

# **Financial Dispute Resolution Centre Financial Dispute Resolution Scheme**

## **Guidelines on Intake Criteria of Cases**

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**FDRS Guidelines on Intake Criteria of Cases**

Unless otherwise stated, this Guideline adopts the definitions used in the Terms of Reference of the FDRC.

**(A) FDRC has jurisdiction to accept an application that fulfils all of the following conditions –**

- (1) the application is brought by an Eligible Claimant as defined under Paragraph 13 of the Terms of Reference;
- (2) an Eligible Claimant has filed a Complaint to the relevant FI and received a Final Written Reply issued by the FI; or it has been more than 60 days from the date he filed the Complaint with the relevant FI and has not received the Final Written Reply from the relevant FI;
- (3) the relevant financial services provider must be an FI as defined under Paragraphs 2 and 9 of the Terms of Reference;
- (4) the claim must be of a monetary nature;
- (5) the amount for each individual claim does not exceed HK\$500,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent; and
- (6) the dispute must arise out of a contract between the Eligible Claimant and the FI that was entered into or arose in Hong Kong, or any act or omission of the FI in connection with the provision of a Financial Service to an Eligible Claimant where the FI acted as an agent.

**(B) Notwithstanding the foregoing, hereinunder are situations where Case Officers should reject an application –**

- (1) the claim is over HK\$500,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent; or
- (2) the claim is not related to a Financial Service ; or
- (3) the claimant is not an individual or sole proprietor having or who had an individual customer relationship with the FI; or
- (4) the claimant has not been provided with a Financial Service by the FI; or
- (5) the claimant has not suffered (or is unlikely to suffer) actual monetary loss, or cannot

provide evidence to substantiate his actual monetary loss; or

- (6) the claim is without substance or is frivolous or vexatious; or
- (7) the claimant has not filed a Complaint to the relevant FI ; or
- (8) the claimant has filed a Complaint to the relevant FI and he has not received a Final Written Reply within 60 days from the date the Complaint was filed with the FI; or
- (9) the claim is the subject of a complaint lodged with the Insurance Claims Complaints Bureau (ICCB) which is currently under the ICCB's consideration; or

***Note: If the claimant lodged a complaint against the FI with the ICCB while the case is being processed by the FDRC and the FDRC is informed, the case will be discontinued. There is an ongoing obligation on the part of the Eligible Claimant to inform the FDRC whether any such complaint against the FI with the ICCB in respect of the subject matter of the Eligible Dispute has been initiated.***

- (10) the subject matter of the claim has previously been considered or excluded by the FDRC; or
- (11) the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) or has been the subject of court proceedings where there has been a decided judgment; or

***Note: If the claimant commences legal proceedings against the FI while the case is being processed by the FDRC and the FDRC is informed, the case will be discontinued. There is an ongoing obligation on the part of the Eligible Claimant to inform the FDRC whether any such legal proceedings against the FI in respect of the subject matter of the Eligible Dispute has been initiated.***

- (12) the claim is about employment matters from an employee or employees of an FI; or
- (13) the claim is about policies and practices, fees, premiums, charges or interest rates charged by an FI, except a dispute concerning an alleged non-disclosure, inadequate disclosure, misrepresentation, incorrect application, breach of any legal obligation or duty or maladministration or regulatory requirement; or
- (14) the claim is about investment performance, except a dispute concerning an alleged non-disclosure, inadequate disclosure, or misrepresentation, or negligence or breach of fiduciary duty; or
- (15) the claim is about an FI's decision when exercising a discretion under a will or private trust, except a dispute concerning alleged negligence or breach of fiduciary duty; or
- (16) the claim is about an FI's failure to consult beneficiaries before exercising a discretion

under a will or private trust, where there is no legal obligation to consult; or

(17) the claim:

- involves (or might involve) more than one Eligible Claimant who jointly own an account; and
- has been referred to the FDRC without the consent of the other claimant or claimants; or

(18) the claim is made more than 12 calendar months from the date of the purchase of the Financial Services, or the date on which the Eligible Claimant first had knowledge that he suffered monetary loss arising out of the Financial Services, whichever is the later. A claimant's knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him.