

## **Section A: Preliminary**

### **1. Purpose and Scope of Terms of Reference**

- 1.1 These Terms of Reference including the Annexes set out who is eligible to lodge a dispute at the Financial Dispute Resolution Centre (“**FDRC**”), the types of disputes that the FDRC can consider, how the FDRC resolves disputes, services that the FDRC provides and other related matters. For the avoidance of doubt, the interpretation accorded to these Terms of Reference by the FDRC shall be final and conclusive.
- 1.2 These Terms of Reference are binding upon the following classes of persons and entities as defined in paragraph 2 below:
- the Financial Institutions (“**FI**”);
  - Applicants;
  - Eligible Claimants (“**EC**”) whose claims have been accepted by the FDRC;
  - Mediators; and
  - Arbitrators.

### **2. Definitions**

- 2.1 The following words have the following meanings where they appear in these Terms of Reference –
- ‘Applicant’ means a person or entity making or who had made an Application to the FDRC;
  - ‘Application’ means an application to the FDRC for assessing whether a Customer Claim, FI Claim or FI Counterclaim may be accepted as an Eligible Dispute under the FDRS in accordance with these Terms of Reference and the Intake Criteria;
  - ‘Arbitration’ means the process of arbitration of an Eligible Dispute under the FDRS;
  - ‘Arbitral Award’ means an arbitral award rendered by the Arbitrator which is final and binding on the FI and the EC;
  - ‘Arbitrator’ means a person who is suitably qualified and experienced in arbitration and is appointed by the FDRC to act as an arbitrator;
  - ‘Board’ means the board of directors which is the governing body of the FDRC;
  - ‘Case Officer’ means any person employed by the FDRC who acts as a case manager responsible for addressing enquiries, gathering information and vetting Applications to decide whether an Application should be accepted under the FDRS in accordance with these Terms of Reference and the Intake Criteria;

- ‘Claim’ means a Customer Claim, FI Claim or FI Counterclaim which the FDRC may accept for dispute resolution pursuant to the FDRS;
- ‘Claimant’ means a Party to an Arbitration, who may be an EC or FI, who, as the context requires, is in submission of a Claim in the Notice to Arbitrate;
- ‘Court’ refers to the courts of the Hong Kong Special Administrative Region;
- ‘Customer Claim’ means a claim related to the Written Complaint against an FI by its customer(s), which the FDRC may accept for dispute resolution pursuant to the FDRS. An FI, with signed consent by its customer(s) (in the form set out at Annex X), may bring such Customer Claim before the FDRC for dispute resolution;
- ‘EC’ refers to the person or entity described in Paragraph 13 of these Terms of Reference as an Eligible Claimant;
- ‘Effective Date’ means the date that these Terms of Reference come into effect on 1 January 2018, except for the implementation of the terms in relation to Small Enterprises (SE), which is effective from 1 July 2018;
- ‘Eligible Dispute’ refers to a dispute that fulfils the conditions set out in Paragraph 12 of these Terms of Reference;
- ‘Extended Eligible Dispute’ refers to a dispute that has the meaning described in Paragraph 12.1.2 of these Terms of Reference;
- ‘Extended Mediation Time’ means any duration beyond the Specified Mediation Time which the Parties, the Mediator and the FDRC have agreed to continue with an adjourned Mediation;
- ‘FDRC’ means the Financial Dispute Resolution Centre, a company limited by guarantee under the Companies Ordinance (Cap. 622);
- ‘FDRS’ means the Financial Dispute Resolution Scheme for managing and resolving Eligible Disputes administered by the FDRC;
- ‘Financial Service’ means a financial product, service or advice about a financial product or service provided by or via an FI;
- ‘Final Written Reply’ means a written response from the FI to its customer(s) which accepts the Written Complaint (and where appropriate offers redress), offers redress without accepting the Written Complaint or rejects the Written Complaint;
- ‘FI’ means a financial institution or a financial services provider authorized by the HKMA or licensed by the SFC, but excludes those financial institutions which only carry on Type 10 regulated activity (i.e. provision of credit rating services) under the Securities and Futures Ordinance (Cap. 571);
- ‘FI Claim’ means a claim by an FI against its customer in relation to a Financial Service to which the customer may consent (in the form set out at Annex X) and which the FDRC may

accept for dispute resolution pursuant to the FDRS;

