

FDRS Guidelines on Intake Criteria of Cases (Standard Eligible Dispute)

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

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- (1) the application of an individual Customer Claim is brought by an EC or an FI with signed consent by the Parties (in the form set out at Annex X);
- (2) an EC has filed a Written 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 Written 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;
- (4) the claim must be of a monetary nature;
- (5) the amount for each individual claim does not exceed HK\$1,000,000 (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 EC 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 EC where the FI acted as an agent.

(B) Subject to the fulfillment of all the conditions in (A), hereinunder are situations where Case Officers should reject an application –

- (1) the claim is not related to a Financial Service ; or
- (2) the claimant has not suffered (or is unlikely to suffer) actual monetary loss, or cannot provide evidence to substantiate his actual monetary loss; or
- (3) the claim is without substance or is frivolous or vexatious; or

- (4) the claim is the subject of a complaint lodged with the Insurance Complaints Bureau (ICB) which is currently under the ICB's consideration; or

Note: If the claimant lodged a complaint against the FI with the ICB 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 Parties to inform the FDRC whether any such complaint against the FI with the ICB in respect of the subject matter of the Eligible Dispute has been initiated.

- (5) the subject matter of the claim has previously been considered or excluded by the FDRC; or
- (6) the claim has been the subject of court proceedings where there has been a decided judgment on the same claim; or the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) unless (i) the court has ordered a stay of the proceedings or (ii) the court has been provided with proper notifications of mediation and/or arbitration and accompanied by documentary proof¹ within 21 days from the date of the Application or any other period reasonably extended by the FDRC; or

Note: If a Party commences legal proceedings against the other Party while the case is being processed by the FDRC and the FDRC is informed, the FDRC will forthwith discontinue the Application. There is an ongoing obligation on the part of the Parties to inform the FDRC whether any such legal proceedings against the other Party in respect of the subject matter of the Eligible Dispute have been initiated while the claim is being handled by the FDRC.

- (7) the claim is about employment matters from an employee or employees of an FI; or
- (8) 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
- (9) 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

¹ Documentary proof may include but not limited to a copy of the court order or note of the judge or master or acknowledge receipt of the notification to the court.

- (10) 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
- (11) 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
- (12) the claim involves (or might involve) more than one EC who jointly own an account; and has been referred to the FDRC without the consent of the other claimant or claimants; or
- (13) the claim is made more than 24 calendar months from the date of the purchase of the Financial Services, or the date on which the EC 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.

FDRS Guidelines on Intake Criteria of Cases (Extended Eligible Dispute)

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 of a Claim must be brought in either of the following situations and with signed consent by the Parties (in the form set out at Annex X):
 - (a) where a Customer Claim (provided that an EC has filed a Written 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 Written Complaint with the relevant FI and has not received the Final Written Reply from the relevant FI) is brought by an EC or an FI, which:
 - (i) exceeds HK\$1,000,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent; and/or
 - (ii) is more than 24 calendar months from the date of the purchase of the Financial Services, or the date on which the EC 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;
 - (b) where an FI Claim or FI Counterclaim is brought by an FI.
- (2) the relevant financial services provider must be an FI;
- (3) the claim must be of a monetary nature; and
- (4) the dispute must arise out of a contract between the EC 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 EC where the FI acted as an agent.

(B) Subject to the fulfillment of all the conditions in (A), hereinunder are situations where Case Officers should reject an application –

- (1) the claim is not related to a Financial Service ; or
- (2) the claimant has not suffered (or is unlikely to suffer) actual monetary loss, or cannot provide evidence to substantiate his actual monetary loss; or
- (3) the claim is without substance or is frivolous or vexatious; or
- (4) the claim is the subject of a complaint lodged with the Insurance Complaints Bureau (ICB) which is currently under the ICB's consideration; or

Note: If the claimant lodged a complaint against the FI with the ICB 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 Parties to inform the FDRC whether any such complaint against the FI with the ICB in respect of the subject matter of the Eligible Dispute has been initiated.

- (5) the subject matter of the claim has previously been considered or excluded by the FDRC; or
- (6) the claim has been the subject of court proceedings where there has been a decided judgment on the same claim; or the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) unless (i) the court has ordered a stay of the proceedings or (ii) the court has been provided with proper notifications of mediation and/or arbitration and accompanied by documentary proof² within 21 days from the date of the Application or any other period reasonably extended by the FDRC; or

Note: If a Party commences legal proceedings against the other Party while the case is being processed by the FDRC and the FDRC is informed, the FDRC will forthwith discontinue the Application. There is an ongoing obligation on the part of the Parties to inform the FDRC whether any such legal proceedings against the other Party in respect of the subject matter of the Eligible Dispute have been initiated while the claim is being handled by the FDRC.

- (7) the claim is about employment matters from an employee or employees of an FI; or

² Documentary proof may include but not limited to a copy of the court order or note of the judge or master or acknowledge receipt of the notification to the court.

- (8) 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
- (9) 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
- (10) 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
- (11) 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
- (12) the claim involves (or might involve) more than one EC who jointly own an account; and has been referred to the FDRC without the consent of the other claimant or claimants.