FIJI REVENUE AND CUSTOMS SERVICE

Alternative Dispute Resolution (ADR) Framework

Content

STATEMENT

FRCS approach to disputes

1. As FRCS apply tax law to facts, some areas of dispute are inevitable. Where disputes do occur, our approach is to resolve disputes early and avoid litigation (where possible). We aim to work collaboratively to reduce the time to resolve disputes, reduce the number of disputes, lower costs for both taxpayers and the FRCS, and make interactions with the FRCS easier.

We will encourage prevention and ensure earlier resolution of disputes.

2. The FRCS is committed to work with taxpayers to:
   - avoid disputes where possible;
   - resolve disputes as early as possible;
   - resolve disputes in the simplest and most cost-effective manner taking into account the merits and the risks;
   - clarify disputes by listening to each other's views and considering all resolution options; and
   - manage disputes in a courteous and fair manner.

FRCS approach to ADR

3. ADR is an umbrella term for processes, in which an impartial person, assists those in a dispute to resolve or narrow the issues between them. We refer to this impartial person as an ADR Practitioner.

4. When disputes cannot be resolved by early engagement and direct negotiation, the FRCS is committed to using ADR where appropriate to resolve disputes. It is important to recognise though that not all cases are suitable for ADR. In cases where ADR is suitable, the FRCS and the taxpayer should choose a process which is suited to the circumstances and the nature of the dispute.

5. Taxpayers and their representatives can expect that the FRCS will:
   - identify opportunities for ADR;
   - consider and respond to requests for ADR;
   - suggest ADR where appropriate; and
   - speak with and write to the taxpayer before ADR to explain the process and what they can expect from it.

6. By way of general observation, ADR may be appropriate when:
   - there are issues that are able to be negotiated or resolved by one or more parties;
   - the dispute is capable of being settled within existing settlement policies and practices; and
   - early resolution is preferable to judicial determination.

7. In practice, ADR may be appropriate where it will, for example:
   - achieve a quicker or cheaper resolution particularly when the cost of litigating is out of proportion to the possible benefits;
   - narrow or clarify the facts and issues in dispute;
   - minimise risks associated with evidentiary difficulties;
   - facilitate a certain / earlier payment of tax or;
   - maintain or improve the relationship between the parties in dispute.

8. ADR may be inappropriate where, for example:
   - resolution can only be achieved by departure from an established 'precedential FRCS view' and there is no material difference between the facts in dispute and the facts which form the basis of the 'precedential FRCS view';
   - the cost and delay involved in ADR is disproportionate to the likely benefit;
   - the dispute turns on genuine and fundamental issues of law or is otherwise straightforward and there is a clearly identified public benefit in having the matter judicially determined;
   - The facts are clear, and the application of the law is straightforward; or
   - there is a genuinely held concern that the case involves serious criminal fraud or evasion.

Disputes to which this framework applies

9. This framework is written in respect of taxation disputes. However, many of the principles set out in this framework will apply to other disputes to which the FRCS is a party.

10. This framework supports the application of ADR through FRCS's mediation, settlements, and legal processes.

EXPLANATION

FRCS obligations with respect to ADR

11. FRCS to endeavour where possible to avoid, prevent and limit the scope of legal proceedings by considering ADR before initiating legal proceedings and by participating in ADR where appropriate.

12. When participating in ADR, FRCS must do so fully and effectively. An obstructive or uncooperative attitude indicates a failure to participate in good faith. However, participation in good faith does not require a party to act other than in their self-interest.

13. As a government agency, the FRCS is required to approach ADR with 'good management' in mind; that is, in a way that is efficient, effective, economical, and ethical. Resolution of a dispute may therefore be appropriate as a matter of good management.

14. Parties to tax disputes to take genuine steps to resolve a dispute before commencing legal proceedings in the Fiji Judicial System.

How to initiate ADR

15. ADR is generally initiated by agreement between the parties.

16. FRCS personnel involved in disputes should actively look for opportunities where ADR can help to resolve or progress the dispute. Any opportunities identified should be discussed with the relevant manager(s) and appropriate technical staff before approaching the taxpayer or their advisors.

17. Taxpayers can also request ADR. Requests should usually be directed to the tax officer managing the dispute, who will discuss the request with the relevant manager(s) and appropriate technical staff before responding.

18. If ADR is requested by a taxpayer and the FRCS considers that ADR is not appropriate, the FRCS will clearly communicate the reasons to the taxpayer.

What can a taxpayer expect from the FRCS in ADR

19. When engaging in ADR, the FRCS will:
    - be prepared;
    - participate fully, effectively and in good faith;
    - ensure the taxpayer has been provided with all relevant documents prior to the ADR process;
    - be willing to negotiate and attempt to resolve all aspects of the dispute (if appropriate);
    - listen to the taxpayer and remain courteous at all times;
    - ensure a decision maker is present; in exceptional circumstances the decision maker may attend by video or telephone; and
    - if the FRCS considers that final resolution of the dispute is not possible at ADR but there is still value in the ADR process going ahead, the FRCS will advise the taxpayer before the ADR process proceeds of any limitation of the scope of the ADR.

