Investor Money Regulations

A new regime for fund service providers in Ireland

On the 30th March 2015, the new Investor Money Regulations were brought into effect by Statutory Instrument 105 of 2015, with corresponding Guidance Notes published by the Central Bank of Ireland. These new rules apply to fund service providers, including fund administration firms who operate bank accounts for the collection and payment of money from and to investors in respect of subscriptions and redemptions in funds.

The new rules must be implemented by 1st April 2016 and will have a significant impact on the daily processes and controls for some fund service providers. The high level of oversight afforded to client assets generally, coupled with the fact that these are brand new requirements, make it extremely important for firms to understand the requirements and how they can comply by the deadline.

There are many different banking models in operation across the fund servicing industry in Ireland, so it will be necessary to unravel the new requirements from a contractual and technical perspective within each firm.

An alternative 'Fund Asset Regime' may be an option for some firms but this has yet to be defined and will undoubtedly require a significant control and oversight framework that is compliant with both the AIFMD and UCITS regulations.

Client Asset Regulations

Previously, the client asset requirements (CAR) in Ireland applied to all investment business firms. On the face of it, the CAR therefore applied to transfer agency activities in respect of subscriptions and redemptions, involving the transfer of monies to and from the fund through collection accounts. However, the "one size fits all" approach of the CAR posed many practical challenges in applying client asset rules to third party fund service providers, in effect making it unworkable.

As of 30th March 2015, there are now two regulations, the Client Asset Regulations for Investment Business Firms (replacing the regulations of 1 November 2007) and the new Investor Money Regulations which are specifically for fund service providers who own and operate collection accounts. The intention of the Central Bank of Ireland is to ensure that all Irish investment business firms are required to comply with a client asset regime in the interests of ensuring that any money due to clients or investors in funds is remote from the insolvency of the Irish firm. It should be noted that Irish authorised collective investment schemes are not in the scope of these regulations as fund assets continue to be subject to fund rules e.g. AIFMD and UCITS Notices. This may include collection accounts that are appropriately structured as fund assets.

Treatment of collection accounts

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The treatment of collection accounts has been an area of ongoing concern for the Central Bank of Ireland for some time. In a review published in March 2012, reviewers appointed by the Central Bank articulated their view that monies passing through collection accounts are client assets within scope but acknowledged that for practical reasons the CAR are not applied to the operation of these accounts. The report stated: "We regard this lacuna as unsatisfactory. It is undesirable that no appropriate requirements to safeguard client assets are imposed at this stage of the process. This should be resolved."

The Investor Money Regulations are the Central Bank of Ireland's solution to these concerns. They bring fund service providers, and in particular, collection accounts, squarely into a client asset regime. There has been extensive industry engagement with the Central Bank of Ireland on this topic and the final regulations are the result of lengthy discussion and input from industry regarding the role and responsibilities of fund service providers in handling investor money. Nonetheless, it is likely that many fund service providers will need to examine their policies, procedures, systems and contractual arrangements in some detail, in order to ascertain what steps they will need to take to achieve compliance with the new regulations in the 12 month lead-in time.

Core principles

There are six core principles outlined in the Investor Money Regulations, as follows:

- Segregation
- Designation
- Reconciliation
- Daily calculation
- Risk management
- Investor money examination

Fund service providers will need to apply these principles to all collection accounts that are not considered to be fund assets. This represents a very significant change to the current operation of collection accounts, requiring detailed new processes to maintain the required level of identification, segregation, reconciliation and oversight. As with any form of principles based regulation, significant effort will be required to demonstrate to the Central Bank of Ireland how a firm's processes and procedures are in line with the requirements.

Each of these six core principles is explained in summary below:

Segregation

Investor money should be held separately to non-investor money, such as fund money or the fund service provider's own money. Further information is provided in the guidance notes to clarify that money received before the dealing date of the relevant fund is considered to be investor money, but that any money received from an investor on or after the dealing date of the fund, is not considered investor money and should not therefore be held in the collection account.

Designation

Each account used by the fund service provider for the purpose of holding investor money, must be designated as a 'collection account' by the fund service provider's bank. This designation must appear in the account name. The fund service provider must also obtain an 'Investor Money Facilities Letter' from its bank in respect of each collection account opened.

Reconciliation

Each collection account must be reconciled on a daily basis. All reconciliation records and backup must be readily available for inspection. The person carrying out the reconciliation must be independent of the person responsible for maintaining the records that are used to perform the reconciliation (segregation of duties). Additional provisions are made for reconciliations that are produced electronically or outsourced to a third party, but firms must be able to evidence the robustness of their system controls and oversight in each case.

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Daily Calculation

Every day, as at the close of business on the previous working day, the fund service provider must ensure that its investor money resource (the amount of investor money on all collection accounts) is equal to its investor money requirement (the amount of investor money that should be on the collection accounts). Shortfalls need to be funded by the fund service provider. Failures to perform the daily calculation are reportable to the Central Bank of Ireland.

Risk Management

Each firm subject to the rules must appoint a Head of Investor Money Oversight ('HIMO') which is a Pre-approved Controlled Function ('PCF'), and each firm must document and maintain an Investor Money Management Plan ('IMMP'). The responsibilities of the HIMO and the content of the IMMP should be tailored to the business model of each fund service provider. The IMMP should be approved at least annually by the Board of the fund service provider.

Investor Money Examination

The regulations require an external auditor to provide an 'assurance report' annually on the firm's safeguarding of investor money, indicating the adequacy of processes and systems and the level of compliance with the new regulations. The report must be provided to the Central Bank of Ireland within 4 months after each financial year end.

Preparing for reform

The new rules will represent a significant change in practice for some fund service providers. For others a period of restructuring will be required. In both instances firms will at a minimum need to review current structures, existing contracts and legacy arrangements against the new requirements.

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To date Industry proposals have focussed on structuring collection accounts as custody assets of the investment fund in line with AIFMD, the intention being that the Investor Money Regulations will not apply. These proposals seek to reflect the AIFMD and the proposed UCITS V model by applying the cash monitoring and reconciliation duties to collection accounts. In line with AIFMD, collection accounts could be opened in the name of the fund, the manager on behalf of the fund or the depositary on behalf of the fund. The latest industry proposal to the Central Bank of Ireland, attempts to set out the basis upon which such fund accounts could be opened at umbrella, or even manager level, but still be treated as fund assets, with a view to minimising the number of collection accounts that a fund or manager would need to open.

How can we help?

Deloitte has been actively involved in dialogue with industry for some time with regard to the development and implementation of the Investor Money Regulations. We will continue to engage with key industry stakeholders over the next 12-18 months to address the operational challenges that fund service providers in Ireland will inevitably face under the Investor Money Regulations or the proposed alternative Fund Asset Regime.

We can help your firm in response to these new regulations in the following ways:

- Perform a high level impact analysis in the context of both the Investor Money Regulations and the proposed Fund Asset Regime.
- Assess your firm's current banking model in more detail to determine if it already lends itself to either an investor money regime or a fund asset regime, or even a mix of both.
- Help you to determine which model is the most appropriate for your business and your client base with due consideration to the following:
    - Restructuring requirements
    - Contractual arrangements
    - Oversight & control
- Should your banking model, or even part of it, be within the scope of the Investor Money Regulations in their entirety, we can help you to meet your obligations in the following ways:
    - Impact analysis
    - IMMP production / review
    - Senior Management Training (HIMO & Board of Directors)

Whichever model you choose, we will help you to develop procedures and processes, design and deliver training programs, and implement your model of choice.

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