

Request for Proposals

Claims Management Services

10 May 2024

Request for Proposals (RFP)
Claims Management Services -
Investor Compensation Company Limited (ICC)

We are pleased to invite your company to submit a proposal in respect of the captioned services.

If your company is interested in providing such services, please send your proposal to the ICC at the address as shown in the RFP by **2:00 p.m. 31 May 2024**. Late proposals will not be considered.

For and on behalf of the

Investor Compensation Company Limited

Request for Proposals (RFP) for Claims Management Services for Investor Compensation Company Limited (ICC)

1. Introduction

The ICC is considering the outsourcing of certain aspects of the management of the Investor Compensation Fund (“Fund”) that is established under the Securities and Futures Ordinance (“SFO”).

The ICC is seeking a professional claims management organization to assist in handling investor compensation claims and this request is for a competitive bid for the role of a Claims Manager and is issued with the objective of appointing a firm by 1 September 2024. Written responses to this request must be delivered to our office by 2:00 p.m. 31 May 2024. Should oral presentations be required we will advise you as soon as possible after this date.

In summary, the Claims Manager will be expected to receive and acknowledge receipt of claims, check required documentation, request additional information from claimants when necessary, interview claimants if required, verify information with third parties such as the defaulting broker, its administrators or liquidators, Hong Kong Monetary Authority, investigating accountants appointed by the Securities and Futures Commission (“SFC”) or ICC, make a recommendation to allow or disallow the claim in full or in part, provide reasons for any recommended disallowance, and prepare such recommendations for consideration by the ICC, issue letters and notices to claimants informing claimants of the ICC’s decision, and answer enquiries from investors or members of the public.

The successful candidate will be that deemed by the ICC to have established their ability to provide the full range of required services on an efficient and cost effective basis, with the commitment of suitably qualified and experienced personnel.

2. Background

With the enactment of the SFO on 1 April 2003, a new compensation arrangement has taken effect. The ICC was set up and commenced operation on 1 April 2003 under section 79(1) of the SFO to administer the Fund.

The Fund replaces the Unified Exchange Compensation Fund, the Commodity Exchange Compensation Fund and the Dealers’ Deposit Schemes for non-exchange participant dealers to pay compensation to investors who suffer

pecuniary losses as a result of a default of a licensed intermediary or authorized financial institution in Hong Kong.

The Securities and Futures (Investor Compensation – Claims) Rules (“Claims Rules”) state the circumstances in which a person is entitled to claim compensation, the manner in which a claim for compensation is to be made, the information to be supplied to the ICC to enable the claim to be determined and the persons who are not entitled to make a claim.

Products coverage include the following:

1. Securities and futures contracts traded at the Stock Exchange of Hong Kong Limited and Hong Kong Futures Exchange Limited respectively and
2. Securities traded on the Shanghai Stock Exchange and the Shenzhen Stock Exchange and in respect of which an order for sale or purchase is permitted to be routed through the northbound link of a Stock Connect arrangement (for defaults occurring on or after 1 January 2020) (collectively “Eligible Products”)

Both Eligible Products and client money are covered by the Fund under the current investor compensation regime of the SFO.

A “per investor” compensation limit has been raised from HK\$150,000 to HK\$500,000 under the Securities and Futures (Investor Compensation – Compensation Limits) Rules with effect from 1 January 2020.

The arrangements will be administered by the ICC which is recognized and regulated by the SFC. Under the Securities and Futures (Transfer of Functions – Investor Compensation Company) Order (“Transfer Order”), certain functions of the SFC relating to the management of the Fund have been transferred to the ICC subject to the reservation that these functions are to be performed concurrently with the SFC. The ICC will receive and determine claims under the Claims Rules, make payments to claimants, and pursue subrogated rights against defaulters. The ICC is to be classified as a public body under the Prevention of Bribery Ordinance, Cap 201.

Section 4 of the Claims Rules prescribes the circumstances in which a person is entitled to claim compensation. It provides that where a qualifying client of a specified person sustains a loss as a result of the default committed by the specified person, or an associated person of the specified person, in relation to specified securities or futures contracts, or related assets, he may claim compensation from the Fund.

The terms “qualifying client”, “specified person”, “default”, “associated person”, “specified securities or futures contracts” and “related assets” are all defined in section 2 of the Claims Rules. The interaction of these definitions

prescribes the circumstances in which a claim for compensation can be made. A default covers insolvency, bankruptcy or winding up, breach of trust, defalcation, fraud or misfeasance of the specified person or an associated person of the specified person.

