



The Investor Compensation Company DAC

**ICCL Returns for Fund A Participant Firms
(incorporating eligible client guidance)**

Issue date 6 July 2020

LIST OF ABBREVIATIONS USED IN THIS PAPER

ICCL	THE INVESTOR COMPENSATION COMPANY DAC
THE SCHEME / ICS	INVESTOR COMPENSATION SCHEME
THE BANK	CENTRAL BANK OF IRELAND
THE BOARD	THE BOARD OF THE ICCL
THE ACT	INVESTOR COMPENSATION ACT, 1998 (AS AMENDED)
THE DIRECTIVE / ICSD	INVESTOR COMPENSATION SCHEME DIRECTIVE 97/9/EC
EU	EUROPEAN UNION
EU ICS	EU NATIONAL INVESTOR COMPENSATION SCHEME
CAR	CLIENT ASSET REGULATIONS

Contents

1	Introduction	5
	1.1. Background	5
	1.2. Additional returns	5
	1.3. Related documents	5
2	Return 1 – Eligible Client numbers for levy rate purposes	6
	2.1. Why is the return need?	6
	2.2. Basis of Assessment	6
	2.3. Period of Assessment	7
	2.4. Completing the return	7
3	Return 2 – Theoretical maximum exposure return	8
	3.1. Why the return is needed?	8
	3.2. Basis of Assessment	8
	3.3. Date of Assessment	8
	3.4. Completing the return	9
4	Return 3 – Eligible client geographic distribution	10
	4.1. Why the return is needed?	10
	4.2. Basis of Assessment	10
	4.3. Date of Assessment	10
	4.4. Completing the return	11
5	Frequently Asked Questions	12

List of Returns

Return No.	Return Name	Page No.
RETURN 1	FUND A: ELIGIBLE CLIENT NUMBERS FOR LEVY RATES PURPOSES	7
RETURN 2	FUND A: THEORETICAL MAXIMUM EXPOSURE RETURN	9
RETURN 3	FUND A: ELIGIBLE CLIENT GEOGRAPHIC DISTRIBUTION	11

Frequency of Returns

Return No.	Return Name	Date	Date	Date
RETURN 1	FUND A: ELIGIBLE CLIENT NUMBERS FOR LEVY RATES PURPOSES	August 2020	August 2021	August 2022
RETURN 2	FUND A: THEORETICAL MAXIMUM EXPOSURE RETURN	July 2020	March 2021	March 2022
RETURN 3	FUND A: ELIGIBLE CLIENT GEOGRAPHIC DISTRIBUTION	N/A	March 2021	N/A

1 Introduction

1.1. Background

In July 2016, The Investor Compensation Company DAC ["ICCL" or "Company"] having consulted with the Central Bank of Ireland (the 'Bank'), as the Competent Authority in Ireland for the Investor Compensation Directive (97/9/EC) ('the Directive' or 'ICSD') issued guidance to Fund A participants in relation to the assessment of eligible clients for levy purposes. This guidance is supplementary to the established basis for the assessment of levies for Fund A firms which has, since the inception of the Investor Compensation Scheme ["the Scheme"] been based on the number of eligible clients of a firm. Historically, firms have completed this return as a self-assessed exercise in conjunction with the payment of the annual levy invoice which is issued in August each year (Return 1).

In the intervening period, the ICCL and the Bank have engaged directly with some participant firms in circumstances where unexpected variances were observed between certain ICCL and Bank returns. In such circumstances, additional clarity may have been provided to ensure consistency of the returns received.

1.2. Additional returns

Furthermore, the Board of the ICCL ["the Board"] has introduced additional returns of ad-hoc or recurring frequency to support the strategic planning processes within the ICCL, specifically returns designed to help quantify the theoretical maximum exposure that each Fund A participant firm presents to the Scheme at a point in time (Return 2), and, a return that seeks to identify the scale of cross-border investment service provision by Fund A participant firms to eligible investors within the EU/EEA (Return 3).

1.3. Related documents

1.3.1. *Funding Arrangements of the Investor Compensation Scheme Document – 30 April 2019*

This document is available on www.investorcompensation.ie

2 Return 1 – Eligible Client numbers for levy rate purposes

2.1. Why is the return need?

As set out in the ICCL's Funding Arrangements document (April 2019), the ICCL will continue to operate a self-assessment model for participant firms to determine the appropriate annual levy.