FRCS expectations of taxpayers in ADR

20. The FRCS expects taxpayers and their representatives to:
    - be prepared, including ensuring that all relevant people are participating or directly accessible;
    - participate fully, effectively and in good faith;
    - be authorised to discuss and resolve the dispute;
    - provide the FRCS with all relevant documents prior to the ADR process and;
    - be willing to negotiate and attempt to resolve all aspects of the dispute or clarify prior to the ADR process any limitation of the scope of the ADR process

The ADR process

21. If the parties choose to participate in ADR, they may need to consider various options for the conduct of the ADR process.

22. For an ADR process the parties will need to consider and agree on:
    - the type of ADR process to be used;
    - where the ADR process will be conducted;
    - the terms and conditions of the engagement of the ADR practitioner, including payment of the ADR practitioner's fee, which is ordinarily shared between the parties;
    - the scope of the ADR process and the issues to be reviewed;
    - what documents if any will be provided to the ADR practitioner and exchanged prior to the ADR process;
    - what will be required of each party during the ADR process;
    - confirming that all communications during the ADR process are "without prejudice" and not able to be used in other contexts or in litigation;
    - who will attend the ADR process for each party;
    - ensuring a decision maker for each party will attend the ADR process; and
    - the circumstances in which an ADR process may be terminated early.

Engagement of a Practitioner for ADR

23. An ADR practitioner is an independent person who is trained to help parties in dispute to work towards a solution. In mediation, the ADR practitioner will assist the parties to resolve some or all of the issues in dispute but will not provide advice to them.

24. Relevant Manager from FRCS Dispute and Resolutions team can assist in the selection and engagement of a ADR practitioner.

Participation in ADR

25. FRCS personnel attending an ADR process should be clear in advance about their respective roles.

26. FRCS personnel must prepare thoroughly and be familiar with all facts, issues, law and policy relevant to the dispute. They should also have regard to the underlying interests of both parties when identifying options for resolution of the dispute.

27. The FRCS personnel attending the ADR should have authority to make decisions about the issues likely to be discussed, including the authority to settle or make decisions about payment of debt. In exceptional cases where it is not possible for the FRCS decision maker to be present at the ADR process, they will be accessible by telephone or videoconference during the course of the ADR.

28. It is desirable to persist with negotiations at ADR while there is any likelihood of a successful outcome.

29. The ADR process should be brought to an end if it becomes clear that there is no likelihood of a successful outcome.

30. Successful outcomes may include:
    - resolution of the dispute, either in part or in full;
    - clarification of the facts or issues;
    - obtaining payment;
    - improving the relationship between the parties to the dispute; or
    - agreeing on a way forward to progress the dispute towards resolution.

Confidentiality of the ADR process

31. All ADR processes are conducted in a confidential and on a 'without prejudice' basis whereby all participants involved in the process will not disclose any information or documents provided to them in the course of or for the purposes of the ADR process to anyone not involved in the process unless authorised by the disclosing participant to do so or as required by law.

32. All external mediators engaged to conduct a mediation will be required to sign a Non-discourse Agreement before assisting in an ADR process.

33. Each participant agrees to ensure that all its Authorised Representatives (if any) sign a Non-discourse Agreement before assisting in an ADR process.

34. Any party to this Agreement (whether the ADR Practitioner or the party participants) compelled by any legal process to disclose any information disclosed in the ADR process (Compelled Party):
    a. will notify each other party in writing of the identity of any person to whom disclosure is required and the claimed reason for the disclosure;
    b. will co-operate reasonably with any other party who claims a reasonable right to oppose disclosure (provided that in giving any such co-operation the Compelled Party is not required to breach any law or incur any material personal cost and any party opposing disclosure must meet all the Compelled Party's costs in giving such co-operation).

Privilege

35. Subject to this Agreement and any legal obligation, any admission, concession, proposal or other statement or document made, prepared or disclosed in connection with the ADR process (other than a binding Settlement Agreement) will
    a. be "without prejudice" ;
    b. retain the benefit of any privilege, including legal professional privilege, that would otherwise have applied; and
    c. not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings.

36. The FRCS will seek feedback from participants in ADR to identify potential improvements to FRCS processes and to provide community assurance. This will be sought independently of the ADR process and will maintain the confidentiality of all participants.

Documenting an agreement

37. FRCS personnel attending an ADR process must ensure that any settlement deed or agreement document is clear, unambiguous and fully reflects the agreed outcomes.

38. Sometimes parties will be unable to execute an enforceable agreement at the ADR process. In such circumstances a 'Heads of Agreement' should be drafted to record what has been agreed. Such a minute may or may not be enforceable depending on its terms. Accordingly, it is preferable for the parties to indicate whether they intend to be legally bound by the document. Alternatively, parties may wish to reserve the right to be bound only when an enforceable agreement is executed.

39. For the purposes of achieving certainty and finality for the parties, the agreement should take effect on its execution.

What can taxpayers do if their expectations are not met?

40. If a taxpayer does not think the FRCS has met the standards outlined in the FRCS ADR Framework while considering or engaging in an ADR process, the taxpayer has the right to make a complaint.

41. A taxpayer should first try to resolve the matter with the tax officer involved in the ADR process. If still unsatisfied, the taxpayer should talk to the tax officer's manager.

42. A taxpayer's review and appeal rights will be unaffected by participating in ADR, subject to the terms of any settlement reached and compliance with the legislative timeframes.