Under section 7 of the Claims Rules the SFC/ICC will determine whether there has been a default, whether the claimant is entitled to compensation from the Fund and the provisional amount of compensation payable to the claimant.

A notice of determination will be issued to a claimant under section 8 of the Claims Rules specifying the amount of compensation payable under the Claims Rules. However, the SFC/ICC will not issue a notice of determination specifying a provisional amount of compensation that is less than the compensation claimed unless it has first given the claimant a reasonable opportunity of being heard. If after this, the SFC/ICC decides to issue the notice of determination, it will give its reasons in the notice.

Determinations by the SFC/ICC as to whether there has been a default, the date of default, whether a claimant is entitled to compensation or the provisional amount of compensation, are all reviewable by the Securities and Futures Appeals Tribunal (“SFAT”) on application of the claimant who is dissatisfied with such a decision.

Interested persons should note that a wide range of information may be obtained from the ICC website at www.hkicc.org.hk. Should further information be required, respondents may raise enquiry and/or request for further documentation regarding this RFP no later than **24 May 2024**. The ICC may, at its discretion, decline to respond to any enquiry and/or request raised by respondents. All enquiries and/or requests for further documentation shall be submitted to:

Steve Ang
General Manager
Investor Compensation Company Limited
Re: ICC RFP Letter
54/F One Island East
18 Westlands Road
Quarry Bay, Hong Kong
or by e-mail to : icc@hkicc.org.hk

or by telephone: 2523 7382

3. Services Required

The successful respondent will be required to provide the following services at the ICC's discretion, with both English and Chinese language capability, to the ICC. Outsourcing of all or any of the services to a third party is not allowed unless prior consent is obtained from the SFC/ICC.

- a. At the instruction of the ICC, liaison with the ICC and, where necessary, the SFC or any other relevant persons following a broker default to determine information requirement and protocols for receipt and settlement of claims in relation to that default.
- b. After a claim notice is published by the ICC, answer questions verbally or in writing from investors. If no claim notice is published, investors can claim compensation within six months when he/she is first aware of the default. Unless with the permission of the ICC, claims will be rejected if they are not submitted in time or not covered by the Fund, and so there will inevitably be appeals to be dealt with.
- c. If appropriate, receive and acknowledge receipt of investor claims forms and supplementary evidence which proves that the claimant had cash and securities or outstanding positions of futures contracts with the broker at the time of the default. Usually the supplementary evidence includes contract notes, receipts of cash or securities for custody, evidence of payment, statement of account and bounced cheques. Filing of these documents and providing copy of the documents received to the ICC as and when requested.
- d. Vetting and verification of the claims, requests for additional information and documentation, prior to preparation of the case reports for each individual claimant for submission to the ICC for consideration.
- e. Brief the ICC closely on statistical status at daily interval for the first two weeks of a default and then at fortnightly intervals (approximately twice a month) thereafter. The information to be provided on a daily basis for the first two weeks should include total number of claim forms received, total value of the claims applied for in the forms received and total number of enquiries. The fortnightly Claim Record reporting after the first two weeks thereafter should contain more details regarding each claim received. The interval for submitting information and the information required to be provided are subject to change as required by the ICC depending on the circumstances of each case.
- f. Availability for further liaison with the ICC and as and when required with the SFC and/or administrators, liquidators, for further discussion on individual claims and recoveries.

Please note that the ICC may be developing its own claims management system and database, which will allow electronic access by the Claims Manager and thus it is important that the tendering firms have high band-width access to the Internet or a private network.

- g. Case paper for each claim case is required to be prepared for submission to the Claims Committee after verifying each claim. If an accountant report is available, this should be reviewed before the case paper is prepared.
- h. The case paper submitted to the Claims Committee should contain sufficient information, relevant findings and explanations for the Claims Committee to make a determination or rejection.
- i. The claims are to be determined by the Claims Committee based on section 7 of the Claims Rules.
- j. Recommend to the Claims Committee allowance or disallowance in full or in part of claims. This may be done in batches.
- k. In respect of each claim which is allowed, prepare a provisional notice of determination in Chinese and in English to be issued to the claimant, informing the claimant of the provisional amount of compensation that the claimant is entitled to, and prepare other relevant documents, such as reply form to be completed by claimant. Send out the provisional notice of determination together with the relevant documents to the claimant by registered mail and by email if necessary.
- l. After a provisional notice of determination is issued, prepare a final notice of determination in Chinese and in English and other relevant documents for each claim where the claimant either accepts the provisional compensation amount or does not respond to the provisional notice of determination within the given time limit.
- m. Send copy of the reply forms received from claimants to the ICC to enable the ICC make necessary arrangement for cheque issuance.
- n. Despatch the cheque prepared by the ICC together with the final notice of determination and the relevant documents to the claimant by registered mail.
- o. In respect of each claim which has been rejected by the Claims Committee, prepare a provisional notice of determination in Chinese and in English to be issued to the claimant, informing the claimant of the Claims Committee's provisional determination. Send out the provisional