Return 1 determines the appropriate annual levy and takes the form of the annual levy invoice that is issued to each participant firm in August of each funding year.

2.2. Basis of Assessment

The annual levy payable by a Fund A firm continues to be based upon two criteria:

- 2.2.1.1. *Whether the firm is subject to the Bank's Client Asset Regulations ["CAR"];*
- 2.2.1.2. *The number of eligible clients who, at any point during the period of assessment, were provided with an investment service (other than solely investment advice) **and/or** the firm held, administered or managed assets or money on behalf of the eligible client **and/or** were provided with the activities of an insurance intermediary.*

An annual levy invoice is issued to each participant firm on the basis of the prior year Return 1 as submitted by the participant firm. In effect, this means that the annual levy invoice issued to participant firms is an estimate and it is the responsibility of each participant firm to calculate the actual number of eligible clients for the period of assessment, and update the return accordingly.

Upon receipt of the updated Return 1 from the participant firm, the ICCL will raise any supplementary invoice or credit note necessary and it will be issued to the participant firm to settle the annual levy liability.

The ICCL frequently engages with the Bank in respect of the confirmation of the number of eligible clients returned by participant firms to the ICCL. These returns may then be subject to verification by the Bank as part of its ongoing supervisory process.

2.3. Period of Assessment

The period of assessment will continue to be the participant firm's financial year which ended immediately prior to the commencement of the ICCL funding year. (e.g. where a participant firm's financial year ends on 31 March 2020, eligible client data for the entire period 1 April 2019 to 31 March 2020 must be used for the ICCL Funding Year commencing on the following 1 August 2020.)

2.4. Completing the return

Each participant firm, having calculated the correct number of eligible clients for the period of assessment, must then determine from the eligible client ranges (see table 1 below), which levy rate is applicable to the participant firm. The participant firm must include the actual number of eligible clients that it has calculated beside the appropriate band/levy rate. The return must be signed and submitted to the ICCL before the invoice due date which is 35 days after the invoice date.

(Please see a sample of Return 1 below – extracted table 1 from the annual levy invoice below)

This is the participant firms' actual number of eligible clients for the period of assessment as assessed by the firm.

TABLE 1 - FUND A: BAND AND LEVY RATE STRUCTURE

FOR THE FUNDING YEAR COMMENCING 1 AUGUST 2019

Band	Number of eligible clients	August 2019 to July 2020 Not subject to "CAR"	August 2019 to July 2020 Subject to "CAR"	Select levy band
0	Zero	€5,400	€5,400	
1	1 – 49	€20,000	€22,000	
2	50 – 749	€30,000	€33,000	
3	750 – 2,499	€60,000	€66,000	2,234
4	2,500 – 4,999	€100,000	€110,000	
5	5,000 – 9,999	€160,000	€176,000	
6	10,000 – 19,999	€180,000	€198,000	
7	20,000 – 29,999	€220,000	€242,000	
8	30,000 – 39,999	€240,000	€264,000	
9	40,000 – 49,999	€300,000	€330,000	
10	Over 50,000	€340,000	€374,000	

3 Return 2 – Theoretical maximum exposure return

3.1. Why the return is needed?

Return 2 assists the Board of the ICCL to assess the theoretical maximum exposure of the Scheme at a point in time. The availability of this data is critical to enabling the Board of the ICCL to ensure that the Scheme is meeting its statutory objective of ensuring adequate funds are available to meet reasonably foreseeable losses that may arise in the future.

In this context, the ICCL commenced collecting this data through two channels, initially, some investment firms were requested to complete an “ICCL return” through the Central Bank of Ireland’s Online Return platform in January of each year. For other firms, such as Credit Institutions and others, the ICCL engaged directly with those firms to collect the equivalent data in Q2 of the calendar year.

With effect from 1 January 2020, “**Return 2**” will be issued to participant firms during quarter 2 with a return timeframe of circa 21 days. In subsequent years, Return 2 will be issued to participant firms during quarter 1 with a return deadline of 31 March.

3.2. Basis of Assessment

The theoretical maximum exposure of a Fund A firm will be based upon updated criteria:

1. *the number of eligible clients who, as at the date of assessment, the firm held, administered or managed assets or money on behalf of;*
2. *the value of assets or money held, administered or managed on behalf of each client;*
3. *analysed between total eligible client numbers:*
 - *greater than the compensation threshold (currently €20k);*
 - *less than the compensation threshold (currently €20k);*
 - *aggregate value of assets or money held, administered or managed on behalf of each client where the per client value is less than the compensation threshold (currently €20k).*

In contrast to return 1, return 2 is a point in time return based on eligible client relationships at that date (31 December) where the firm holds or administers or manages, client money or instruments.

