

COMPARISON OF INVESTMENT GUARANTY IN SR AND IRELAND

Guarantor Protection in Ireland	Investment Guaranty Fund in the Slovak republic
<p>1.1 General information about protection scheme</p> <p>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.</p>	<p>1.1 General information about protection scheme</p> <p>System of protection is regulated in the act no. 566/2001 Coll. on securities as later amended in provisions of § 80 and subs. (hereinafter the „Act“).</p> <p>An Investment Guarantee Fund is hereby established (hereinafter referred to as "the Fund") by the Act, which shall collect financial contributions of stock brokerage firms, branches of foreign stock brokerage firms, asset management companies, and branches of foreign asset management companies to provide compensation for inaccessible client assets received by a stock brokerage firms, foreign stock brokerage firms, asset management companies, and foreign asset management companies providing an investment service.</p>
<p>1.2 Eligible Depositors</p> <p>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:</p> <ul style="list-style-type: none"> ○ 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. <p>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).</p> <p>An Excluded Investor is also defined in Article 2 of the Act as follows:</p> <p>a) A professional or institutional client, including:</p> <ul style="list-style-type: none"> ○ an investment firm; ○ an investment firm for the purposes of the Investment Services Directive; 	<p>1.2 Eligible Depositors</p> <p>The Act in § 81 sec. 1 stipulates that clients whose assets is protected (client property) are the following persons (client property for the purpose of the Act means funds and financial instruments of a client entrusted to a security dealer or to a foreign securities dealer in relation to performing an investment service or ancillary services pursuant to Article 6 (2) (a), including the financial instruments and funds obtained for these values, if the client is one of the following persons):</p> <p>a) a natural person, including a natural person-entrepreneur,</p> <p>b) a foundation, non-investment fund, non-profit organization providing generally beneficial services, civil association, or an association of owners of residential and nonresidential premises,</p> <p>c) a legal person other than those mentioned in letter (b), except for:</p> <ol style="list-style-type: none"> 1. a bank, insurance company, supplementary pension insurance company, asset management company including investment fund assets, pension fund management company including pension fund assets, stock brokerage firm other than a bank, central depository, stock exchange, commodity exchange, post office, legal person operating lotteries or other games, the Export-Import bank of the Slovak Republic, 2. a Slovak legal person not mentioned in subparagraph (1), or a foreign legal person with at least a partly similar

<ul style="list-style-type: none"> ○ 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 <p>b) a local authority, or</p> <p>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</p> <p>d) a close relative or a third party acting on behalf of a client referred to in paragraph (c), or</p> <p>e) another firm in a group undertaking, or</p> <p>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</p> <p>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</p> <p>h) a client specified by the supervisory authority as an excluded investor in accordance with section 35(8) of the Act;</p>	<p>line of business as any of the legal persons listed in subparagraph (1),</p> <p>3. a legal person not mentioned in subparagraphs (1) and (2) which is required under a separate law to have its financial statements audited,</p> <p>4. the state, a state budget-funded organization, state budget-supported organization, state fund, town, higher territorial unit, and public administration authorities,</p> <p>5. a legal person established by law not covered by subparagraphs (1) to (4),</p> <p>6. a legal person controlling a stock brokerage firm or a foreign stock brokerage firm or controlled in the meaning of Article 138 of the Act by a stock brokerage firm or a foreign stock brokerage firm in which, or in the branch of which, the client assets are maintained.</p> <p>No compensation is provided for:</p> <p>a) precluded financial instruments and deposits,</p> <p>b) for client assets of clients who have had a special relationship to a stock brokerage firm at any time within one year before the date the client assets become inaccessible,</p> <p>c) clients who by their criminal activities for which they were lawfully sentenced, partly or fully caused the inability of the stock brokerage firm to meet its liabilities towards clients,</p> <p>d) clients who acquired financial instruments and funds in connection with legalization of income from criminal activity for which they were lawfully sentenced.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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 	<p>For the purposes of the Act, the following persons are deemed to have a special relationship to a stock brokerage firm:</p> <p>a) members of the statutory body of the stock brokerage firm, executive officers of the stock brokerage firm, other employees of the stock brokerage firm specified in the articles of association of the stock brokerage firm, and the proxy of the stock brokerage firm,</p> <p>b) members of the Supervisory Board of the stock brokerage firm,</p> <p>c) legal persons or natural persons who control the stock brokerage firm, members of the statutory body of these legal persons and executive officers of these legal persons,</p> <p>d) persons close to members of the Board of Directors of the stock brokerage firm, members of the Supervisory Board of the stock brokerage firm, executive officers of</p>