FRCS ROLES AND RESPONSIBILITIES IN AN ADR PROCESS

43. The following table sets out the roles and responsibilities of the various FRCS stakeholders in the course of an ADR process.

Task	Responsibility
Identifying and reviewing ADR opportunities	Business area case officer
Providing advice on ADR generally	Mediation Coordination Team or Legal Business Area depending on the type of ADR
Agreeing to ADR	Business Area Case Team in consultation with Mediation Coordination Team or Legal Business Area depending on the type of ADR
Approval of expenditure on ADR practitioner	TBD
Selecting ADR practitioner	Mediation Coordination Team or Legal business area depending on the type of ADR
Engaging ADR practitioner	Mediation Coordination Team or external solicitor
Agreeing the ADR process used [and if necessary a protocol for the process]	Business area case officer/team with assistance of the Mediation Coordination Team
Preparing for and attending the ADR	At least 2 FRCS business area case officers
Drafting documents at ADR	Business area case officer / external solicitor (if engaged)
Agreeing terms of an agreement at ADR	Business area delegate in consultation with Debt Business Area regarding payment if applicable
Authorising a settlement arising out of ADR	Business area delegate in consultation with the Mediation Coordination Team
Ensuring settlement documentation is completed including entering data on case management system	Business area case officer
Ensuring the agreement is given effect, including raising any agreed amended assessment/s	Business area case officer

Annexure

Annexure 1

Mediation - Statement of Expectations

This Statement of Expectations applies to all mediation participants and mediators. It outlines what is expected of participants and what participants can expect from the process.

Participants

The role of mediation participants is to present their view of the facts and issues of the case. Participants include FRCS officers involved in the case (including panel/committee members where relevant), the taxpayer/s and representatives of the taxpayer/s.

All participants will:

- be prepared for the mediation, including ensuring that all relevant people are participating or directly accessible;
- be authorised to discuss and resolve the dispute;
- participate in the mediation fully and in good faith;
- have an objective approach to settling the issues and be willing to negotiate and attempt to resolve all aspects of the dispute or clarify prior to the mediation process any limitation of the scope of the process;
- be respectful of all parties, and the mediation;
- answer (where possible) any relevant questions, asked by the mediator or other parties
- as far as practicable, be open and transparent in providing information directly relevant to the case to enable a better understanding of the facts and issues;
- adhere to confidentiality requirements (as outlined below).

Mediators

The mediator's role is to manage the discussion between the participants with a view to resolving the dispute or at least making progress towards resolution.

The mediator will:

- have training, skills and experience in conducting mediation processes;
- act in good faith and within the law;
- support the integrity and fairness of the process;
- respect time and attempt to bring the process to a conclusion in a reasonable time;
- be neutral, impartial and avoid any actual or perceived conflict of interest
- not have an interest in the eventual outcome of the case;
- not accept any gifts, inducements or rewards (whether in monetary or nonmonetary form) in respect of his or her involvement in the process, except for the mediator's current remuneration as <'an employee of the FRCS' or 'a appointed external mediator who is paid as per the fee structure they are employed through>;
- aside from taking actions necessary to maintain control of the discussion, not compel any participant to agree to steps in the process, conditions, or outcomes which the participant is not comfortable accepting;
- not have any prior or future involvement in the case, whether or not in their capacity as an employee of the FRCS, without consent of all participants;
- immediately disclose to the participants anything that may, or may be seen to, affect their independence, and only continue to act as mediator in the process with the consent of all participants;
- adhere to confidentiality requirements (as outlined below);
- cease to act and withdraw from the process if:
  - a reasonable request is made by a participant; or
  - if anything will impair their ability to meet these expectations.
- suspend or terminate the process if they believe that continuation of the process may harm or prejudice one or more of the participants, or that one or more of the participants are not acting in good faith.

Confidentiality

Any information disclosed during the mediation process is only to be used for the mediation process, unless:

- authority is otherwise provided by the disclosing party;
- disclosure is required by law;
- or the information represents an actual or potential threat to human life or safety.

This means that:

- what is said in the mediation process stays in the process;
- anything said or written during or about the mediation process must not be spoken or written about outside of the process unless agreed by all participants;
- the mediator can only speak or write about the mediation to the following people (where they agree to keep what you tell them to themselves):
  - the other participants
  - the mediator
  - other people specifically involved in the mediation process, such as lawyers and expert advisers
  - other people agreed by all participants.

To avoid any doubt:

- No admission by, or new evidence obtained from, a participant as a consequence of the mediation process can be used by or be disclosed to any other person employed by the FRCS, or otherwise engaged to act for the CEO, as a basis to amend the returns of any person or would otherwise benefit the other party, without the prior consent of the participant.

Before the mediation

- Participants will be separately contacted by the mediator. The pre-mediation meeting will allow each of you to separately be introduced to the mediator who will outline the process, establish your objectives, clarify aspects of the dispute and answer any questions you have about the process.
- Participants will be notified of the date, time and venue of the mediation.
- Any change to the date, time or location will be notified to all participants as soon as possible.

On the day

- The mediator will outline the meeting format, reinforce mutual expectations and aims for the session, and will assist to document the outcome if requested by both parties.
- Participants will be invited to communicate their aims for the session, interpretation of the tax issues in dispute and briefly summarise their concerns.
- The mediator will summarise each participant's view to ensure mutual understanding by all parties. Participants will be able to briefly respond to the mediator's summary.
- The mediator will establish an agenda listing the issues to be resolved or questions to be answered.
- Participants will discuss all agenda items to evaluate options and the decision-making process.
- The mediator will assist the participants in their discussions to reach an agreed resolution to the issues.

