should be an affordable avenue for consumers to resolve their disputes with traders. Consumers should be charged no fee for its services, including:
 - preliminary legal advice at the pre-mediation stage
 - mediation
 - subject to merits test, arbitration and legal representation during arbitration

Recommendation 4

- Participating traders should follow the procedures of CDRC for dispute resolution
- Only participating traders can display a logo indicating that independent, impartial and affordable ADR procedure provided by the CDRC is readily available to consumers



Recommendation

Recommendation 5

- CDRC shall be impartial, independent, and transparent to ensure fairness, e.g.:
 - mutual agreement on the choice of mediators and arbitrators
 - disclosure of any actual or potential conflict of interests by the mediators or arbitrators
 - non-acceptance of any sponsorship

Recommendation 6

- The claimable amount handled by CDRC should be capped at HK\$200,000.



Recommendation

Recommendation 7

- Arbitration proceedings should be as simple and cost-effective as possible and the legal costs recoverable should be limited so as to minimize the costs for arbitration.
- CDRC should also stipulate its own mediation and arbitration rules to simplify the procedures, e.g.:
 - “documents-only” arbitration for simple cases
 - “guillotine” procedure that fixes a reasonable or realistic time for oral hearing

Recommendation 8

- Referral mechanism in place for the Council and the Judiciary to refer suitable consumer disputes to the CDRC.



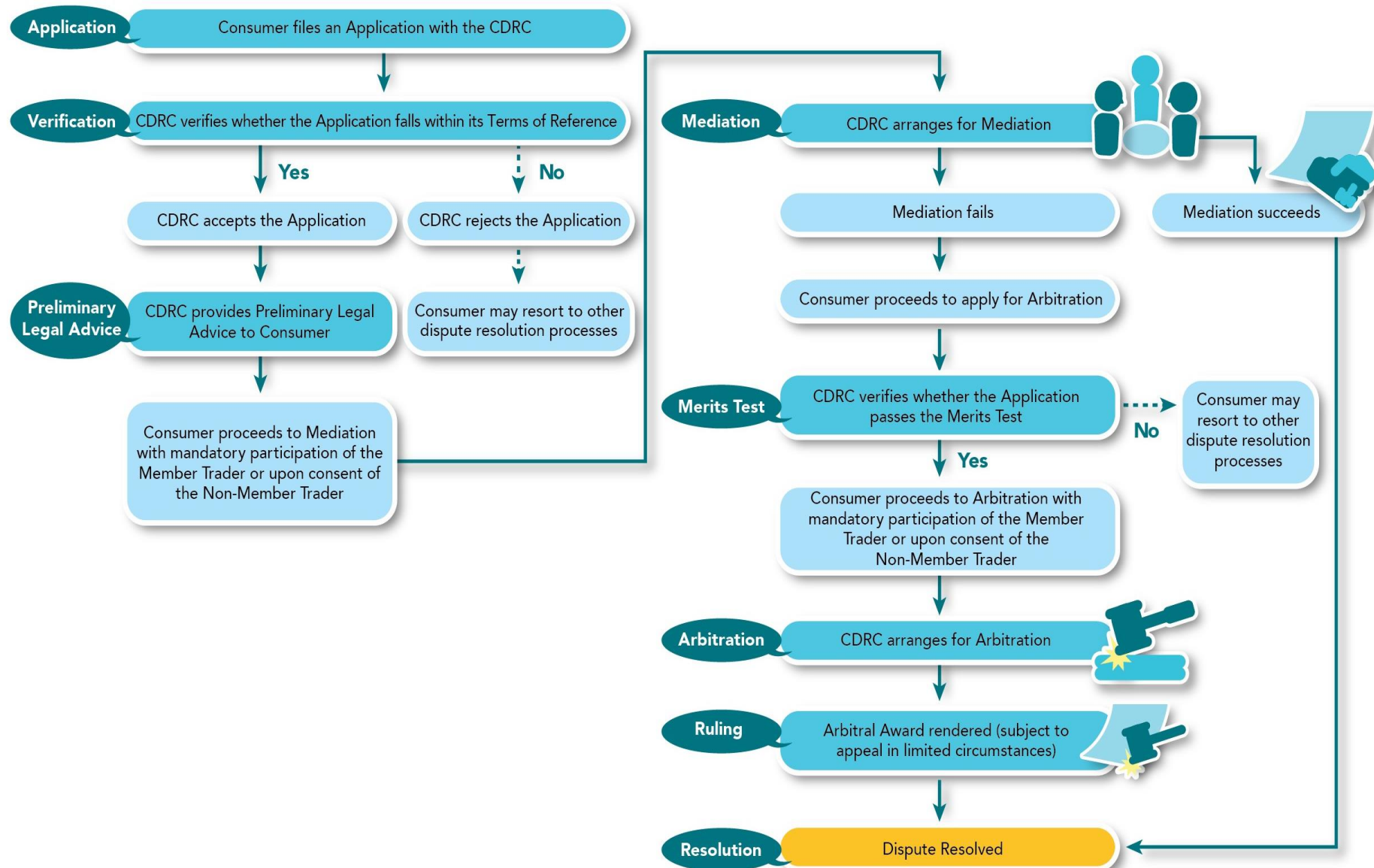
Recommendation

Recommendation 9

- Merger of the existing consumer dispute resolution schemes into the CDRC may optimize cost-effectiveness through resource sharing.



Flowchart on Consumer Dispute Handling Process by the Consumer Dispute Resolution Centre ("CDRC")





Conclusion

The Council advocates for establishing a "Consumer Dispute Resolution Centre"
- a better dispute resolution mechanism for consumers and traders in Hong Kong

To enhance consumer protection and serve the interest of justice in consumption





消費者委員會
CONSUMER COUNCIL

Thank you