- ‘FI Counterclaim’ means a counterclaim made by an FI against a Customer Claim which has been or was accepted for dispute resolution pursuant to the FDRS to which the EC may consent (in the form set out at Annex X) and which the FDRC may accept for dispute resolution pursuant to the FDRS and it may or may not arise from the same occurrence, transaction, or subject matter as the individual claim from the customer;
- ‘Government’ means the Government of the Hong Kong Special Administrative Region;
- ‘HKMA’ means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);
- ‘Hong Kong’ means the Hong Kong Special Administrative Region;
- ‘ICB’ means the Insurance Complaints Bureau;
- ‘Intake Criteria’ means the *FDRS Guidelines on Intake Criteria of Cases* set out in Annexes II-A and II-B;
- ‘Limitation Period’ means the time limit for a Customer Claim to be made to the FDRC within 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. An EC's knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him;
- ‘List of Arbitrators’ means the FDRC’s list of arbitrators for arbitration under these Terms of Reference and the *FDRS Mediation and Arbitration Rules*;
- ‘List of Mediators’ means the FDRC’s list of mediators for mediation under these Terms of Reference and the *FDRS Mediation and Arbitration Rules*;
- ‘Maximum Claimable Amount’ means the maximum amount to be claimed for a Customer Claim not exceeding HK\$1,000,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent;
- ‘Mediation’ is the process of mediation of an Eligible Dispute under FDRS;
- ‘Mediated Settlement Agreement’ means a written agreement setting out the terms Parties have agreed in Mediation to resolve the Eligible Dispute;
- ‘Mediator’ means a person who is suitably qualified and experienced in mediation and is appointed by the FDRC to act as a mediator;
- ‘Notice to Arbitrate’ means a written notice sent by a Claimant to the FDRC to request for the initiation of Arbitration;
- ‘Paragraph’ means a term and/or condition set out in paragraphs in these Terms of Reference, excluding the Annexes;

- ‘Parties’ mean an EC and the relevant FI;
- ‘Regulators’ mean the regulators of financial services in Hong Kong such as the SFC and the HKMA;
- ‘Representative’ means the representative of an FI at the Mediation and/or Arbitration conducted under the FDRS, and may include any individual who dealt with the EC or supervised the dealing with the EC in the provision of the Financial Service that gave rise to the Eligible Dispute, and the individual is an employee, agent or third party contractor of the FI;
- ‘Respondent’ means the Party to an Arbitration, who may be an EC or FI or, who, as the context requires, is in receipt of a Claim;
- ‘Rule’ means a term and/or condition set out in the *FDRS Mediation and Arbitration Rules*;
- ‘SE’ means a small enterprise which is a limited company or a partnership, and in accordance with its latest financial year end statement has:
  - (1) an annual turnover not exceeding HK\$50 million; and
  - (2) gross assets not exceeding HK\$50 million; and
  - (3) not more than 50 employees in Hong Kong.

If a limited company is a subsidiary company or a holding company (in accordance with the definitions used in the Companies Ordinance (Cap. 622)) within a group, the group’s consolidated figures will be used. For overseas incorporated enterprises, same criteria apply;

- ‘SFC’ means the Securities and Futures Commission referred to in section 3 of Securities and Futures Ordinance (Cap. 571);
- ‘Specified Mediation Time’ means the 4 hours allocated for the substantive mediation meeting under these Terms of Reference;
- ‘Standard Eligible Dispute’ refers to a dispute that has the meaning described in Paragraph 12.1.1 of these Terms of Reference;
- ‘Terms of Reference’ means these Terms of Reference *for the FDRC in relation to the FDRS (January 2018)*; and
- ‘Written Complaint’ refers to a written complaint raised by its customer(s) to the FI before a Customer Claim is lodged with the FDRC.

2.2 References to the provision of Financial Service include, where the context admits, references to its non-provision.

2.3 References to the male gender include, where the context admits, the female gender and

vice versa and references to the singular number include, where the context admits, the plural number and vice versa.

2.4 References to days mean calendar days.

2.5 References to month mean calendar month.

### **3. Amendment and Applicability**

3.1 The Board shall, at all times, have power to amend these Terms of Reference following consultation with the Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.

3.2 The FDRC may issue guidelines from time to time to address points relating to the operation of these Terms of Reference in order to take into account industry product and policy developments and any other changes. Such guidelines and any updates to these Terms of Reference will take effect on a date to be published by FDRC on its web site.

3.3 FDRC may amend the Annexes as and when required. In the event of inconsistency between the main body of these Terms of Reference and the Annexes, these Terms of Reference prevail.

3.4 These Terms of Reference apply to all Claims in which the date of first knowledge of loss by the EC or the FI, where applicable, falls on or after the Effective Date.

3.5 The Terms of Reference (February 2014) apply to all claims in which the date of first knowledge of loss by the EC falls before the Effective Date.