After the negotiation

- If participants have agreed on an outcome, the mediator will assist the participants to record the agreement, settlement or recommendation. The case will be finalised in accordance with the agreed outcome.

Feedback or concerns

If participants have concerns at any stage in the process, they should raise them with the mediator or email: legal@frcs.org.fj

Participants may withdraw from the process at any time by advising the mediator and the other participants.

If the mediation does not resolve the dispute, the taxpayer's rights of review will be unaffected, and they may still be able to appeal the FRCS's decision to court.

Participants will be invited to complete a feedback form after the mediation to capture their views of the process.

We appreciate your feedback to help us measure the effectiveness of the process and make any improvements.

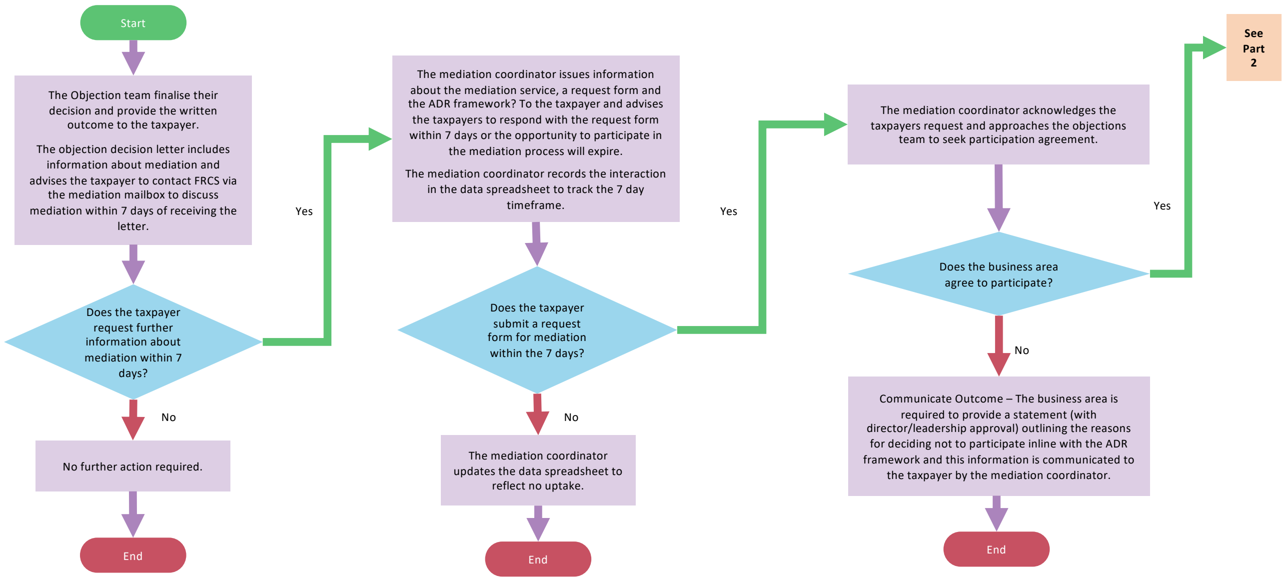
Annexure 2

FIJI REVENUE AND CUSTOMS SERVICE

FRCS Post Objection Mediation Process Map

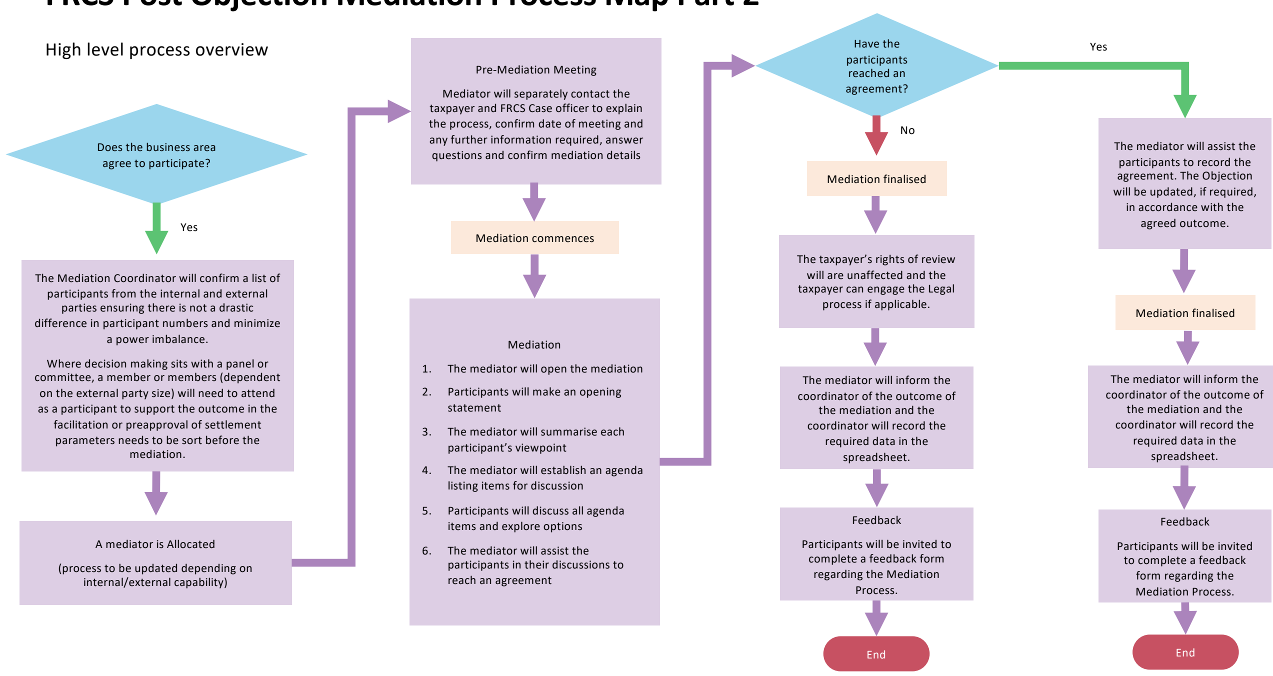
FRCS Post Objection Mediation Process Map Part 1

