

IRISH INVESTMENT PROTECTION SCHEME

1.1 General information about protection scheme

The Investor Compensation Act, 1998 (the “Act”) gives effect to the requirements laid down by the EU Investor Compensation Directive (97/9/EC). The Act provides for the establishment of the Investor Compensation Company Limited (“ICCL”) which has been empowered to set up, maintain and operate a scheme to compensate eligible investors of failed investment firms.

1.2 Eligible Depositors

Article 2 of the Act defines an eligible investor as a person, not being an excluded investor, who is a client of an investment firm and has made an application for payment under section 34 of the Act. A client is defined as a person:

- to whom an investment firm provides investment business services, or
- who has entrusted money or investment instruments to an investment firm in connection with the provision of investment business services by the firm.

Investment business services include those services provided under the Investment Intermediaries Act 1995 and the European Communities (Markets in Financial Instruments) Regulations 2007 (as amended).

An Excluded Investor is also defined in Article 2 of the Act as follows:

- a) A professional or institutional client, including:
 - an investment firm;
 - an investment firm for the purposes of the Investment Services Directive;
 - a credit institution as defined in Article 1 of Council Directive No. 77/780/EEC;
 - a financial institution as defined in Article 1(6) of Council Directive No. 89/646/EEC of 15 December 1989;
 - an insurance undertaking;
 - an undertaking for collective investment; or
 - a pension or retirement fund, or
- b) a local authority, or
- c) a director, manager or personally liable member of the investment firm, a holder of at least 5 per cent. of the capital of the investment firm, a person responsible for carrying out the statutory audit of the investment firm or a client with similar status in a group undertaking, or
- d) a close relative or a third party acting on behalf of a client referred to in paragraph (c), or
- e) another firm in a group undertaking, or
- f) a client who has any responsibility for, or has taken advantage of, facts relating to the investment firm which gave rise to the firm's financial difficulties or contributed to the deterioration of its financial situation, or
- g) a company which is of such a size that it is not permitted to draw up abridged balance sheets under Article 11 of the Fourth Council Directive No. 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, or
- h) a client specified by the supervisory authority as an excluded investor in accordance with section 35(8) of the Act;

The ICCL has provided some additional clarification on the types of client that should be treated as eligible investors

for the purposes of the Act. They include:

- An execution-only client.
- A client who has entered or exited a Business Expansion Scheme during the year in question.
- A client whom a receipt and transmission service was provided by one group entity even if the order was passed to another group entity for execution.
- A client even if a client is already covered for Deposit Protection Scheme purposes.
- A client who deals in tracker bonds instruments. Tracker Deposit Investors should be included in eligible client numbers at initial investment and at maturity stages.
- In case of a client who invests a once-off lump sum with a product producer via a firm he should be included in "eligible client" numbers in the year in which the lump sum is invested.
- An accountant/ solicitor should be included unless (i) he/she is acting as a provider of investment business services; or (ii) he/she is a professional investor as referred above.

1.3. Eligible Deposits

Eligible deposits under the Act consist of the following:

money owed to or belonging to the client and held on behalf of the client by the investment firm in connection with the provision of investment business services by the investment firm, and

investment instruments belonging to a client of the investment firm, and held, administered or managed by that firm for the client, in connection with the provision of investment business services by that firm to the client, the value of those instruments being determined, so far as possible, by reference to their market value,

on the day of a determination made under section 31(3) of the Act or a ruling by a court, as appropriate, which the investment firm is unable to discharge at that time.

Investment business services include those services provided under the Investment Intermediaries Act 1995 and the European Communities (Markets in Financial Instruments) Regulations 2007 (as amended).

Only proven debts may be treated as eligible deposits. Proof of debt may be furnished by way of detailed statement of account, affidavit of debt or any prescribed means.

The Act requires that Ireland's investor compensation requirements will apply to cover eligible investors at branches of the firm set up in other member states. There is, however, an important exception to this principle, the "Topping Up" clause contained in Article 7(1) of the Investor Compensation Scheme Directive provides that a firm belonging to a scheme offering a lower or narrower protection may join voluntarily a scheme in the host country in order to supplement its cover at branches located in the host member states where investor compensation scheme is more generous.

1.4. Inaccessible Deposit

The following deposits are excluded from the requirements of the Act:

- any monies or investment instruments held or maintained by an investment firm on behalf of an excluded investor (see definition above);
- money or investment instruments arising out of transactions in respect of which a money laundering or counter financing of terrorism offence has occurred;
- Any amount which the investment firm is entitled to set-off against any amount owed by the client to the Investment Firm or in respect of which such a right of set off would have existed had
 - the money or investment instruments been repayable on demand, and
 - such liability had fallen due, immediately before a determination was made under Article 34 of the Act that the investment firm was unable to repay the amount or a court made a ruling to that effect;
- Any money or investment instruments held on behalf of a client by an investment firm where the money or investment instruments were entrusted by the client to the investment firm at any time when the investment firm was not an authorised investment firm, unless the supervisory authority is satisfied that, at the time the money or investment instruments were so entrusted, the client did not know and could not reasonably be expected to have known that the investment firm was not an authorised investment firm.

1.5. Compensation for Inaccessible Deposits

The compensation payable to eligible investors of authorised investment firms is a maximum of 90% of the amount lost subject to a maximum of €20,000 to each investor.

1.6 Compensation Payment Place

The ICCL can only begin the process of making compensation payments to investors once it has been advised by the Irish Financial Services Regulatory Authority (“the Financial Regulator”) that an authorised firm has either:

- (a) been the subject of a court ruling which prevents the firm returning money or investment instruments to clients; or
- (b) been the subject of a determination by the Financial Regulator that the firm is unable to meet its obligations arising from claims by clients.

Once it has been so advised, the ICCL will write to all known clients of the failed firm advising them of their right to make a claim for compensation and make the necessary publications. In accordance with the provisions of the Act investors will be given at least five months from the court ruling or determination by the Financial Regulator in which to make a claim. The validation of claims is carried out by an ‘Administrator’ who will be either the court appointed liquidator to the firm or some other person appointed by the Financial Regulator.

1.7 Period for the Payment Compensation Claims

Once advised of a claim, the ICCL will write to all known clients of the failed firm advising them of their right to make a claim for compensation and make the necessary publications. In accordance with the provisions of the Act investors will be given at least five months from the court ruling or determination by the Financial Regulator in which to make a claim. The validation of claims is carried out by an ‘Administrator’ who will be either the court appointed liquidator to the firm or some other person appointed by the Financial Regulator. Payment of claims will take place within three months of the validation of the claim by the Administrator but the aim of the ICCL is to make payments as quickly as possible after validation of the claim.