

## Investor Compensation Company DAC publishes its 2021 Annual Report

### *Introduction*

The Investor Compensation Company DAC ["ICCL"] is a statutory body established under the Investor Compensation Act, 1998, ("the Act") to provide, in the circumstances prescribed under that Act, compensation to eligible clients of failed investment firms, where such firms are unable to return client money and/or investment instruments belonging to them. The Compensation Scheme is primarily aimed at small investors and provides compensation of up to €20,000 for each investor for claims covered. The ICCL collects annual levies from investment firms in order to build the reserves from which compensation can be paid. The ICCL does not receive any funding from the State.

### *Results for the year*

The ICCL has reported a surplus for the year to 31 July 2021 of €17.3 million, an increase of €13.8 million on the previous year. The increase was mainly attributable to receipts of risk equalisation levies (the latter were instituted in 2020 to address elevated exposures for the Compensation Scheme arising from Brexit-related developments). This boosted the company's accumulated reserves to €82.5 million (up from €65.2 million in 2020). The reserves included €56.6 million in the Scheme's primary fund - Fund A – which is earmarked for larger investment firms (such as banks, asset managers and stockbrokers), while the second fund, Fund B, which covers smaller investment firms including insurance brokers and retail intermediaries stood at €25.9 million

The reserves are net of all projected liabilities arising from ongoing compensation cases, which have been fully provided for.

### *Funding*

The reserves of the ICCL consist of accumulated levies collected from authorised investment firms affiliated to the Scheme. Funding plans are set in advance for three-yearly cycles following consultation with stakeholders including the contributing firms, with the present cycle extending to end-July 2022. Proposals for the next period to mid-2025 are currently the subject of consultation. Since the financial year-end, the reserves have increased to more than €87 million, reflecting levies collected in the latest funding period.

This funding is augmented by a range of other sources, including specialist Excess of Loss insurance policies (via the Lloyds' market) and revolving credit facilities with a domestic commercial bank, which provide additional resources of up to €110 million and €30 million respectively. Because of sustained growth in its reserves and a varied funding model, the ICCL is in a position to cover compensation claim obligations to affected eligible clients of failed firms of more than €190 million for Fund A firms and €36 million for Fund B firms, without the need to impose supplementary levies on the investment firms participating in the Scheme.

At this time, there are just over 3,000 investment firms in the Scheme, which represents a marginal reduction from 2020. There are 170 firms attached to Fund A.

## **Cases**

No new compensation cases arose during the past year.

### ***Custom House Capital (CHC)***

CHC is the largest failure of an investment firm dealt with to date by the ICCL, with total investor losses estimated by the Liquidator at over €61 million and compensatable losses of up to €19.7 million, which have been fully provided for in the ICCL's accounts. The liquidation of the firm commenced in October 2011 and almost 2,000 claims for compensation were received by the ICCL from clients of the firm.

By the end of the latest financial year-end (31 July 2021), the ICCL had paid total compensation of €7.4 million on foot of the certification of 574 claims. Certification of claims had been deferred by the Liquidator/Administrator pending the outcome of the ICCL's High Court application for directions on the interpretation of legislative provisions relating to its statutory subrogated claim in respect of compensation paid.

Arising from issues that had emerged in the course of the liquidation, the ICCL had applied to the Court in 2019 seeking clarification as to how elements of the Scheme should operate in the CHC case (as well as in future cases). These related to the determination of the compensatable loss of eligible investors and the scope of the subrogated claim. In a judgment issued in October 2021, the Court ruled that the liability of an insolvent investment firm to return assets to clients and the calculation of compensatable loss must be determined as at the start of the liquidation of the firm. Any subsequent recoveries and distributions of client assets are not relevant to that calculation. Furthermore, the ICCL's right of subrogation under the Act is limited to the investment firm's own assets.

These important Court decisions have enabled the recommencement of the certification of claims and the associated payment of compensation to clients of the firm. Since the judgment was received, the ICCL has been engaging with the Administrator to ensure the claims certifications/payment processes are advanced. The ICCL has received over 200 certified claims and is validating these claims as quickly as possible. To date, the ICCL has paid out more than €300,000 in compensation to eligible investors. It is anticipated that the vast majority of the remaining claims will be certified and paid in 2022.