High level process overview



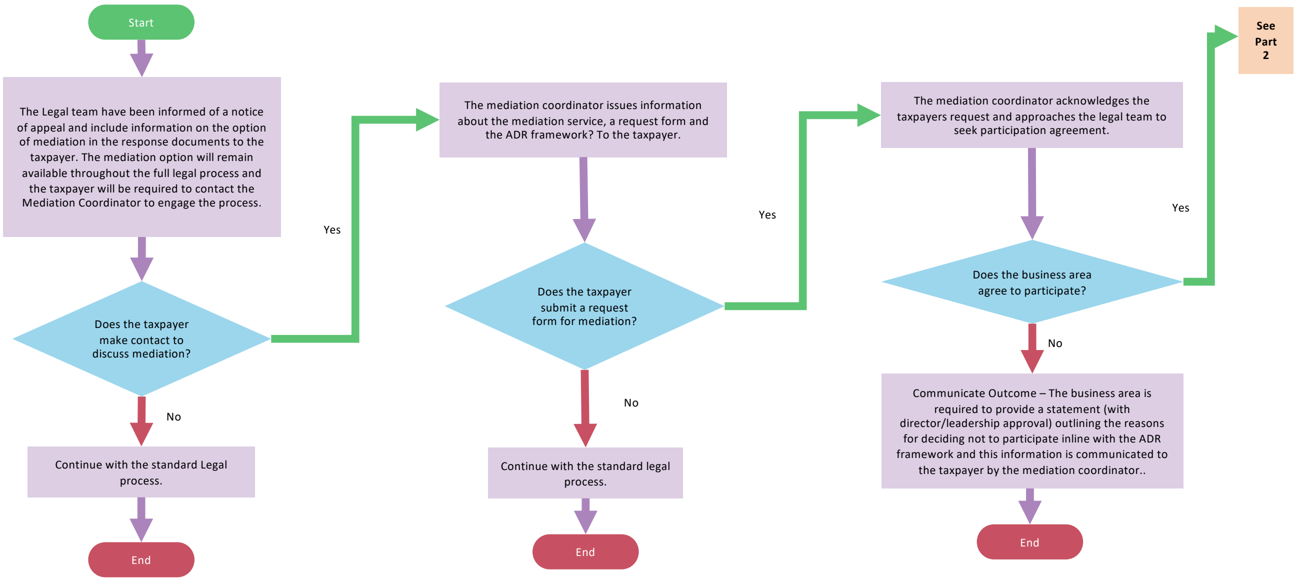
FRCS Post Objection Mediation Process Map Part 2