notice of determination together with the relevant documents to the claimant by registered mail and by email if necessary. After a provisional notice of determination is issued, prepare a final notice of determination in Chinese and in English if the claimant does not make representations to the ICC within the given time limit. Send out the final notice of determination to the claimant by registered mail and by email if necessary.

- p. Send out letters by registered mail and by email if necessary to the claimants whose claims should be treated as having been withdrawn, advising the claimants of the decision of the Claims Committee.
- q. Reconsider claims if claimants make representations or submit new evidence to the ICC after provisional determinations or decisions have been made in respect of them. Prepare new case paper to be considered by the Claims Committee. Send out appropriate notices or letters to the claimants as the ICC deems appropriate by registered mail and by email if necessary.
- r. Diarize files for the claimant's responses and follow up with the claimant on any outstanding issues until the claimant's case is finalized. If the claimant does not respond by sending reminder letter to the claimant, escalate any such case with relevant information to the attention of the ICC.
- s. Some claimants may appeal against the determinations not to allow or partially allow their claims or the date of default which is used for calculating the share/futures contract prices. If they appeal, files and information have to be compiled for the ICC's onward submission to the SFAT.
- t. Throughout the process, the Claims Manager may need to answer questions, both general and case specific, from claimants, the SFC or ICC. The Claims Manager may also need to liaise with the administrators, liquidators, trustees in bankruptcy of the defaulting brokers.
- u. Once all the claims in respect of a default are determined and completed, forward all the physical files to the ICC and also submit the completed claims database for that particular default to the ICC in soft copy format.

Please note that the ICC has the option of reserving the right not to assign work to the Claims Manager if the ICC considers that it is within its capacity to handle the claims processing and payments. The ICC also has the right to appoint more than one Claims Manager to provide the services set out in this

RFP. In the event that more than one Claims Manager is appointed, the ICC has the sole and absolute discretion to assign work to any of its appointed Claims Managers as it considers appropriate.

4. Conditions

1. Commitment

This RFP does not in any way constitute commitment on the part of the ICC to select proposals of any of the respondents.

2. Costs

Respondents acknowledge that all costs and expenses incurred in responding to this RFP will be borne by them.

3. Notification of Result of Selection

The respondent whose proposal has been accepted will be notified in writing of such acceptance by the ICC. The unsuccessful respondents will be notified in writing of their rejected proposals. The ICC is not required to provide reasons for such rejection.

5. Remuneration and Duration

We are inviting proposals for an appointment period of three years.

Please advise:

a. Preferred basis of remuneration, for example:

- Any annual retainer fee;
- Rate per claim settled.

b. Any other relevant fees.

Please note that the ICC will bear all the out of pocket expenses which are reasonably incurred by the Claims Manager in connection with claims processing.

6. Evaluation Criteria

The successful respondent will not necessarily be the cheapest. We will evaluate bids on the following criteria:

1. Quality of response

Your proposal will outline the range of services you believe the SFC and ICC will require and the manner in which you intend providing those services.

We will evaluate your bid based on the extent it meets our objectives, our view on the relevance of your experience and our evaluation of your ability to provide the required services. Your availability to meet the timing requirements will also feature.

2. Personnel and company background

We will require a description of the company background including a summary of the past two years' financial record, if available, and a listing of the key personnel (and their qualifications, experience and location) who will take leading roles in this Service.

Please provide in respect of such personnel details of:

- a. Relevant experience, knowledge of securities and futures markets is a preference;
- b. Their other responsibilities;
- c. The approximate time they can devote to the project;
- d. How they will interact with the SFC and ICC; and
- e. How sufficient personnel will be provided to handle one or more large-scale broker defaults.

3. References

Please provide the names and contact details of three major clients of your company in respect of claims management services, with whom we may make contact.

4. Remuneration

As detailed in section 5.

7. Confidentiality

All information presented in or as a result of this RFP, including information disclosed by the ICC during the selection process, is to be considered strictly confidential. Information must not be released to external parties without the express written consent of the ICC.