<p>at maturity stages.</p> <ul style="list-style-type: none"> • 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. 	<p>the stock brokerage firm, or natural persons who control the stock brokerage firm,</p> <p>e) legal persons, in which any of the persons specified in paragraphs (a), (b), (c) or (d) have a qualified interest,</p> <p>f) shareholders with a significant influence over a stock brokerage firm and any legal person that is under their control or that has control over them,</p> <p>g) legal persons controlled by the stock brokerage firm,</p> <p>h) an auditor or a natural person that carried out an audit on behalf of the auditing company,</p> <p>i) a member of the statutory body of another stock brokerage firm and the manager of a branch of a foreign stock brokerage firm,</p> <p>j) the manager of a branch of a foreign stock brokerage firm and his deputy.</p>
<p>1.3. Eligible Deposits</p> <p>Eligible deposits under the Act consist of the following:</p> <p>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</p> <p>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,</p> <p>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.</p> <p>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).</p> <p>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.</p>	<p>1.3. Protected deposits</p> <p>The client assets of persons stated in § 81 sec. 1 of the Act is protected.</p> <p>Client assets are also deemed to include:</p> <p>a) joint client assets which, according to records made by a stock brokerage firm or foreign stock brokerage firm before the client assets become inaccessible pursuant to § 82 sec. 1 of the Act, were kept for several clients, with information on individual clients having at least the extent as follows:</p> <ol style="list-style-type: none"> 1. name, birth registration number or date of birth, and permanent residence of the client, if a natural person, 2. name, identification number, if assigned, and registered office of the client, if a legal person, whose client assets are protected under this Act, as well as the name, and permanent residence of a person or persons constituting or participating in the statutory body of the legal person, <p>b) assets in notarial custody with a stock brokerage firm or foreign stock brokerage firm, where the eligible beneficiary of financial instruments or funds in custody is or should be an entity whose assets are protected under this Act, if before the date the client assets become inaccessible pursuant to § 82sec. 1 of the Act, a notary administrating the notarial custody delivers a written notice to the stock brokerage firm or foreign stock</p>

<p>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.</p>	<p>brokerage firm concerned containing information on eligible beneficiaries at least in the extent as follows:</p> <ol style="list-style-type: none"> 1. name, birth registration number or date of birth, and permanent residence of the client, if a natural person, 2. name, identification number, if assigned, and registered office of the client, if a legal person, whose client assets are protected under this Act, as well as the name, and permanent residence of a person or persons constituting or participating in the statutory body of the legal person, <p>A client's funds accepted by a stock brokerage firm or a branch of a foreign stock brokerage firm and kept in accounts covered by protection under a separate law shall not constitute client assets.</p> <p>For the purposes of the Act, the following are not client assets:</p> <ol style="list-style-type: none"> a) client assets which, according to records made by a stock brokerage firm or foreign stock brokerage firm before the client assets become inaccessible pursuant to § 82 sec. 1, were not kept for the client with at least the following minimum extent of client information: <ol style="list-style-type: none"> 1. name, birth registration number or date of birth, and permanent residence of the client, if a natural person, 2. name, identification number, if assigned, and registered office of the client, if a legal person, whose client assets are protected under this Act, as well as the name, and permanent residence of a person or persons constituting or participating in the statutory body of the legal person, b) joint client assets in the case of which the conditions defined in § 81 sec. 2(a) of the Act, are not met, c) notarial custody in the case of which the conditions defined in § 81 sec. 2(b), of the Act are not met.
<p>1.4. Inaccessible Deposit</p> <p>The following deposits are excluded from the requirements of the Act:</p> <ul style="list-style-type: none"> • 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; 	<p>1.4. Inaccessible client assets</p> <p>Inaccessible client assets are client assets accepted by:</p> <ol style="list-style-type: none"> a) a stock brokerage firm or foreign stock brokerage firm which has been declared incapable of meeting its liabilities towards clients pursuant to § 86 sec. 3 of the Act, b) a stock brokerage firm or foreign stock brokerage firm whose use of client assets has been suspended by a court order, provided that such an order became executable before a declaration pursuant to § 86 sec. 3 of the Act.

<ul style="list-style-type: none"> ● 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 <ul style="list-style-type: none"> ○ 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. 	<p>Securities and other financial instruments accepted by a stock brokerage firm pursuant to previous paragraph which the stock brokerage firm or foreign stock brokerage firm is able to return to the client without damaging the claims of other clients, are not inaccessible client assets.</p>
<p>1.5. Compensation for Inaccessible Deposits</p> <p>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.</p>	<p>1.5. Compensation for Inaccessible client property</p> <p>For inaccessible client assets, a client shall be entitled to compensation in the Slovak currency from the Fund, and the Fund shall compensate for such inaccessible client assets in the extent and under terms specified in the Act. Instead of a client, another person may only be entitled to compensation if stipulated in the Act.</p> <p>For inaccessible protected client assets the Fund provides compensation to a single client or to another entitled person amounting to 100 % of such client assets..</p>
<p>1.6 Compensation Payment Place</p> <p>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:</p> <ul style="list-style-type: none"> (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. 	<p>1.6 Compensation Payment Place</p> <p>The Fund shall pay compensation for inaccessible client assets through a bank it commissions with this task. For this purpose, it may give necessary instructions to the bank. These instructions shall be binding upon the bank.</p>

<p>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.</p>	
<p>1.7 Period for the Payment Compensation Claims</p> <p>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.</p>	<p>1.7 Period for the Payment Compensation Claims</p> <p>The payment of compensation must be completed no later than within three months (i) of the day when the National Bank of Slovakia declares a stock brokerage firm unable to meet its liabilities towards clients, or (ii) from the delivery of an executable court order on suspension of use of client assets by the stock brokerage firm or foreign stock brokerage firm provided that such an order became executable before a declaration pursuant to clause (i) above. The Fund may, subject to prior approval of the National Bank of Slovakia, in extraordinary and justified instances, extend this period by three months at most. However, the payment of compensation must be completed not later than within one year of the announcement pursuant to clause (i) or clause (ii) stated above.</p>