High level process overview



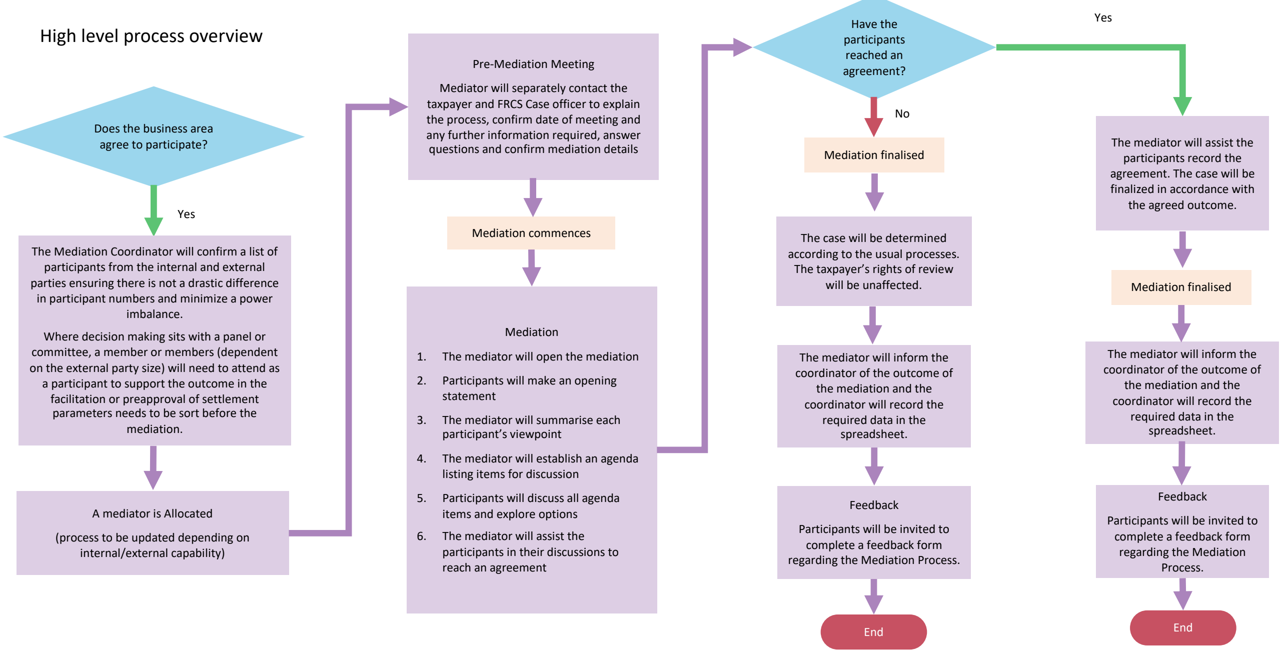
FRCS Legal Mediation Process Map Part 1

High level process overview



FRCS Legal Mediation Process Map Part 2

High level process overview



Annexure 3

FIJI REVENUE AND CUSTOMS SERVICE

Overview of the Mediation Coordination Team:

The administration and coordination of the Mediation Service should be independent from the objections case team to support independence and impartiality.

Central to the management of mediation requests are the following principles:

- The mediation service operates independently of FRCS business areas in the administration and processing of requests for mediation.
- The mediation service remains impartial.
- FRCS business areas, not the mediation service, make decisions about FRCS participation in mediation.
- If the FRCS declines a request for mediation, the business area, is responsible to provide reasons via the mediation mailbox.

The service should be contactable by an external facing group mailbox that can be accessed by more than one staff member who can:

- support taxpayers to better understand the service,
- issue the required forms for completion by the taxpayer,
- manage regular communication with the internal teams to support the allowable time for a taxpayer to lodge a request without further related action on the taxpayers file,
- initial assessment and coordination of mediation requests including -
  - seeking agreement from the Business Area to participate,
  - coordinating decline responses from the Business Area where required,
  - profile the taxpayers account to support encouraging mediation where inadequate communication with the taxpayer is evident,
- collect and record relevant data of request including final outcomes,
- request participant details and ensure there is not an imbalance between the parties,
- coordinate the allocation of a mediator including collating the relevant information required for the mediator (request forms, participant details and any additional information),
- request feedback following the finalisation of a mediation,
- manage and support a network of internal mediators and/or manage the relationship with an external mediator provider.

Annexure 4

FIJI REVENUE AND CUSTOMS SERVICE | **Mediation Referral Form**

Taxpayer Name

Taxpayer Identification Number (TIN)

Case Details	
ADR Substantive amount in dispute	**$**
ADR Penalty amount in dispute	**$**
Stage of Case	**<post objection / legal>**
Location of Taxpayer	

Participant Details

Position/Role	**Name**	**Location/Business Line**	**Contact Number(s)**
Taxpayer			**M:** **W:**
Taxpayer Representative			**W:** **M:**
FRCS Case Officer			**W:** **M:**
FRCS Decision Maker			**M:** **W:**
Other FRCS Attendants			**M:** **W:**

Case Documents
Add any documents that relate to the mediation request in the table directly below. (e.g. Position paper, taxpayer objection form , legal reasoning document)

Brief Background of Case
A brief summary of case, incl. facts and issues

Other Relevant Issues
For example: sensitive issues, communication issues, taxpayer overseas, extended case times, etc.

Initiation of mediation

Indicate what triggered this mediation request.

☐ **FRCS**	☐ **Taxpayer**	☐ **Mutual**	☐ **Court Ordered**

Time Frames
Are there events in time that will affect the mediation process (i.e. court dates, participants travelling or conflicting commitments)

Annexure 5

FIJI REVENUE AND CUSTOMS SERVICE

| Mediation Request Form

Section A: Applicant's details	
1. Taxpayers Name:	
Taxpayer Identification Number (TIN):	
Type of applicant:	
Individual:	☐ Yes ☐ No
Non-individual entity:	☐ Yes ☐ No
Relationship to the entity (eg director, public officer, N/A):	

Section B: Contact details	
2. Contact person for this application?	
Title:	
Family Name:	
First Given Name:	
Other Given Names:	
Daytime phone number (including area code)	
Email address:	
Address for related correspondence:	

Section C: Application details	
3. Provide details of an FRCS reference number (if applicable):	

4. Provide a brief background of the dispute:

5. Provide a brief summary of the issues in the dispute:	
6. Have you attempted to clarify the problem? (have you had a conversation with the other party in order to clarify the issues?):	☐ Yes ☐ No
7. What are the name/s and contact details of FRCS officers involved in the dispute (if applicable)?:	
8. What is the stage of the dispute? (post objection/litigation):	
9. What are the primary tax and penalties involved? (if unknown, provide an estimate if possible.):	
10. What are the period involved in the dispute? (if known):	
11. Do you need other persons or assistance with accessibility challenges?	

