

## Features of FDRC

- The Financial Dispute Resolution Centre (FDRC) is a non-profit making company limited by guarantee.
- FDRC administers the Financial Dispute Resolution Scheme (FDRS) to resolve monetary disputes between a financial institution and its customers who are individuals, sole proprietors or small enterprises (collectively known as “Eligible Claimants” if they fulfill the requirements as defined under the FDRS).
- The maximum amount of claim for a standard eligible dispute is HK\$1,000,000 (including any interest on any alleged to be a loss) or the foreign currency equivalent; claimable amount for an extended eligible dispute is unlimited.

## Vision of FDRC

- Being the leading provider of dispute resolution processes to deal with financial dispute between financial institutions and their customers constructively before they escalate.
- Supporting Hong Kong as an international financial centre by extending our services and engaging stakeholders of the financial industry.

## Mission of FDRC

- Providing independent and impartial “Mediation First, Arbitration Next”, “Mediation Only” or “Arbitration Only” processes of dispute resolution to facilitate the resolution of monetary disputes between financial institutions and its customers who are individuals, sole proprietors or small enterprises in Hong Kong.

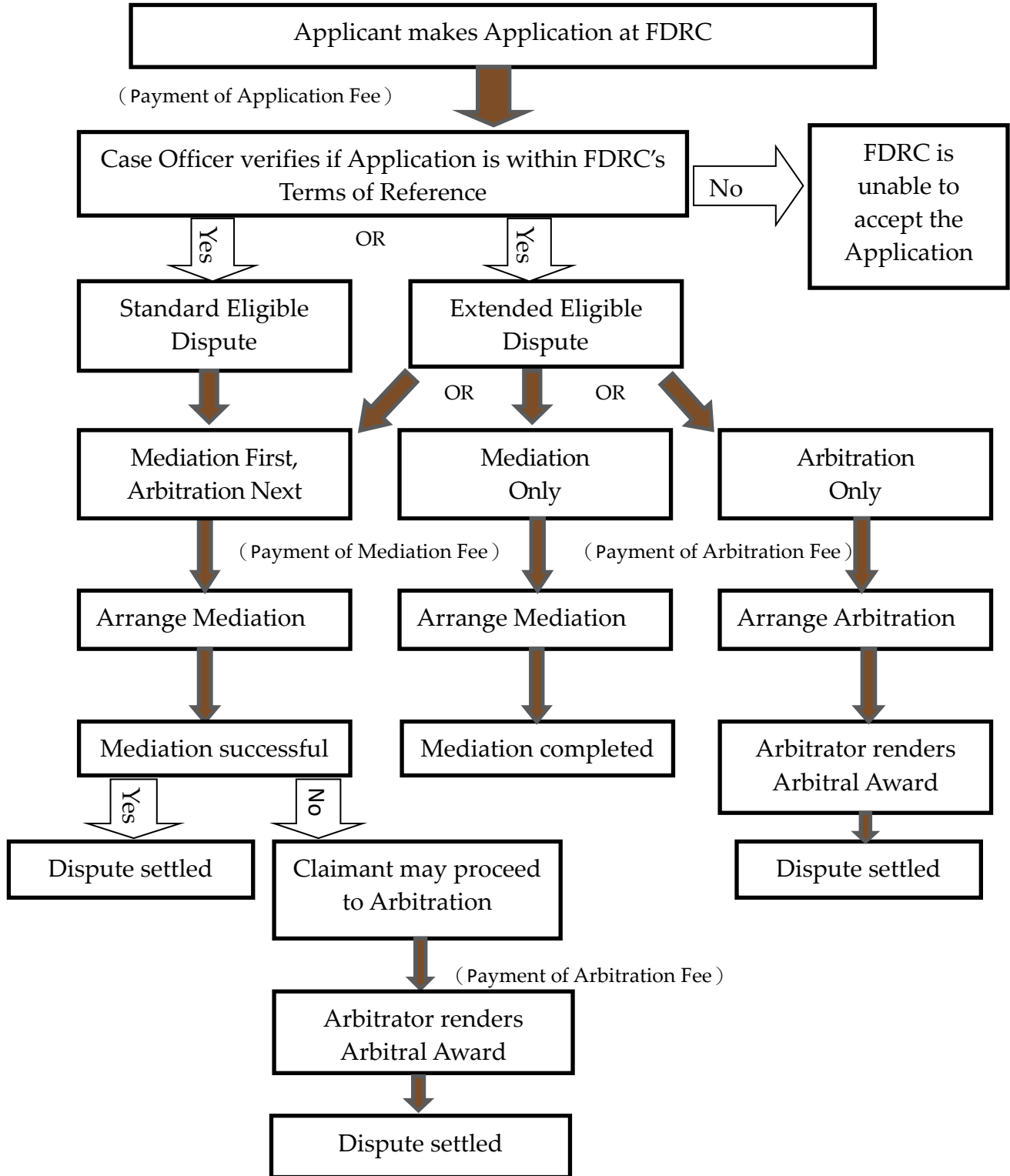
## Advantages of FDRS

- One-stop avenue for dispute resolution. Affordable for Eligible Claimants who do not have the resources to go to court.
- All the financial institutions who are members of the FDRS are obligated to participate in the FDRS for a Claim which is accepted by the FDRC as a Standard Eligible Disputes.
- Dedicated List of Mediators and List of Arbitrators to provide high quality services.
- Trained Case Officers to administer the mediation and arbitration processes.

## Guiding Principles of FDRC

- **Independence:** Set up and operate an independent FDRS without external interference.
- **Impartiality:** Ensure both the financial institutions and their customers are treated in an impartial way.
- **Accessibility:** Establish dispute resolution processes which are straight forward, clear and easy to understand.
- **Efficiency:** Ensure that financial disputes are settled in a timely and efficient manner.
- **Transparency:** Being transparent whilst also acting in accordance with confidentiality and privacy obligations.

**Work Flow of Financial Dispute Resolution Centre (FDRC)**



## Application

- The Terms of Reference (January 2018) apply to all Claims in which the date of first knowledge of loss by the Eligible Claimants (EC) or the financial institutions (FI), where applicable, falls on or after the Effective Date.