All responses and other materials submitted in response to this RFP will become the property of the ICC. The ICC assumes no obligation and shall incur no liability regarding confidentiality of all or any portion of a response or any other material submitted in response to this RFP unless expressly agreed in writing to protect specifically identified information.

8. Conflict of Interest

No tenderer may have any interest which conflicts, or has the potential to conflict, with its duties to the ICC under the proposal. If a tenderer has any interest which conflicts, or has the potential to conflict, with its duties to the ICC under the proposal, the tenderer should clearly state this in its proposal. This requirement extends to the tenderer's associates, associated persons, group companies and each member of the tenderer's professional staff (and their associates and associated persons).

9. Prevention of Bribery

A tenderer shall prohibit its directors, employees, agents, and sub-contractors who are involved in this RFP from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this mandate.

The tenderer shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that its directors, employees, agents and sub-contractors are aware of the prohibitions in this section.

10. Timing

Please note that we will require your submission by 2:00 p.m. 31 May 2024 and intend making an appointment by approximately 1 September 2024.

The successful respondent must be prepared to start work immediately on appointment to allow sufficient time to finalise arrangements should a default occur.

11. Submission

The original written proposal (with two duplicate copies) must be submitted in sealed envelopes (plain envelope bearing no logo) to the following address:

Tender Box
Investor Compensation Company Limited
54/F One Island East
18 Westlands Road
Quarry Bay, Hong Kong
Hong Kong

Each proposal must be separated into the following parts:

- a. a Technical Part; and
- b. a Price Schedule.

The Technical Part and the Price Schedule must be submitted as separate documents (with duplicate copies) and be placed in two separate envelopes. The envelope containing the Technical Part must be clearly marked “Technical Proposal”. The envelope containing the Price Schedule must be clearly marked “Price Schedule”. Price information must not be specified in the Technical Part.

In order to allow the ICC sufficient time to consider all proposals validly submitted, tenderers should keep their offers open for at least 120 days from the closing date of this Request for Proposals. If this cannot be done, reason must be stated in the proposal.

A tenderer is requested to sign an **Acknowledgement And Undertaking (Annex A)** pertaining to preservation of secrecy and avoidance of conflict of interests and submit it together with the proposal. **Submission of a proposal without a signed copy of the Acknowledgement And Undertaking will not be considered.**

12. Additional Information

- a. The number of claims and thus workload will be dependent of the number of defaults and the associated number of investors who make claims in respect of defaults. Needless to say this will be difficult to

predict BUT the successful firm will need to commit to provide the necessary resources to adequately deal with the claims in the timeframe agreed by the ICC, which is expected to be such that payments will be made as soon as reasonably practicable and which is normally within 6 months assuming satisfactory receipt of associated information from the claimant and assuming co-operation of third parties such as an administrator or a liquidator of a defaulting broker in insolvency. In exceptional circumstances, payments will need to be made as soon as possible and it is expected be required to be made within 1 to 2 months from the date of default.

- b. Number of broker default since the establishment of the ICC in 2003 and number of claims received and allowed by the ICC in respect of each default case are shown as below:

Year of Default	Number of Broker Default	Number of Claims Received
2003	0	0
2004	0	0
2005	0	0
2006	3	774
2007	2	482
2008	0	0
2009	0	0
2010	0	0
2011	0	0
2012	0	0
2013	2	3
2014	0	0
2015	1	464
2016	0	0
2017	0	0
2018	0	0
2019	1	25¹
2020	0	0
2021	0	0
2022	0	0
2023	0	0

¹ Regarding a broker default which the SFC issued a restriction notice in 2019, the ICC published a notice inviting claims on 1 February 2021 to invite the client of the concerned broker who believe they have sustained a loss as a result of the default to lodge an application for compensation with the Fund. Therefore, these claims were received by the ICC between February and April 2021.

c. To give tendering firms some idea of the amount of information that will be required to process each claim, the information that are required to be provided by a claimant currently include the following:

- Name of the defaulting covered person (firm name)
- Address of the defaulting covered person

For individual Claimants:

- Client account numbers(s) of all accounts with the covered person
- Claimant name(s) in English
- Claimant name(s) in Chinese and code number (if applicable)
- Claimant H.K. identity card / passport number and country
- Address
- Correspondence address
- Residential telephone number and mobile phone number
- Telephone number during office hours
- Facsimile number
- E-mail address
- Dishonoured cheque(s) or payments issued by the covered person
- Specified securities/futures contracts owed by the covered person
- Amounts claimed arising from options trading
- Cash position with the covered person
- Other amount claimed
- Debt due by Claimant to the covered person
- For joint account, information on ratio of the ownership of the assets in the account.