### ***Money Markets International Stockbrokers Limited (MMI)***

The liquidation of MMI, which dates from March 1999, is continuing. The ICCL has paid €775,000 in compensation to eligible clients of the firm, the most recent payment being made some years ago. Resolution of a number of issues in the liquidation is awaited and it remains unclear whether additional compensation will arise in the case.

## ***Chairperson's Comments***

Speaking on the publication of the Annual Report, the Chairperson of the ICCL, Mrs Jane Marshall, said:

*“Despite the persistent challenges stemming from the impact of the pandemic, the ICCL's operations continued without undue disruption in the past year. The Board remains committed to ensuring the smooth functioning of the Scheme in a difficult environment. The past year has seen further growth in the ICCL's reserves, which is testament to the ongoing strong support for the Scheme from the participating investment firms.*”

*The recent comprehensive High Court judgment in the Custom House Capital case has brought necessary clarifications for how the Compensation Scheme should operate in this and future compensation cases. I am pleased to say that in the immediate aftermath of those decisions, the certification of the outstanding claims has resumed and that the ICCL has since paid over €300,000 to eligible investors. We will ensure that as certifications for the remaining claims are received, compensation payments will be made without delay. It is hoped that the process will be largely completed in 2022.*

The ICCL Annual Report for the year-ended 31 July 2021 is now available online at [www.investorcompensation.ie](http://www.investorcompensation.ie)

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**For further information, please contact:**

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**Mrs Marshall and Mr Fagan will be available to receive phone calls from the media on Friday, 17 December 2021 from 10.00am until 11.00am. Any e-mailed requests for information will be attended to as quickly as possible and in the order in which they are received.**

#### **Note for Editors:**

The ICCL was established under the Act. Its principal objective is to establish and operate an investor compensation scheme in accordance with the terms of EU Investor Compensation Scheme Directive 97/9/EC. The Act provides that investment firms must become members of the scheme and contribute to its funding. Following industry consultation, detailed funding arrangements were put in place which provided for the establishment of two separate funds to take account of differences in the activities of investment firms. The ICCL is not involved in the regulation or supervision of investment firms.

The ICCL is fully funded through levies collected from participant investment firms and receives no State funding (see below).

Ten Directors represent the interests of consumers (5) and the interests of the financial services industry (5) and are prescribed by the Minister for Finance. The Governor of the Central Bank of Ireland nominates and appoints the Chairperson and Deputy Chairperson of the Board.

#### **ICCL Funding Model**

The ICCL consults with its participant firms once every three years concerning its funding for the following three years. The latest *Funding Arrangements* document in respect of the Funding Years ending 31 July 2020-22, which was issued in April 2019, outlines contribution rates payable by the different categories of authorised investment firms affiliated to the

Scheme and the various sources from which the ICCL may draw funds in the event of a claim arising. These sources are as follows:

- Payments to be made out of the reserves built up in Fund A or Fund B, as appropriate.
- Additional top-up payments to be collected from participant firms subject to certain limitations on the supplementary amount in any one year.
- Claim on an 'Excess of Loss' Insurance Policy where the level of claims in any one year exceeds €15 million per fund.
- Commercial borrowing may be arranged under the ICCL's statutory borrowing powers. This borrowing is subject to approval by the Central Bank.
- Inter-fund borrowing. Under Section 19 of the Act, inter-fund borrowing is permitted up to one third of the fund, subject to approval by the Central Bank.

The implementation sequence of the individual elements of the cascade model will be determined by the Board of the ICCL depending on circumstances prevailing at the time of default.

### **Role of the Administrator**

The Act requires that the Central Bank or the High Court, as appropriate, appoint an Administrator to each new case. This role is usually undertaken by the Liquidator of the insolvent firm concerned. The principal responsibilities of the Administrator are to review each claim received from clients of the failed investment firm, to verify the eligibility and net loss of each claimant, and to certify the level of compensatable loss, if any, to be paid. The ICCL strives to ensure payment to each eligible client is made within two weeks of receipt of the certification statement from the Administrator.

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