



# **The Investor Compensation Company Limited**

**Response to CP61 – Central Bank of Ireland  
Consultation Paper on Impact Based Levies and  
Other Levy Related Matters**

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# 1 Introduction

The Investor Compensation Company Limited ('ICCL' or 'the Company') welcomes the opportunity to provide comments to the Central Bank of Ireland ('the Bank') consultation paper CP 61 ('the Paper') concerning Impact Based Levies and Other Levy Related Matters.

The ICCL is aware that the Bank has sought a response from interested parties on eleven matters as summarised in section 8 of the Paper. The submission of the ICCL will focus solely on question 8.11:

*“Do you agree with the Central Bank’s proposal to remit 100 per cent of the value of monetary penalties to the Exchequer? If not, how would you propose to treat monetary penalties?”*

## 2 Who are the ICCL

The ICCL is an independent body established by the Investor Compensation Act, 1998 ('the Act'). The Act transposed the EU Investor Compensation Scheme Directive ('Directive 97/9/EC') into Irish law.

The principal objectives of the ICCL are:

- to operate a financially sound scheme so that the Company can provide statutory levels of compensation to eligible investors of failed authorised investment firms;
- to set up and maintain funds out of which the Company can pay compensation and our costs, under the Act;
- to set up and maintain a structure that the Company can use to pay compensation to investors of failed authorised investment firms, under the Act; and
- to ensure the Company pays compensation without unnecessary delay.

In accordance with section 21(2) of the Act, the ICCL collects an annual levy from authorised investment firms, which includes insurance intermediaries for the purposes of the Act. The annual levies are credited to the fund(s) approved in accordance with section 19(1) of the Act. Compensation must be paid to clients of an authorised investment firm that cannot return client assets.



The ICCL currently maintain two funds, in accordance with section 19 of the Act. The following categories of investment firm are required to be members of the Investor Compensation Scheme ('the Scheme'):

<b>Fund A</b>
Investment firms authorised under the European Communities (Markets in Financial Instruments) Regulations 2007.
Investment firms authorised under Section 10 of the Investment Intermediaries Act, 1995 that are not exempt under Section 2(5) of the Investor Compensation Act, 1998.
Stockbrokers authorised under the European Communities (Markets in Financial Instruments) Regulations 2007.
Credit institutions authorised to provide investment business services.
Certain certified persons who provide investment business services, which are similar to services provided by Fund A firms, in a manner which is incidental to their main professional activities.
UCITS management companies authorised to undertake Individual Portfolio Management services.

<b>Fund B</b>
Authorised Advisors authorised under the Investment Intermediaries Act, 1995.
Multi-Agency Intermediaries authorised under the Investment Intermediaries Act, 1995.
Insurance Intermediaries registered under the European Communities (Insurance Mediation) Regulations 2005.
Certain certified persons who provide investment business services, which are similar to services provided by Fund B firms, in a manner which is incidental to their main professional activities.

### 3 Treatment of Monetary Penalties

The ICCL understand that under the current arrangements, monetary penalties imposed on regulated firms in Ireland by the Bank, are included as "Other Income" in the Profit and Loss and Appropriation Account of the Bank, as required by section 33(J)(2)(b) of the Central Bank Act, 1942 (as amended). Other Income, is classified separately from income derived from regulated activities and is currently returned to the exchequer as "Surplus income" as required by section 32(H) of the Central Bank Act, 1942 (as amended), subject to any transfer to the General Reserve of the Bank.

The ICCL therefore understand that any proposal that does not require the monetary penalties income to be remitted to the Exchequer on the foregoing basis will require legislative amendment.



## 4 Proposal of the Central Bank of Ireland

The Paper issued by the Bank, proposed two options for the treatment of income arising from monetary penalties:

- 100% remittance to the Exchequer, or,
- Offsetting monetary penalties against levies of the industry category to which they relate.

In section 5 below, the ICCL make an alternative proposal to those proposed by the Bank. The ICCL believe that its proposal as detailed below has strong merits and addresses many issues that currently challenge the Bank, Industry and the ICCL generally.

## 5 Proposal of the ICCL

The ICCL propose that monetary penalties imposed be made payable to the benefit of the appropriate Compensation Fund, where:

- the monetary penalty is payable by an investment firm<sup>1</sup> required to contribute to the ICCL;

**OR**

- the fine is payable by an insurance undertaking whose tied agents are required to contribute to the ICCL;

**AND**

- the Bank has deducted an amount (either actual or percentage based) in recognition of costs incurred during the investigation which preceded the imposition of the fine;

In other circumstances, the monetary penalty could be remitted 100% to the Exchequer or to an equivalent compensation fund e.g. Insurance Compensation Fund.