- '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.
- Before filing an application to the Financial Dispute Resolution Centre (FDRC), the Applicant who is an individual, sole proprietor or small enterprise (SE)\* (collectively known as EC) must have filed a **written complaint** concerning the disputes with the relevant FI.

\* SE means a limited company or a partnership, and in accordance with its or its group's latest financial year end statement has:

- (1) an annual turnover not exceeding HK\$50 million;
- (2) gross assets not exceeding HK\$50 million; and
- (3) not more than 50 employees in Hong Kong.

\* EC refers to the person or entity described in Paragraph 13 of these Terms of Reference as an Eligible Claimant.

\* 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 (Chapter 571).

- Before filing an Application with the FDRC,
  - Call Hotline: **(852) 3199 5199** for enquiries
  - Attend a **briefing session**

- If the Applicants are FIs who may file Applications to the FDRC on or after 1 January 2018, they have to obtain their customers' consent before filing.
- Submit an FDRS Application Form and **fees** with all **relevant information**.

## Vetting Stage

- The Case Officer would accept or reject the Application according to the *Financial Dispute Resolution Scheme (FDRS) Guidelines on Intake Criteria of Cases*.
- The Applicant may request the FDRC to review its decision by making representations to the FDRC within 21 days from the date of receipt of the Case Officer's decision.
- The FDRC's senior staff member shall review the decision of the Case Officer and make the final and conclusive decision where necessary.
- For a Claim which is accepted by the FDRC as a **Standard Eligible Dispute**, it shall proceed in accordance with the sequence "Mediation First, Arbitration Next".
- For a Claim which is accepted by the FDRC as an **Extended Eligible Dispute**, it may be processed under "Mediation First, Arbitration Next", "Mediation Only" or "Arbitration Only", provided that the EC and the relevant FI (the "Parties") have given their signed consent.

### **A. Standard Eligible Disputes**

- (a) the dispute must be an individual Customer Claim brought by an EC or an FI with signed consent by the Parties;
- (b) 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 a Final Written Reply from the relevant FI;
- (c) the financial services provider involved in the dispute must be an FI;
- (d) the dispute must be of a monetary nature;
- (e) the amount for each individual claim does not exceed Maximum Claimable Amount\*; and
- (f) 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.