Annexure 6

FIJI REVENUE AND CUSTOMS SERVICE

| FRCS Mediation - Participants' Feedback Form

Your answers will be used for quality improvement purposes only.

Date of Mediation:	
Taxpayers Name:	
Taxpayer Identification Number (TIN):	

Section 1

Role in Mediation

(Taxpayer/Taxpayers Lawyer/Taxpayers Accountant/Taxpayer Other/FRCS DR Officer/FRCS Business Area Officer/FRCS Technical Specialist/FRCS Debt Officer/FRCS Other)

Section 2

Mediation Process

1. Did you obtain a better understanding of the other party's views?	☐ **Yes**	☐ **No**
2. Do you feel your relationship with the other party has improved?	☐ **Yes**	☐ **No**
3. Do you feel the mediation process was fair?	☐ **Yes**	☐ **No**
4. Do you feel the mediation process was effective to resolve or progress the dispute?	☐ **Yes**	☐ **No**
5. Do you feel the mediator behaved impartially to both parties?	☐ **Yes**	☐ **No**
6. Do you feel the other party attending participated fully and was willing to listen?	☐ **Yes**	☐ **No**
7. Would participate in mediation again if a dispute arose?	☐ **Yes**	☐ **No**

Section 3

8. What worked well during the mediation process?

9. Is there anything that could have been done better during the mediation process?

10. Do you have any comments about the mediation process or the participants?

Section 4

Further Improvements to the Process

11. Would you be willing to speak to someone from the FRCS who is independent of the mediation process so we can hear your views on improvements to the process?	☐ **Yes**	☐ **No**

If you would be willing, please provide your name and telephone number.

Annexure 7

FIJI REVENUE AND CUSTOMS SERVICE

| Mediation Feedback Form – Mediator

Taxpayer Identification Number:	Taxpayer Name:

Date of Mediation:	Name of Mediator:	Name of Co-mediator: (If applicable)
/ /		

Channel the matter proceeded by:

☐ MS teams	☐ Webex	☐ Phone	☐ Zoom	☐ F2F

Mediation outcomes:

Select ALL that apply

☐ **Fully Resolved**

- ☐ Settlement under the Code
- ☐ Settlement NOT under the code (select below)
- ☐ Heads of Agreement

  OR

- ☐ Other written agreement
- ☐ FRCS agreed with Taxpayer view
- ☐ Taxpayer agreed with FRCS view

☐ **Partially Resolved**

- ☐ Clarified facts/issues
- ☐ Improved relationship
- ☐ Parties understand other's position
- ☐ Other (explain below)

- ☐ Not Resolved
- ☐ No benefit from Mediation

Comments or additional outcomes:

Any further comments about the outcomes	☐ *Possible Good News Story (tick)?*

Mediation process:

Tick all those that apply (expand in comments below)

☐ Did the parties participate in good faith?	☐ Were the parties adequately prepared?

Comments on process:

For example:

** What worked well?   * What could have been done better?   * Any issues requiring action/ attention by the Mediation Coordination Team?*

** Any learnings that should be shared with CoP?   * Any feedback that would be useful for the business area for preparation in future?*

Capability:

Self-reflection: What skills you would like to improve on?

Participant feedback: Any skills the FRCS Business Area can improve on?

Is this suitable for a Case Study:

☐ **Yes**	☐ **No**

Annexure 8

Compendium of Declined Responses

When a mediation request is declined by the business area, a statement supporting the decline must be provided to the taxpayer. The statement is provided by the business area and the email is drafted and sent by the Mediation Coordination Team. It is also important to confirm the request has been finalised/closed where applicable, so the taxpayer has a clear understanding of the status of their request.

The standard email template for a declined response is:

> Good afternoon <name of person requesting mediation>,
>
> *We refer to your request for mediation on behalf of your client <enter taxpayer name> dated <enter date of request>.*
>
> *<where there has been an extended timeframe between responses> Thank you for your patience while we reviewed your request.*
>
> *Mediation is a voluntary process, and we therefore seek the agreement of both parties to participate before proceeding with any mediation request.*
>
> *The relevant FRCS Business Area has considered your client's request and has advised us that they do not agree to participate in mediation at this time.* OR *We have consulted the relevant FRCS parties involved in your matter and consideration has been given to the mediation request.*
>
> In accordance with the *FRCS's Alternative Dispute Resolution Framework, they have provided a written statement detailing why they do not agree to participate.*
>
> *<insert the business lines reason>*
>
> *Given the above, please note that your request for mediation will be finalised.*
>
> *If you have any questions about the above, you are able to contact <insert business area case officer name> from <insert business area>.*
>
> *Alternatively, please do not hesitate to contact me or email the FRCS Mediation Coordination Team at <insert FRCS mediation group mailbox>.*

Some examples of business area reasoning that aligns with the ADR Framework are as follows and should be added to as FRCS create unique decline responses:

The relevant FRCS Business Area has considered your client's request and has advised us that unless there is new information provided that has not previously been considered, it is likely the case team will decline your mediation request. Please provide any additional information by <insert reasonable date> for consideration or your request for mediation will be considered finalised. If you have any questions about the above or you would like the opportunity to provide additional information, you are able to contact your case team directly.
The relevant FRCS Business Area has considered your client's request and has advised us that mediation is not suitable. The <Objections or Legal> area in reviewing your request for mediation consider mediation would not further advance your client's case. The objection decision was well considered based on the information provided, it is comprehensively set out, and no obvious errors have been made. Your circumstances are suitable for judicial determination. Given the above, please note your request for facilitation will be finalised.

