



FINANCIAL SERVICES

The Investor Money Regulations and the Client Asset Regulations 2015

by **David Williams**

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Implications for Investment Funds and MiFID Firms

Overview

The Investor Money Regulations (SI No. 105 of 2015) (the IMR) were published on 31 March 2015 following a lengthy consultation period with industry which began in 2013. The IMR apply to fund service providers (FSPs) including administrators, depositaries, UCITS Management Companies, Alternative Investment Fund Managers (AIFMs) and Alternative Investment Fund (AIF) Management Companies.

The IMR, together with the Client Asset Regulations (SI No. 104 of 2015) (the CAR), which apply to MiFID authorised investment firms, replace the Client Asset Requirements which were issued by the Central Bank in November 2007. The Central Bank has issued detailed guidance in relation to both the IMR and the CAR to coincide with the publication of the IMR and the CAR. The guidance documents are designed to be read in conjunction with the IMR or the CAR as appropriate.

Breaches of the IMR or the CAR can attract various penalties, including sanctions under the Central Bank's administrative sanctions procedures.

Collection Accounts

The IMR bring collection accounts (i.e. bank accounts which are used by FSPs to receive subscription monies being paid into a fund and remit redemption monies being paid out of a fund) within their scope. Collection accounts are not subject to the existing client asset requirements. FSPs will need to review their use of collection accounts in light of the extensive requirements introduced by the IMR.

Where the collection account is an asset of the fund the IMR will not apply. A collection account opened in the name of a fund will be deemed to be an asset of the fund. Therefore, an account which is in the name of the fund will fall outside of the definition of collection account for the purposes of the IMR.

Where the collection account is deemed to be an asset of the fund it will be subject to the safekeeping regime applicable to the fund. However, the net asset value of the fund should not be affected by the inclusion of the collection account as all assets held in a collection account will have a corresponding and equal liability. For example, subscription monies held in a collection account will be netted off against the liability for shares due to be issued to the subscribing investor.

Currently, some FSPs use aggregated collection accounts opened in the name of the FSP to hold monies relating to multiple investment funds for efficiency reasons and to afford themselves a grace period within which monies received can be allocated to the correct fund. These FSPs will need to consider the implications of the IMR on their current operating model.

Scheme of the IMR

The IMR are set out under the following six headings which the Central Bank regards as the six core principles of an investor money regime:

1. Segregation: Investor money must be segregated from monies owned by the FSP.
2. Designation: Investor money must be clearly identified in the records of the FSP and the relevant credit institution.
3. Reconciliation: FSPs must keep records which allow them to provide an accurate record of investor money at any time and without delay. FSPs should conduct a reconciliation between their internal records and the records of any third party which holds investor money on their behalf on a daily basis.
4. Daily calculation: FSPs should carry out a calculation each working day to ensure that the aggregate balance of all collection accounts is equal to the amount of investor monies which the records of the FSP show it should be holding. Any shortfall must be made up out of the monies of the FSP.
5. Risk Management: FSPs should have appropriate systems and controls in place to identify and counteract risks in relation to investor money. The IMR introduces a requirement that each FSP to whom the IMR apply must appoint a "Head of Investor Money Oversight", which will be a pre-approval controlled function under the Central Bank's Fitness and Probity Rules. FSPs will also be required to create and maintain an "Investor Money Management Plan" (IMMP). The IMMP should document the business model of the FSP, all risks identified in relation to investor monies and the controls in place to mitigate those risks. The Head of Investor Money Oversight will be responsible for maintaining the IMMP and monitoring the FSPs compliance with it.
6. Investor Money Examination: The FSP must engage an external auditor at least annually to report on the FSP's compliance with the IMR.

Client Asset Regulations

The CAR are potentially applicable to the following entities, depending on the scope of their authorisation and whether they hold client assets:

- MiFID authorised investment firms;
- Firms authorised as investment business firms under the Investment Intermediaries Act 1995;
- UCITS Management Companies; and AIFMs.

The CAR are set out under the same six headings as are used in the IMR and the requirements as described in relation to the IMR above are broadly similar to those introduced by the CAR. However, the CAR have an additional set of requirements which fall under the following heading:

Client Disclosure and Client Consent: An investment firm must provide information to its clients on how and where that client's assets are being held, and the resulting risks, in a manner which is clear and easily understood.

Investment firms must also provide their retail clients with a Client Assets Key Information Document (the CAKID). The CAKID must contain certain prescribed information and disclose the circumstances in which the CAR will and will not apply. There is no prescribed format or length for the CAKID contained in the CAR or the guidance document.

Next Steps

The CAR will come into effect on 1 October 2015 and the IMR on 1 April 2016. Affected entities will need to determine the actions needed in order to comply with the IMR and the CAR and make such contractual and operational changes as are necessary prior to the relevant implementation date.

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