The ICCL note that the occurrence and value of monetary penalties has increased significantly since the establishment of the Enforcement Directorate of the Bank. By way of example, the ICCL understands from a review of the Settlement Agreements published on the Bank's website that 16 monetary penalties were imposed in 2012 compared with 9 in 2011. The monetary value of those penalties for the financial year ended 31 December 2012 was €8,492,900 (2011: €5,050,000). *(Refer to tables 1 & 2 of appendix 1 for further detail)*

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<sup>1</sup> Investment firm is defined in section 2 of the Investor Compensation Act, 1998 (as amended)



The value of monetary penalties that would have qualified for remittal to the ICCL utilising the criteria laid out above is estimated for 2012 at €2,252,900<sup>2</sup> (2011: €4,300,000). *Further detail is provided in table 3 of appendix 1 (including a comparison of actual ICCL income for the periods considered).*

While past sanctions do not necessarily have a direct bearing on future sanctions, on the basis of the evidence for 2011 and 2012, it is clear that Settlement Agreements have the potential to make a significant contribution to the funding of the Investor Compensation Fund.

The ICCL believe there is considerable merit in this proposal for the following reasons:

- Achieves clear segregation between regulatory enforcement and financial beneficiary;
- Enhances Consumer Protection for retail investors;
- Provides a credible support to funding an increased compensation threshold in a small market;

#### *Achieves clear segregation between regulatory enforcement and financial beneficiary*

It is clear that the aim of enforcement is to promote compliance by all regulated financial service providers by penalising an individual regulated financial service provider (or persons) concerned in its management that have not met the required standards. Further, it is understood that the use of enforcement tools must have a strategic purpose and the Bank's enforcement policy aims to achieve this by rewarding voluntary disclosure and cooperation while correcting and punishing careless or premeditated breaches of regulatory requirements.

Implementing the alternative proposal would ensure that the State or the Bank are not perceived to benefit directly from the application of financial penalties. This would therefore eliminate any perception of a conflict of interest in respect of the Bank's Enforcement Division. The ICCL's proposal would also ensure that the ultimate beneficiary of monetary penalties would be retail investors who suffer losses due to fraud or maladministration at regulated firms.

#### *Enhances Consumer Protection for retail investors*

The Irish retail financial market is small which means that it is difficult to ensure that a compensation scheme which does not benefit from State funding is sufficiently pre-funded. A single failure of a mid-sized investment firm can have a material impact on the compensation fund. Therefore, one of the most important concerns for the ICCL is to ensure available funds are adequate. In Ireland, particularly for Fund A, compensation costs are funded from contributions levied on a relatively small

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<sup>2</sup> These estimates assume no deduction is made by the Bank for costs associated with securing and collecting on Settlement Agreements.



number of participating firms. There are currently 184 active firms eligible to contribute to Fund A. This compares with 239 firms 5 years ago.

The current funding model consists primarily of the annual contributions of investment firms. This is supported by the ability of the ICCL to:

- a) Impose a special top-up, and/or,
- b) Borrow on an inter-fund basis, and/or,
- c) Borrow externally through a negotiated “Stand-by credit facility”, and/or,
- d) Negotiate an annual Excess of Loss Insurance policy.

However, with the exception of (d) above, all elements of the model are capital in nature and must ultimately be funded by industry. Requiring monetary penalties to be payable to the ICCL would provide an absolute and significant boost to the funding model which would ultimately contribute to supporting both a credible and viable Scheme, which is considered essential to support investor confidence.

*Provides a credible support to funding an increased compensation threshold in a small market*

Directive 97/9/EC is currently subject to review and negotiations are expected to recommence shortly. A clear objective of the review is to provide for protection of retail investors at enhanced levels, primarily by increasing the minimum compensation threshold.

It is clear that any increase in the statutory compensation threshold will require an increase in the target reserve levels for the Scheme. A significant increase in compensation thresholds will also increase the difficulty and cost of renewing the current Excess of Loss Insurance policy. These are significant issues for the Scheme when its funding is principally drawn from participants in a small market.

Table 3 of appendix 1 illustrates the support that monetary penalties could provide to the ICCL and also to participants of a small market in meeting the requirements of the current or an amended directive.

## 6 Arrangements in other Member States of the EU

While the approach adopted by Member States of the European Union differs regarding the imposition and treatment of monetary penalties, the ICCL has identified three jurisdictions who apply the proposal brought forward by the ICCL. Monetary penalties imposed on authorised firms, in particular, authorised investment firms, are remitted to the Investor Compensation Fund (“the Fund”) in France (Fonds de Garantie des Dépôts), the Czech Republic (“GFOCP” - Garanční fond obchodníků s cennými papíry) and Portugal (“CMVM” -Comissão do Mercado de Valores Mobiliários).