*\* Maximum Claimable Amount is HK\$1 million.*

### **B. Extended Eligible Disputes**

- (a) the dispute must be brought in the following situations and with signed consent by the Parties:
  - (i) where an individual Customer Claim, subject to A(b), which exceeds the Maximum Claimable Amount and/or is beyond the Limitation Period\*\*, is brought by an EC or an FI; or
  - (ii) where an individual FI Claim or an individual FI Counterclaim is brought by an FI.
- (b) the financial services provider involved in the dispute must be an FI;
- (c) the dispute must be of a monetary nature; and
- (d) 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.

*\*\* Limitation Period is 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.*

## Mediation Stage

- If the amount of claims: –
  - is within HK\$200,000, the FDRC shall assign the case to an in-house mediator or a mediator from the List of Mediators (Listed Mediator); or
  - is beyond HK\$200,000, the Eligible Claimant and Financial Institution (Parties) shall select a mediator from the List of Mediators in accordance with the prescribed procedures of the FDRC.
- The Mediator shall commence the mediation session within **21** days from the date of his appointment, unless otherwise directed by the FDRC in writing.
- The Mediator shall ensure that the Parties sign an *Agreement to Mediate* prior to the substantive mediation session between the Parties.
- Unless it is an Extended Eligible Dispute or it is a claim under court proceedings, no legal representatives are allowed to attend Mediation.
- The Mediator shall file the *Mediation Certificate* to the FDRC at the conclusion of the Mediation.

## Fees (For Customers of Financial Institutions) (HK\$)

Making Enquiries	Nil
Filing an Application	\$200
<b>Mediation</b>	<b>Per case</b>
<b>Specified Mediation Time (4 hours)</b>	
Amount of claim -	
-less than \$200,000	\$1,000
-between \$200,000 and \$1,000,000	\$2,000
<b>Extended Mediation Time</b>	<b>Per hour or part thereof</b>
Amount of claim -	
-less than \$200,000	\$750
-between \$200,000 and \$1,000,000	\$1,500

*\*All Fees are non-refundable*

*\*Fees for the monetary disputes over HK Dollar one million, please refer to the Schedule of Fees.*

*\*References to days mean calendar days*

## Arbitration Stage

- The Claimant may request for Arbitration by serving a **Notice to Arbitrate** (“NTA”) to the FDRC if the FDRC accept the claim for “Mediation First, Arbitration Next” or “Arbitration Only” pursuant to the Financial Dispute Resolution Scheme (“FDRS”).
- For “Mediation First, Arbitration Next”, the Claimant shall file the written request for Arbitration by serving a **NTA** to the FDRC within **60** days from the date of the *Mediation Certificate* if the dispute is unresolved by Mediation.
- The Respondent shall send a **response to the NTA** within **21** days from the receipt of **NTA**.
- The Claimant’s **final submissions** (if any) on the Claim shall be provided within **21** days after receipt of the Respondent’s response, submissions and documents.
- Upon receipt of the **NTA, response to the NTA**, submissions and documents from the Claimant and the Respondent (the “Parties”), the Parties shall select a **single Arbitrator** from the List of Arbitrators in accordance with the prescribed procedures of the FDRC. The appointment of the Arbitrator takes effect upon confirmation in writing by the FDRC.
- The FDRC may remove an Arbitrator for conflict of interest or bias, either upon request of a Party or on the FDRC’s own initiative before the Arbitrator has rendered an **Arbitral Award**.

## Fees (For Customers of Financial Institutions) (HK\$)

Arbitration <i>(For claimable amount up to \$1,000,000)</i>	Per case
Documents-only	\$5,000
In-person hearing (in addition to the fees payable for documents-only Arbitration)	\$12,500

