



A Financial Ombudsman Service

**FSC** FINANCIAL SERVICES COMPLAINTS LTD  
RATONGA PŪTEA PUNA MANAAKI

# TERMS OF PARTICIPATION

MAY 2020

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Terms of participation in the  
Financial Services Complaints  
Limited Scheme

# TERMS OF PARTICIPATION

## 1. PARTICIPATION

- 1.1 Any financial services provider may apply to become a participant by completing and signing the FSCL application form and fulfilling any other application requirements. FSCL shall decide the procedure to be followed in considering applications.
- 1.2 Any decision to admit a financial services provider as a participant is to be made by the majority vote of the full Board. An applicant's participation in the Scheme will commence from the date of the Scheme's approval of the applicant's application or, if later, the date on which the participant completes all Scheme application requirements.
- 1.3 As evidenced by the signing of the application form, any financial services provider admitted as a participant agrees to be bound by all of the terms of participation including the Scheme's rules as set out in the Terms of Reference and the FSCL Constitution.

## 2. PARTICIPANT'S OBLIGATIONS

- 2.1 Each participant:
  - (a) Must operate an internal complaints handling service for its customers and must make the availability of that service known to customers.
  - (b) Must, in writing, inform their customers that the Scheme is available as a free complaints resolution service.
  - (c) Must appoint a contact person for the Scheme and provide the Scheme with the name and contact details of that person and any replacement contact person appointed from time to time.
  - (d) Must comply with any final recommendation or determination which, in accordance with the Scheme's Terms of Reference, is made by the Scheme against the participant and accepted by the complainant.
  - (e) Consents to the Scheme making public:
    - any failure by the participant to comply in whole or in part with any final recommendation or determination made by the Scheme against the participant that has been accepted by the complainant in accordance with the requirements of the Terms of Reference; or
    - the termination of the participant's participation in the Scheme, and
  - (f) Consents to the provision by the Scheme to the Minister, the Financial Markets Authority or other regulator of any information concerning the participant.

### **3. PARTICIPATION FEES**

- 3.1 A participant agrees to pay the Scheme any fees levied by the Scheme on the participant. The annual fee is payable each year beginning 1 July and shall be paid upon the receipt of a tax invoice delivered to the participant.
- 3.2 The participant agrees to pay case fees as prescribed upon the Scheme opening an investigation of a complaint against the participant and at other stages in the process as required.
- 3.3 All fees are subject to annual review with the objective of reducing fees as numbers of participants increase or costs decrease.

### **4. TERMINATION OF PARTICIPATION**

- 4.1 A participant may give no less than 12 months' written notice to the Scheme that it wishes to terminate its participation in the Scheme. The termination will take effect upon expiry of that notice.
- 4.2 The Scheme may, by written notice to the participant, at any time immediately terminate the participant's participation if that participant:
  - (a) Has not paid any fee invoiced by the Scheme pursuant to clause 3.1 and 3.2 within three months of the date of the invoice;
  - (b) Breaches, or fails to perform, any obligation of the participant under the Terms of Participation, the Terms of Reference, or the Constitution; or
  - (c) Acts in a way that brings the participant or the Scheme into disrepute.
- 4.3 Termination of participation, whether by the participant at the expiry of notice in accordance with clause 4.1 or by the Scheme giving notice in accordance with clause 4.2:
  - (a) Does not entitle the participant to repayment of the whole or any part of any fee or charge previously paid by it to the Scheme;
  - (b) Is without prejudice to the participant's liability to pay any fee which has become due and payable to the Scheme; and
  - (c) Is without prejudice to the participant's obligations in respect of any complaint made or referred to the Scheme before the date of termination of participation.
- 4.4 Any participant whose participation is terminated under the provisions above shall remain liable to perform any act or make any payment to which it is bound to perform or pay by any recommendation or determination which, in accordance with the Terms of Reference, is made by the Scheme against it. FSCL reserves the right to enforce such obligation by any legal means, and the participant agrees to pay the full costs of any such action.

### **5. RIGHT TO ATTEND ANNUAL MEETINGS**

- 5.1 Notice of every annual meeting shall be sent to each participant containing an invitation to attend the FSCL annual general meeting. Any participant may attend and speak at such meeting through a representative appointed by that participant.

## 6. GENERAL

- 6.1 Notices: a notice must be in writing and may be given by one party to the other party by sending it by post, email, or facsimile transmission to the other party's current address or, in the case of a participant, the address notified to the Scheme from time to time.
- 6.2 *Force majeure*: except to the extent otherwise provided in these participation terms, performance by a party of their obligations may be interrupted or suspended without liability to the other party if, and to the extent, the interruption or suspension is due to a *force majeure* affecting those obligations. The term *force majeure* includes an act of God, terrorism, war, civil commotion, fire, explosion, flood, failure of electrical or telecommunication networks, or any other event beyond the reasonable control of either party.

## 7. DEFINITIONS

- 7.1 In this agreement, unless the context requires otherwise, the following terms will have the following meanings:

*Act* means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

*Annual meeting* has the meaning given to that term in clause 1.1 of Part B of the FSCL Constitution

*Board* the FSCL Board of Directors

*Constitution* the FSCL Constitution

*Financial services provider* means a provider of a financial service as defined under the Act

*FSCL* means Financial Services Complaints Limited

*Minister* means the Minister of Consumer Affairs

*Participant* means those providers of financial services entered on a register held by FSCL who are, for the time being, Scheme participants

*Scheme* the complaints resolution scheme operated by FSCL and set out in these Participation Terms, the Constitution, and the Terms of Reference

*Terms of Reference* the rules established from time to time by FSCL which constitute and govern the Scheme's powers and duties.