It is clear therefore that there is no consistent approach. Table 4 of appendix 1 provides a summary of the prevailing position on the matter in 12 EU States that the ICCL has recently received information from in preparing this proposal.



## 7 Conclusion

ICCL believe that it is timely and appropriate, that monetary penalties imposed upon authorised and regulated investment firms for shortcomings in their regulatory practice should ultimately be made available to compensate retail investors of failed investment firms through the Scheme.

The ICCL would welcome the opportunity to discuss this proposal in further detail with the Bank, the Department of Finance or any other interested stakeholders.





## 8 Appendix 1

**TABLE 1 – Monetary Penalties Imposed by the Bank during 2012**

No.	Name	Fine	Member of ICCL Fund
1	Aviva Life & Pensions Ireland Limited	245,000.00	N/A
2	Aviva Health Insurance Ireland Limited	245,000.00	N/A
3	Merrion Stockbrokers Limited	65,000.00	Fund A
4	Hitachi Capital Insurance Europe Limited	25,000.00	N/A
5	Alico Life International Limited	3,200,000.00	N/A
6	UBS International Life Limited	65,000.00	N/A
7	Bank of Ireland Mortgage Bank	120,000.00	Fund A
8	Maurice Buckley T/A Maurice Buckley Insurance Investment Services	800.00	Fund B
9	Irish Mortgage Corporation Limited, t/a Moneyzone	65,000.00	Fund B
10	Gerard Geraghty T/A Geraghty & Co	1,100.00	Fund B
11	Ulster Bank Ireland Limited	1,960,000.00	Fund A
12	ICON Plc	10,000.00	N/A
13	Dolmen Stockbrokers Limited	20,000.00	Fund A
14	Community Credit Union Limited	21,000.00	Fund B
15	Aviva Life & Pensions Ireland Limited	1,225,000.00	N/A
16	Aviva Insurance Europe SE	1,225,000.00	N/A
	<b>Total</b>	<b>8,492,900.00</b>	



**TABLE 2 – Monetary Penalties Imposed by the Bank during 2011**

No.	Name	Fine	Member of ICCL Fund
1	Scotiabank (Ireland) Limited	600,000.00	Fund A
2	MBNA Europe Bank Limited	750,000.00	N/A
3	Aviva Investors Ireland Limited	30,000.00	Fund A
4	Pan Index Limited	40,000.00	Fund A
5	Goldman Sachs Bank (Europe) plc	160,000.00	Fund A
6	McSharry & Foley (Sligo) Limited	10,000.00	Fund B
7	J & E Davy t/a Davy	50,000.00	Fund A
8	Susquehanna International Securities Limited	60,000.00	Fund A
9	Combined Insurance Company of Europe Limited	3,350,000.00	Fund B*
<b>Total</b>		<b>5,050,000.00</b>	

\*Combined Insurance Company of Europe Limited distributed their products through a network of Tied Insurance Intermediaries, all of whom were contributors to the ICCL.

**TABLE 3 – Comparison of Monetary Penalties imposed on ICCL Contributor Firms and ICCL Contribution Income for 2011 & 2012**

		Funding Year ending		Total
		2011	2012	
Monetary Penalties	Fund A Firms	940,000	2,165,000	<b>3,105,000</b>
	Fund B Firms	3,360,000	87,900	<b>3,447,900</b>
<i>Sub-total</i>		<i>4,300,000</i>	<i>2,252,900</i>	<b>6,552,900</b>
ICCL Contribution Income	Fund A Firms	3,484,780	3,536,337	<b>7,021,117</b>
	Fund B Firms	1,722,631	1,666,471	<b>3,389,102</b>
<i>Sub-total</i>		<i>5,207,411</i>	<i>5,202,808</i>	<b>10,410,219</b>
<b>Total</b>		<b>9,507,411</b>	<b>7,455,708</b>	<b>16,963,119</b>



**Table 4**

<b>Member State</b>	<b>Beneficiary of Monetary penalties</b>	<b>Funding Model</b>
Austria	No	Ex-post
Belgium	No	Ex-ante
Bulgaria	No	Ex-ante
Czech Republic	Yes	Ex-ante
Finland	No	Ex-ante
France	Yes	Ex-ante
Greece	No	Ex-ante
Ireland	No	Ex-ante
Latvia	No	Ex-post
Portugal	Yes	Ex-ante
Romania	No	Ex-ante
UK	No*	Ex-post

\*UK FSA will remit monetary penalties collected to the Exchequer minus any costs incurred during investigations.