*\*All Fees are non-refundable.*

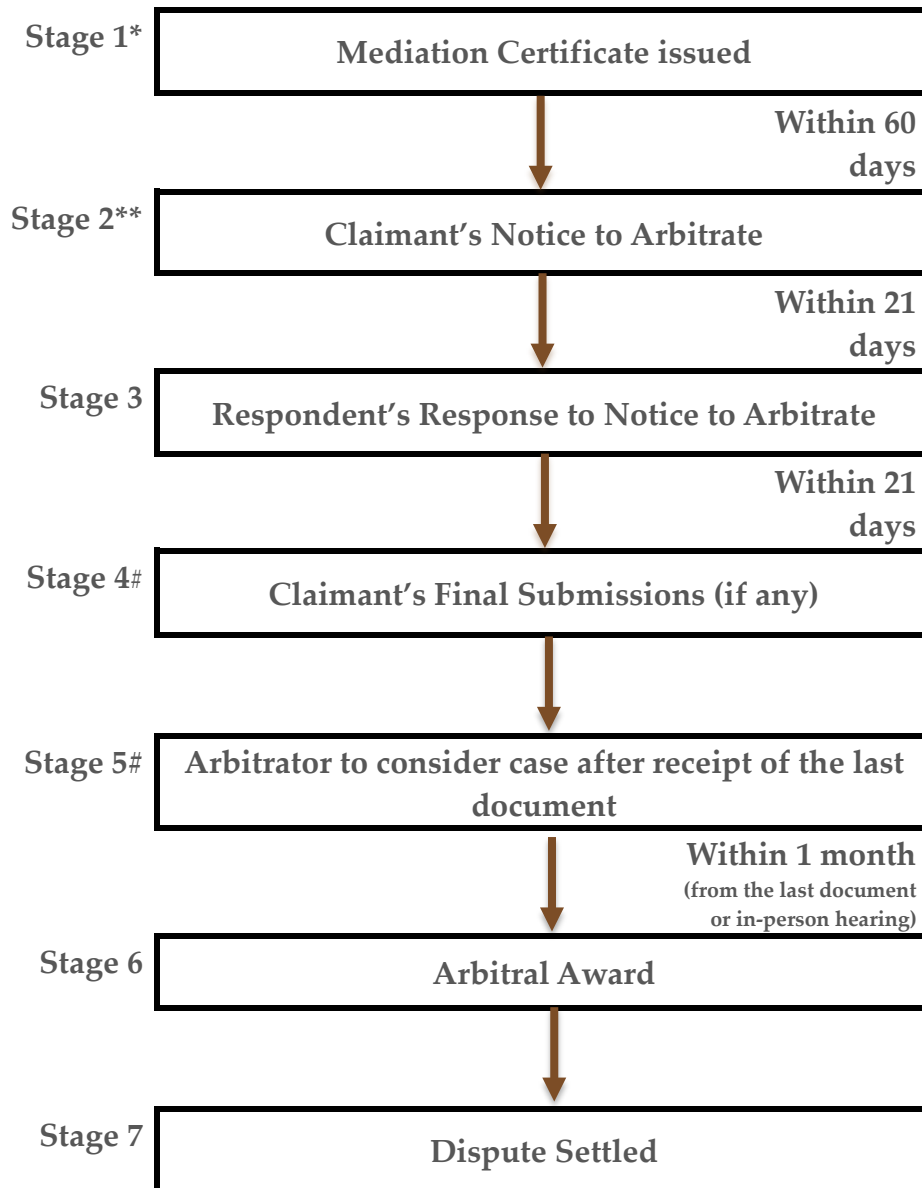
*\*Fees for the monetary disputes over HK Dollar one million, please refer to the Schedule of Fees.*

*\*References to days mean calendar days*

- The Arbitration is a “**documents-only**” process. Under exceptional circumstances, the Arbitrator may call for an in-person hearing.
- The Arbitrator shall render an **Arbitral Award** within **one month** of the receipt of the last document (or the holding of an in-person hearing).
- The Parties should file adequate copies of the **NTA** or **response to the NTA** and other supporting documents for service on FDRC, the other party and the Arbitrator.
- All communications between the Parties and the Arbitrator must be in writing via the FDRC and shall be in the language of the Arbitration.



## Sample Arbitration Process (According to FDRS Mediation and Arbitration Rules)



\*For "Mediation First, Arbitration Next", the Claimant shall file the written request for Arbitration by serving a Notice to Arbitrate to the FDRC within 60 days from the date of the *Mediation Certificate*.

\*\* For "Arbitration Only", the Claimant shall file the written request for Arbitration by serving a Notice to Arbitrate after the FDRC accepts the Application.

# Appointment of an Arbitrator is at Stage 4. A request for removal of an Arbitrator can only be conducted at Stages 4 -5 in accordance with *Procedures of Removal (Challenging and Replacing) of an Arbitrator in the FDRS Arbitration*.