



# PRIOR CAPITAL

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## INVESTOR COMPENSATION FUND

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# INVESTOR COMPENSATION FUND

## 1. INTRODUCTION

Prior Capital CY Ltd (former PriorFX Ltd) (hereafter the “Company”) is an Investment Firm authorized and regulated by the Cyprus Securities and Exchange Commission (hereafter the “CySEC”) under the License No. CIF221/13. The Company is incorporated and registered under the laws of the Republic of Cyprus under the Certificate Registration Number HE321360. The head office of the Company is located at 196 Arch. Makarios III Ave., Ariel Corner, 3030 Limassol, Cyprus.

The Company is obliged under Paragraph 15 of the Law 87(I)/2017 to be a member of the Investor Compensation Fund (hereinafter referred to as the “ICF” or “Fund”) and to have in place an ICF Policy which is reviewed at least on an annual basis as specified in Consultation Paper (“CP 2017-02”) and Directive DI87-07.

## 2. ICF

The ICF constitutes a private legal entity and its administration is exercised by an Administrative Committee of five members, who are designated for a three-year term.

## 3. THE OBJECT OF ICF

The main objective of the Fund is to secure claims of covered Clients against the members of the ICF by the payment of compensation for their claims arising from the covered services provided by its members, so long as failure by the member to fulfil its obligations has been ascertained.

It is a legal obligation for CIFs and other IFs, which are not banks, to subscribe to the ICF.

Failure denotes the inability of the Company to:

- a. Either return to its covered Clients funds owed to them or funds which belong to them but are held by the Company, directly or indirectly, in the context of the provision by the Company to the said Clients of covered services, and which the latter requested the Company to return, in exercising their relevant right; or
- b. To hand over to the covered clients the financial instruments, which belong to them and which the Company holds, manages or keeps on their account, including circumstances where the Company is responsible for the administrative management of the said financial instruments.

## 4. PROTECTION OFFERED BY THE FUND

As indicated above, for purposes of the protection mechanisms offered by the Fund, failure of a Fund Member to execute its ‘obligations’ consists of the following:

- a. Failure to return to a covered Client funds owed to such Client or funds which belong to such Client, but are held by Fund Member, directly or indirectly, in the framework of the provision of covered services by the Fund Member to the client and which the client has requested that they be returned to the client by the Fund Member; or
- b. Failure to return to covered client financial instruments that belong to such Client and which a Fund Member holds, manages or keeps on its account, including the case where the Fund Member is responsible for the administrative management of the said financial instruments;

- c. The Company's Clients may be at risk of losing assets that are held on their behalf by third parties, especially where such third parties become insolvent and where such third parties are not covered by any investor compensation system and/or other insurance cover.

## **5. COVERED SERVICES**

Covered Services are the Investment Services and Ancillary Services, which are listed on the Company's license (License No. CIF221/13) issued by the Cyprus Securities and Exchange Commission ("CySEC") as set out in Part I of the First Appendix of Law 87(I)/2017. The Fund shall not pay compensation to individuals for whom criminal proceedings under the provisions of the Prevention and Suppression of the Legalization of Proceeds from.

## **6. COVERED CLIENTS**

In principle, the Company's Clients are all covered by the Fund under the investment compensation protection scheme, unless they fall into the following categories:

1. Institutional and professional investors including:
  - a. Investment firms;
  - b. Legal Entities associated with the Company and, in general, belonging to the same group of companies;
  - c. Banks;
  - d. Cooperative credit institutions;
  - e. Insurance companies;
  - f. Collective investment organizations in transferable securities and their management companies;
  - g. Social insurance institutions and funds;
  - h. Investors characterized by the Company as professionals (upon their request).
2. States and international organizations;
3. Central, federal, confederate, regional and local administrative authorities;
4. Enterprises associated with the Company;
5. All staff of the Company, inclusive of Managerial and Administration staff;
6. Shareholders of the Company whose participation directly or indirectly in the capital of the Company (as a member of the Fund) amounts to at least 5% of the Company's share capital, or its partners who are personally liable for the obligations of the Company, as well as persons responsible for the carrying out of the financial audit of the Company, as provided by law, such as qualified and statutory auditors;
7. Investors having an enterprise connected with the Company and in belonging to the group of companies to which the Company belongs, positions or duties corresponding to the ones listed in paragraphs 5 and 6 above;
8. Second-degree relatives and spouses of the persons listed in paragraphs 5, 6 and 7 as well as third parties acting for the account of these persons;
9. Apart from investors convicted of a criminal offence, pursuant to the Cyprus Prevention and Suppression of Money Laundering Activities Law of 1996 – 2000, Investor-Clients of the Company responsible for facts pertaining to the Company, whom have caused its financial difficulties or have contributed to the worsening of its financial situation or whom have profited from these facts; and/or;
10. Investors that have are organized in the form of a company, which, due to its size, is not allowed to draw a summary balance sheet in accordance with the Cyprus Companies Law or a corresponding law of an EU Member State.