For Companies:

- Client account numbers(s) of all accounts with the covered person
- Claimant's company name
- Registered address
- Business registration number, certificate of incorporation number, or other similar number
- Name(s), position(s) and telephone numbers of authorized signatories who are authorized to sign the claim form on behalf of the company
- Dishonoured cheque(s) or payments issued by the covered person
- Specified securities/futures contracts owed by the covered person
- Amounts claimed arising from options trading
- Cash position with the covered person
- Other amount claimed
- Debt due by Claimant to the covered person

Full supporting documentation

- Circumstances of the default by the covered person
- Documents supporting the claim, e.g. cash account opening forms, margin account opening forms & agreements, contract notes, securities account statements, bank statements, evidence of payments, etc.
- Any civil or criminal proceedings that have been taken or are contemplated in respect of the facts set out in the claim.

ACKNOWLEDGEMENT AND UNDERTAKING

You should be aware that statutory provisions require:

Preservation of secrecy pursuant to section 378 of the Securities and Futures Ordinance (“SFO”) and in particular subsection (1) of that section.

Avoidance of conflict of interests pursuant to section 379 of the SFO and in particular subsections (1), (2) and (3) of that section.

S.378 of the SFO binds you and in particular ss. (1) of that section which provide as follows:

- (1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person-
- (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;
 - (b) shall not communicate any such matter to any other person; and
 - (c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

TAKE NOTICE THAT IF YOU CONTRAVENE S.378(1) OF THE SECURITIES AND FUTURES ORDINANCE YOU COMMIT AN OFFENCE UNDER S.378(10) OF THAT ORDINANCE. ANY PERSON WHO COMMITS AN OFFENCE UNDER S.378(10) IS LIABLE:

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for two years; or
- (b) on summary conviction to a fine of \$100,000 and to imprisonment for six months.

S.379 of the SFO binds you and in particular ss. (1), (2) and (3) of that section which provide as follows:

- (1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme -
- (a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or
 - (b) which transaction he knows is otherwise being considered by the Commission.

(2) Subsection (1) does not apply to any transaction which a holder of securities or a structured product effects or causes to be effected by reference to any of his rights as such holder -

- (a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product;
- (b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap. 622) or the relevant Ordinance;
- (c) to subscribe for other securities or another structured product or dispose of a right to subscribe for other securities or another structured product;
- (d) to charge or pledge the securities or structured product to secure the repayment of money;
- (e) to realize the securities or structured product for the purpose of repaying money secured under paragraph (d); or
- (f) to realize the securities or structured product in the course of performing a duty imposed by law.

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to -

- (a) any securities, futures contract, leveraged foreign exchange contract, structured product, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or structured product -
 - (i) in which he has an interest;
 - (ii) in which a corporation, in the shares of which he has an interest, has an interest; or
 - (iii) which -
 - (A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest;
 - (B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or
 - (C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or
- (b) a person -
 - (i) by whom he is or was employed;
 - (ii) of whom he is or was a client;
 - (iii) who is or was his associate; or
 - (iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

TAKE NOTICE THAT IF YOU CONTRAVENE S.379(1) OR S.379(3) OF THE SECURITIES AND FUTURES ORDINANCE YOU COMMIT AN OFFENCE UNDER S.379(4) OF THAT ORDINANCE. ANY PERSON WHO COMMITS AN OFFENCE UNDER S.379(4) IS LIABLE:

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for two years; or

- (b) on summary conviction to a fine of \$100,000 and to imprisonment for six months.

The term “specified person” is defined in Section 378 of the SFO and means-

- (a) the Commission;
- (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or
- (c) any person who is or was -
 - (i) a person appointed under any of the relevant provisions;
 - (ii) a person performing any function under or carrying into effect any of the relevant provisions; or
 - (iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

“person” has the meaning attributed to it in s.3 of the Interpretation and General Clauses Ordinance Cap.1 which provides that “person” includes any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word “person” occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation.

We acknowledge the provisions of section 378 of the Securities and Futures Ordinance (SFO) and in particular subsection (1) of that section and the provisions of section 379 of the SFO and in particular subsections (1), (2) and (3) of that section.

Signature

Name

Title

Company

Date

Witnessed by:

Signature

Name

Title

Date