

INVESTOR COMPENSATION

HOW DOES IT WORK ?

April 2000

This booklet gives an overview of the operation of the investor compensation scheme in Ireland and introduces the Investor Compensation Company Limited (ICCL). It is not intended to be a legal analysis of the Investor Compensation Act, 1998 nor is it an exhaustive description of how the scheme operates.

If you would like further information please contact :

***Investor Compensation Company Limited
c/o Central Bank of Ireland
Dame Street
Dublin 2.
Telephone No: (01) 6716666
Fax No: (01) 6716561***

© Copyright of Investor Compensation Company Limited 2000

Introduction

Making an investment will mean letting somebody else handle your money. Over the years we have seen a number of instances in the financial services industry where a firm is unable due to its financial circumstances to return investors' investments or money. In the past there has been very little investors could do to recover their funds and people have suffered significant losses, in some cases their lifesavings.

The establishment of an investor compensation scheme provides a mechanism whereby private investors may be entitled to compensation from ICCL. The compensation is payable to eligible investors without the need to undertake expensive legal action. It is important that investors are aware of what is covered by the scheme and what they must do if they need to make a claim.

The scheme is funded by contributions from its member firms. The method of calculating the contribution payable was decided following an evaluation of the likely call on the scheme, the need for reserves and following consultations with firms and industry representative bodies.

This booklet has been produced to provide an explanation to the public of the scope and method of operation of the investor compensation scheme. It is written in a question and answer format which we hope addresses the main issues and will prevent misunderstandings about the circumstances in which compensation can be paid.

***Note:** Investors must exercise caution in making their investments to ensure that they do not leave themselves open to being defrauded. It is not possible to recover the full value of your investment under the compensation arrangements.*

The Investor Compensation Company Limited

The Investor Compensation Company Limited was established under the Investor Compensation Act, 1998. Its objective is to maintain a compensation scheme out of which payments can be made to customers of a failed investment firm.

The Company's directors are appointed by the Minister for Finance and the Minister for Enterprise, Trade and Employment and are selected on the basis that they represent the interests of clients of investment firms (i.e. the public) or the interests of the financial services industry. The Governor of the Central Bank of Ireland appoints the chairperson and deputy chairperson of the Board.

ICCL is not involved in the regulation or supervision of investment firms. This task is carried out by those bodies listed at the back of the booklet.

ICCL's key objective is to process claims for compensation as expeditiously as possible and to ensure that compensation, where applicable, is paid without undue delay. ICCL will apply the rules of the scheme in a fair and sympathetic manner. It will do all it can to help investors who have lost money.

Scope of the Investor Compensation Scheme

How can the investor compensation scheme help me ?

If a member firm of the scheme goes out of business and cannot return your investments or money, you are entitled to make a claim under the scheme.

Other circumstances which can result in a decrease in the value of an investment e.g. poor advice, market movements or inflation, are **not** compensatable.

Note: Compensation is only payable where a firm is unable, due to its financial circumstances, to return your investments or money.

What kind of financial firms are members of the scheme ?

A wide variety of financial firms are covered by the scheme. They can be categorised as follows:

- investment firms regulated by the Central Bank of Ireland
- stockbrokers regulated by the Central Bank of Ireland
- insurance brokers, agents and tied agents
- banks and building societies licensed by the Central Bank of Ireland which carry out investment services
- accountants certified by their professional bodies to conduct investment business (*except where the firm, in the future, may be a member of a compensation scheme established by an approved professional body and authorised by the Central Bank*).

Financial services firms not covered by the scheme include:

- insurance companies
- credit unions
- investment services provided by solicitors
- the deposit taking business of banks and building societies
- foreign firms selling their investment services into Ireland from abroad
- collective investment schemes such as unit trusts or UCITS¹

Some of these firms are members of their own compensation schemes and this should be discussed with the individual firms involved.

How do I know that the firm I am investing with is part of the scheme ?

The first time you deal with a member firm, it should confirm to you in writing that it is a member of the scheme. This information can also be confirmed by contacting the firm's regulatory body, details of which are listed at the back of the booklet.

Note: It is important to note that compensation will not be payable if an investor deals with a firm which has not been authorised to provide investment services.

¹ The failure of a collective investment scheme is not covered by the compensation arrangements. However, compensation is payable, subject to the normal rules, where a member firm is involved in a transaction involving units in a collective investment scheme.

Are all types of investments covered ?

A very broad range of investments is covered by the scheme. It includes transactions in investment instruments such as:

- public and private company shares
- units in collective investment schemes
- prize bonds
- life and non-life insurance policies
- tracker bonds
- futures and options.

Does it matter when I carried out the transaction ?

All transactions carried out after 1 August 1998 (the date the Investor Compensation Act, 1998 came into law) are covered by the scheme. However, certain transactions (those which come within the scope of the European Commission Investor Compensation Directive) are covered even if you entered into them before 1 August 1998 (e.g. where a firm has discretion over your investments).