In cases of paragraphs 5, 6, 7 and 8, the Fund suspends the payment of compensation informing the interested parties accordingly, until it reaches a final decision as to whether such cases apply.

The Company shall not pay compensation:

- A. In respect to claims arising out of transactions involving individuals convicted of a criminal offence for the said transactions, pursuant to the Prevention and Suppression of Money Laundering Activities Law of 2007-2018;
- B. If there are pending criminal proceedings for the legalisation of proceeds from illegal acts or activities under the provisions of the Prevention and Suppression of the Legalisation of Proceeds from Criminal Activities Law of 2007-2018, as amended from time to time, until the full completion of such court proceedings.

## **7. COMPENSATION OF COVERED CLIENTS AND PAYMENT FORMALITIES**

The ICF initiates the compensation payment procedure when at least one of the following criteria is met:

- If the member of the ICF submits to the ICF or to CySEC a written statement declaring its failure to fulfil its obligations toward its clients; and/or
- If the member of the ICF files an application for liquidation; and/or
- If CySEC has revoked or suspended the member's authorization to provide investment services and ascertains that the member of the ICF is not expected to be in a position to fulfil its obligations toward its clients in the near future, for reasons which do not concern a temporary lack of liquidity which can be dealt with immediately; and/or
- If a Court has, on reasonable grounds directly related to the financial circumstances of the Company which is subscribe to the ICF, issued a ruling/decision which has the effect of suspending the investors ability to lodge claims against the Company.

Upon issuance of a decision by the Court or by CySEC on the commencement of the compensation payment process, the ICF publishes in at least three (3) newspapers of national coverage, an invitation to the covered clients, as these are defined here above, to make their claims against the Company, arising from covered services. The procedure for the submission of the relevant application, the deadline and their content will be provided in the said invitation, according to the circumstances of the situation.

The publication contains at least:

- the name and address of the headquarters of the member of the ICF, to whom the covered client compensation process has been activated through the ICF.
- the deadline for the submission of compensation applications, which cannot be less than five months and greater than nine months from the last publication.
- the mode and address of submission of applications.
- the address at which investors may be informed about the exact content of the applications to be submitted, and get the relevant form provided by the ICF.

## **8. INTERRUPTION OF DEADLINE FOR SUBMISSION OF APPLICATIONS**

In case a covered Client, not being its fault, was neither informed about the invitation to submit compensation applications nor in a position to submit within the deadline this application, the deadline is interrupted provided that an interruption of the deadline arises in case of an event of force majeure, as long as it has been proved that it prevented the keeping of the deadline for the submission of compensation applications or the collection and submission of the required information.

Indications that the covered client has an impediment for which he is not responsible, and which forms a reason for the interruption of the deadline for the submission of a compensation application include especially;

- proved absence of the covered client abroad for a period which includes at least half of the deadline for the submission of a timely application;
- illness confirmed by a doctor that it forms a serious impediment for the submission of an application for a period which includes at least half of the deadline for the submission of a timely application;
- or
- his stay in a correctional institution for a period which includes at least half of the deadline for the submission of a timely application.

A covered Client who submits an application late to the ICF for the payment of compensation is obliged to submit, in addition to the information forming the necessary minimum content of the application a solemn declaration stating the reason for which he was not in a position to claim compensation in time attaching the necessary supporting evidence to prove his allegations.