In the absence of information previously requested and given the many extensions and numerous and detailed discussions to date in an attempt to resolve the dispute, mediation is not appropriate.

The following documentation was to be provided to the FRCS by <insert date documents we due by>:

- <insert document name or information requested>

Given the above, please note your request for facilitation will be finalised.

Example of direct conversation preferable:

The relevant FRCS Business Area has considered your request and has offered to discuss your mater directly with you rather than through mediation in the first instance. In the discussion, the case team will aim to address the specifics of your request and clarify further information with you.

Your mediation request will be placed on hold and can be revisited pending the outcome of the direct discussion.

It is the FRCS Business Area's view that a resolution can only be achieved by departure from an established 'precedential FRCS view' and there is no material difference between the facts in dispute and the facts which form the basis of the 'precedential FRCS view'.

The facts are clear and the application of the law is straightforward.

The FRCS Business Area has invited the taxpayer and their representative to put forward any additional facts and any explanation if you disagree with the team's interpretation of the law by <insert date>.

If you have any questions about the above, you are able to contact your case team directly.

The principal issues in dispute do not involve technical legal matters but turns on evidence. It is not apparent the issues can be negotiated or that the facts or issues can be narrowed or clarified via a mediation process. Rather, the taxpayer must produce sufficient evidence to substantiate the tax outcomes. Given the lack of evidence provided and the relatively straightforward nature of the issues in dispute, the cost and delay involved in mediation is, disproportionate to any likely benefit.

We have been advised that the request has been declined for the following reasons:

- The issue in dispute is discreet and the mediation process will not assist in narrowing the issue in dispute
- The facts of the issue in dispute have already been established through the penalty decision and the objection process
- Mediation would add unnecessary cost and time for limited benefit compared to a streamlined process where both parties have direct negotiations
- The business area is open to meet with you to discuss the dispute further with the view of resolution

If you wish to discuss resolution directly, please contact <insert case officer name and contact number>.

The relevant Business Area has declined to participate as there is no new issues or arguments. Both the audit team and the objections team have requested substantiation documentation to support the taxpayers position. The information provided to date was incomplete and gives effect to the FRCS Objection decision.

We consider that the issues at hand are not complex nor is there a disagreement of the interpretation of the law. It is a matter of whether the taxpayer has substantiated their position with documentary evidence or not.

It is considered that the cost and delay involved is disproportionate to the likely benefit. Additionally, the FRCS Business Area has concerns that given the history of failure to comply with notices and requests for information throughout previous processes goes to the heart of the FRCS expectations of taxpayers involved in ADR to participate in good faith.

<If relevant> Further it is noted that the extension of time with the objection refers to carry forward losses in previous years, for which tax returns have not been lodged thereby there has been a failure to comply with tax obligations.

Mediator Introduction Email - Example

Dear PARTICIPANTS NAMES

By way of introduction, I have been allocated the mediation that has been requested in respect of dispute relating to XXXXX. I confirm I have no conflicts of interest in this matter.

I am located in X AND have a Role in the FRCS as X (if applicable).

About mediation

Mediation is a process provided by the FRCS as part of its alternative dispute resolution services. Parties in the mediation are the decision makers. The mediator is an independent and impartial person to mediate your discussions, help you to explore options and assist the parties to find mutually acceptable solutions. Mediation therefore focuses on future actions and outcomes. <when available- Detailed information about the mediation process is available on the FRCS website.>

The mediation process begins with a pre-mediation conference, which is conducted by myself with the respective parties separately. This will be followed by the mediation process itself held on a separate day. Please let me know if there are any timeframe pressures for me to factor into the planning of the mediation process.

The pre-mediation conference

The purpose of the pre-mediation conference is to prepare you for the mediation process, and for me to understand the nature of the dispute. The call typically takes about 30 to 45 mins. I generally use a teleconference facility for this meeting, with an invitation issuing once you have identified a suitable time for me to call. I can also do this initial call by Webex or Teams if you prefer a 'face to face' call – let me know whether a teleconference or virtual call is preferred.

Mediation process

Once I have held separate confidential meetings with all parties, and the dispute appears appropriate to proceed to mediation, I will ask everyone to identify some future suitable dates where it is possible to hold a mediation process at a mutually agreeable time. This process will either be conducted in person or by Microsoft Teams, and may last all day, or even more than one day due to time differences – I will assess that detail and provide more instructions on next steps in due course.

Action required

To enable me to set up the required meetings, can you please identify:

1. a date and time that is suitable for everyone for the 45 minutes pre-mediation conference
2. advise if you prefer teleconference or a virtual conference for the pre-mediation call
3. start to identify some future potential dates for the mediation to happen, commencing the week of DD MM YYYY. Please note the actual duration depends on a number of factors. This event will be held in person or by Webex or Teams.

I look forward to hearing back on suitable times to conduct the pre-mediation call.

The following dates / times are my existing commitments where I am unavailable, which may help you to plan:

XXXXXX

If you have any queries you can contact me by email or phone per this email. I look forward to being of assistance in this mediation process.

CONTACT

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Published@2024