3.3. Date of Assessment

The date of assessment will continue to be 31 December.

3.4. Completing the return

Each participant firm, having calculated the correct number of eligible clients and the associated value of protected eligible client money/instruments for the period of assessment, must then populate the form "Return 2".

(Please see below for a sample of Return 2 below)

These fields are general information and the person named should be able to respond to any queries from ICCL regarding the data returned.

ICCL Ref: «Contact_No»

Firm Name: «Contact_Name»

Compliance Manager:

Mary Smith

Telephone:

021-423 7056

Email address:

marysmith@investmentfirm.ie

Address for Correspondence (if different from cover letter):

No change

Please provide the requested information based on your data as at 31 December 2019:

Q1.	How many Eligible Clients ¹ does your firm have with investments (money and instruments) valued at more than the compensation threshold of €20,000?	6
Q2.	How many Eligible Clients does your firm have with investments (money and instruments) valued at less than the compensation threshold of €20,000?	12
Q3.	In respect of your answer to question 2, please include the aggregate value in Euros of those investments.	€180,000

Name:

Block Capitals

Position in Company:

(if relevant)

Block Capitals

The aggregate value of investment in Q3 when divided by the number of eligible clients in Q2 must be < €20,000. The theoretical maximum exposure of the firm to the ICCL in the sample return is €282,000 = (6 * €20k) + (€180k * 90%).

¹ An "eligible client" means a person, not being an "excluded investor", who has entrusted money or investment instruments to an investment firm in connection with the provision of investment business services by the investment firm. This will include money or instruments held, and/or, administered, and/or, managed by your firm. (An "excluded investor" is as defined in the Investor Compensation Act, 1998)

4 Return 3 – Eligible client geographic distribution

4.1. Why the return is needed?

Return 3 assists the Board of the ICCL to assess the level of cross-border claims that may arise for the Scheme at a point in time. The availability of this data is critical to enabling the Board of the ICCL to ensure that the Scheme has the operational capacity in place to deal with any cross-border failure. The data also assists the Scheme to assess whether cross-border co-operation is likely to be necessary based on the numbers of cross-border clients in each jurisdiction, and to establish appropriate multi-lateral or bi-lateral agreements in a timely manner.

In this context, the ICCL has collected this data directly from firms on one occasion to date in 2018. In future years, it is intended to collect the equivalent data in Q1 of every second calendar year, commencing March 2021.

With effect from 1 January 2021, “**Return 3**” will be issued on a biennial basis to participant firms during quarter 1 with a return deadline of 31 March.

4.2. Basis of Assessment

The basis of assessment for the geographic distribution of eligible clients will be based upon a number of criteria:

1. *the number of eligible clients who, as at the date of assessment, the firm held, administered or managed assets or money on behalf of;*
2. *the jurisdiction within which the client ordinarily resides.*

*The number of eligible clients from **Return 3** should match the number of eligible clients from **Return 2**.*

4.3. Date of Assessment

The date of assessment will continue to be 31 December.

4.4. Completing the return

Each participant firm, having calculated the correct number of eligible clients and their associated jurisdiction for the period of assessment, must then populate the form "Return 3". The total number of eligible clients per Return 2 should match the total number of eligible clients on Return 3.

In respect of your eligible client return as at 31 December 2020 (Return 2), please indicate the jurisdiction for each eligible client.	Number of eligible clients
- Ireland	10
- Austria	1
- Belgium	-
- Bulgaria	-
- Croatia	-
- Cyprus	-
- Czech Republic	2
- Denmark	-
- Estonia	-
- Finland	-
- France	3
- Germany	-
- Gibraltar	-
- Greece	-
- Hungary	-
- Iceland	-
- Italy	-
- Latvia	-
- Liechtenstein	1
- Lithuania	-
- Luxembourg	-
- Malta	-
- Netherlands	-
- Norway	-
- Poland	-
- Portugal	-
- Romania	-
- Slovakia	-
- Slovenia	-
- Spain	-
- Sweden	-
- United Kingdom	1
- Other (please advise)	-
Total number of eligible clients (must reconcile to the number of eligible clients on "Return 2")	18