Will I be covered if I do business on the Internet ?

If you deal on the Internet with a firm which has been authorised in Ireland and that firm fails while owing you money, the scheme may be able to help you.

Making a Claim

When can a claim be made ?

Before ICCL can begin the process of paying compensation to investors, it must be advised by the Central Bank of Ireland (Central Bank) that one of the following has occurred, either

- (a) *a court has made a ruling which stops a member firm from paying money to a client or returning the client's investment instruments*
or
- (b) *the Central Bank has made a decision that a member firm is unable to meet its financial obligations to its clients.*

Can any customer make a claim ?

The scheme is designed to assist private customers of a firm which has failed. It is not available to what might be termed 'professional' investors such as large companies, other financial firms or individuals who might be classified as professionals.

How do I make a claim ?

Once ICCL has been advised of either (a) or (b) above by the Central Bank, it will send out a claim form to all **known** clients. Also, it will publish notices in the newspapers advising clients of the member firm of their right to make a claim.

When submitting your claim you should include any documents which the failed firm had sent to you from the time you first made your investment. This is very important when your claim for compensation is being examined. The more information you give to ICCL, the easier it will be to deal with your claim.

How long have I got to make my claim ?

Your claim must be submitted to ICCL within five months of the court ruling or the Central Bank determination that the firm is unable to meet its financial obligations to its clients. Claims after this time will only be processed if the claimant can satisfy the Central Bank that there were good reasons why the claim could not have been made within the five month limit.

How is my claim processed ?

ICCL will pass your claim to a person known under the Investor Compensation Act as an 'Administrator'. The Administrator will examine each of the claims received and will make a judgement as to the amount of compensation payable. This judgement is made in accordance with the rules of the scheme.

What if I am not happy with the level of compensation paid ?

If you are dissatisfied with the level of compensation which the Administrator has determined is payable to you, you can appeal the decision to ICCL. If you consider that the decision of ICCL is inappropriate you may appeal it to the court.

Getting Paid

How long will it take to get paid ?

Your claim will be processed as speedily as possible, but the speed with which you are paid depends on the clarity of your records and the veracity of the records of the firm which has failed. The latter may affect the timing of the Administrator's certification of the claims and may cause a delay. However, once the Administrator has certified the validity of the claim, payment will be made within three months.

How much will I get ?

The amount which can be paid to a claimant is the lesser of £15,751 (€20,000) or 90 per cent of the net loss as certified by the Administrator. Assuming that there are no assets left in the firm, let us look at a couple of examples of how this might work:-

Situation 1

Client A has given the member firm £10,000 to invest in a single premium bond. The bond was never purchased.

Compensation Payable

The client will be entitled to compensation of £9,000 i.e. £10,000 x 90 per cent.

Situation 2

Client B has given the member firm £20,000 to purchase units in a collective investment scheme. The units were never purchased.

Compensation Payable

The client will be entitled to compensation of £15,751. The maximum limit applies in this case.

Summary

1. ICCL operates a national compensation scheme whose function is to provide compensation to private clients of failed investment firms.
2. The scheme is funded by contributions from member firms.
3. Compensation is only payable if the investment firm with which you are dealing is properly authorised in Ireland to provide investment services.
4. Compensation is only payable where the firm is unable, due to its financial circumstances, to return a client's money or investments as determined either by the courts or the Central Bank.
5. All transactions carried out after 1 August 1998 are covered by the scheme and in certain limited circumstances, transactions before that date may also be eligible for compensation.

Summary

6. The maximum level of compensation payable is £15,751 (€20,000) or 90% of the net loss, whichever is the lesser.
7. You have five months to make a claim from the time the investment firm is deemed to have failed.
8. You will be paid compensation within three months of a certificate being issued by the Administrator, verifying your claim.
9. The more documentation relevant to the transaction which you submit with your claim, the easier it will be to validate the claim and the quicker you will be paid.

This publication is intended as only a general guide and not as a detailed legal analysis. It should not be used as a substitute for full professional advice based on the facts of a particular case.

Regulatory Authorities

Investment Firms and Banks	Accountancy Bodies
Central Bank of Ireland Dame Street Dublin 2	The Association of Chartered Certified Accountants 9 Leeson Park Dublin 6
	The Institute of Certified Public Accountants in Ireland 9 Ely Place Dublin 2
Insurance Intermediaries*	
Insurance Intermediary Compliance Bureau 39 Molesworth Street Dublin 2	The Institute of Chartered Accountants in Ireland Quality Assurance Division 11 Donegall Square South Belfast BT1 5JE
Irish Brokers Association 87 Merrion Square Dublin 2	The Institute of Chartered Accountants in England & Wales Professional Standard Office Silbury Court 412-415 Silbury Boulevard Central Milton Keynes MK9 2AF England
	The Institute of Chartered Accountants of Scotland 27 Queen Street Edinburgh EH2 1LA Scotland

* Regulatory responsibility for these functions are to be taken over by the Central Bank of Ireland