5 Frequently Asked Questions

5.1. What is an excluded investor?

An “excluded investor” is defined in accordance with section 2 of the Act and should be excluded from all ICCL returns. An “excluded investor” is:

- “(a) a professional or institutional client, including:
- (i) an investment firm;
 - (ii) an investment firm for the purposes of the Investment Services Directive;
 - (iii) a credit institution as defined in Article 1 of Council Directive No. 77/780/EEC;
 - (iv) a financial institution as defined in Article 1(6) of Council Directive No. 89/646/EEC of 15 December 1989 [O.J. No. L386, 30.12.1989.];
 - (v) an insurance undertaking;
 - (vi) an undertaking for collective investment; or
 - (vii) 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, a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 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 [O.J. No. L222, 14.08.1978.] 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)”

5.2. What is an investment service?

An investment service, for the purposes of the Investor Compensation Act, includes:

- “investment business services” as defined in the Investment Intermediaries Act, 1995 (as amended);
- “investment services and activities” as defined in European Union (Markets in Financial Instruments) Regulation 2017;
- “activities” of an insurance intermediary.

5.3. How should the firm treat insurance only clients?

Insurance only clients should be included in a participant firm's calculation of eligible client numbers, except, where the insurance only client meets the definition of an excluded investor.

5.4. How should the firm treat a client that only receives investment advice and to whom the firm provides no other investment service(s) and does not hold, administer or manage client money or instruments?

Clients who only receive investment advice and no other investment service(s) and the firm does not hold, administer or manage any client money or investment instruments should be excluded from the eligible client returns.

5.5. How should the firm treat clients to whom the firm provides an investment service and an insurance service?

An eligible client whom a participant firm identifies as both an investment and insurance client should be counted only once for the purposes of calculating the eligible client numbers.

5.6. Should clients who receive an investment service on a freedom of establishment or freedom of service basis be included in the returns?

Yes, the Home State compensation scheme of the participant firm is responsible for compensating eligible clients of the participant firm.

5.7. How should members of Employee Share Ownership Plans (ESOP's) be treated when determining eligible client numbers?

Due to the variety of ESOP arrangements which exist, firms should adopt a 'principles'-based approach when deciding how to calculate eligible client numbers in relation to their ESOP arrangements. Firms should count all ESOP members who at any stage throughout the firm's financial year

met the definition of eligible investor under section 2 of the Investor Compensation Act, 1998 (the Act), including execution-only clients.

In general, ESOPs comprise three elements:

- an Employee Share Ownership Trust (ESOT - a trust),
- an Approved Profit-Sharing Scheme (APSS – a trust), and,
- Beneficiaries.

When shares are transferred from an ESOT to an APSS, participants become beneficially entitled to the shares with immediate effect irrespective of any procedural delays which might occur in effecting the transfer of shares from the APSS to beneficiaries.

Therefore, the following bases should be used in determining the number of eligible clients a firm has in relation to an ESOP - unless the clients would otherwise fall to be 'excluded investors' under section 2(1) of the Investor Compensation Act, 1998:

- The Trustee(s) of the ESOT should be counted as a single eligible client.
- The APSS Trustee(s) should be treated as a single eligible client if the Trust holds shares which are not attributable to particular beneficiaries.
- Each beneficiary, either to whom the APSS has transferred shares or on behalf of whom the Trustee(s) of the APSS holds shares, should be counted as individual eligible clients.

A key issue with regard to whether an ESOP, or, in particular, an ESOT / APSS, constitutes one eligible client or whether some, or all, of their individual members constitute eligible clients depends on whether each such ESOP / ESOT / APSS / individual member meets the definition of eligible investor. Any such determination should be undertaken on a case by case basis for any given ESOP situation.

5.8. How should clients investing in Tracker bonds or similar instruments be dealt with?

"Tracker bonds or similar instruments" are investment instruments for the purposes of the Investment Intermediaries Act, 1995 and investment services in regard to these instruments may be provided by firms authorised under that Act. Clients of a participant firm who deal in these instruments could be eligible to claim compensation in respect of such instruments should a participant firm fail. On this basis, these clients must be included when determining the number of eligible clients of each firm.

The Investor Compensation Company DAC
C/o The Central Bank of Ireland
P.O. Box 11517
North Wall Quay
Spencer Dock
Dublin 1

Telephone: (01) 224 4955
Email: info@investorcompensation.ie
Website: www.investorcompensation.ie