## **9. CONTENT OF COMPENSATION APPLICATIONS SUBMITTED TO THE ICF**

The compensation applications of covered Clients with which they make their claims against a member of the ICF are submitted to the ICF in writing. The compensation applications must include:

- The name of the Claimant;
- The address, telephone and fax numbers as well as any email address of the Claimant
- The Client code that the Claimant has for the member of the ICF;
- The particulars of the covered services agreement between ICF and the Claimant;
- The type and amount of the alleged claims of the Claimant; and
- The exposition of the particulars from which the alleged claims of the Claimant and their amount are derived.

The ICF may ask for more information included in the compensation application, which it communicates with its publication in at least three newspapers of national coverage as well as in the Official Gazette of the Republic and puts a catalogue with this information at the disposal of investors, at its offices and/or at the offices of the member of the ICF.

## **10. PROCEDURE RELATING TO THE RECORDING AND EVALUATION OF THE ALLEGED COMPENSATION CLAIMS**

The ICF designates at least one qualified auditor and at least one lawyer with knowledge on capital market issues, who after having checked initially the prerequisites, they evaluate the claims submitted to the ICF and recommend to the Administrative Committee their acceptance in total or in part or their rejection. In case of disagreement between these persons, each one them submits a separate recommendation. The remuneration of the persons is agreed between the ICF and these persons and burdens the member of the ICF, and, if necessary, is paid by the ICF.

The persons in order to evaluate the applications:

- ask from the member of the ICF to express its opinion about the grounds of the claims alleged by the claimants and, in case of doubt, to present the relevant supporting documents;
- evaluate, based on the information they have, the applications, determining the amount of the compensation for each claimant.

The persons have full access to the books kept by the member of the ICF, in order to accomplish their work, and they are obliged to exhibit confidentiality against any third party as to the information coming to their knowledge in the exercise of their duties provided that the said obligation of confidentiality is disregarded

in order to render possible the exercise of their duties.

## **11.DECISION OF THE ADMINISTRATIVE COMMITTEE ON SUBMITTED APPLICATIONS**

Upon submission of the applications the Administrative Committee has control especially if:

- the claimant falls within the category of covered Clients;
- the application was timely submitted
- the conditions of legislation and of this Policy for the valid submission of compensation applications are fulfilled.

The Administrative Committee rejects the application in case the claimant does not fulfil the above conditions or, if at the Administrative Committee's discretion, there exists at least one of the following reasons:

- The claimant used fraudulent means in order to secure the payment of compensation by the ICF, especially if it knowingly submitted false evidence;
- The damage suffered by the claimant substantially derived from concurrent negligence or offence on its behalf in relation to the damage it suffered and to its underlying cause.

The Administrative Committee during the examination of the applications takes into consideration the recommendations of the persons and decides on the applications submitted to the ICF determining the amount of the compensations for each covered Client-Claimant.

## **12.UNJUSTIFIABLY PAID COMPENSATION**

The ICF may demand at any time from a covered client to return the compensation paid to it, if it finds out posteriori that there was a reason to reject its application.

## **13. AMOUNT OF COMPENSATION**

The Company's books will be used, together with supporting evidence, to ascertain the claims against a Fund Member and the amount payable will be calculated in accordance with the legal and contractual terms governing the relation of the client with the Fund Member subject to set-off rules.

The amount of the compensation payable to each covered Client is calculated in accordance with the legal and contractual terms governing the relation of the covered Client with the member of the ICF, subject to the set-off rules applied for the calculation of the claims between the covered Client and the member of ICF.

The valuation of the financial instruments pertaining to the compensation payable to the covered Client is carried out based on their value at the day:

- Of publication of the court; and
- Of publication of the decision of CySEC.

The calculation of the payable compensation derives from the sum of total established claims of the covered Client against the member of the ICF, arising from all covered services provided by the member and regardless of the number of accounts, of which it is a beneficiary, the currency and place of provision of these services.

In accordance to the Directive DI87-07, the maximum limit of coverage is reduced to €18.000 instead of €20.000. It is noted that the maximum amount of coverage will be, either the 90% of the cumulative covered claims of the covered investor or the amount of €20.000, whichever is lower. For example, if the claim is €50.000, the coverage will be €20.000 due to the fact that 90% of this claim, equals to €45.000. However, if the claim is for €10.000, the coverage will be €9.000 (Min. €10.000 X 90%, €20.000) = €9.000).

#### **14. VALUATION OF CLAIMS OF COVERED CLIENTS AND ITS NOTIFICATION PROCESS**

Upon completion of the valuation, the ICF:

- issues minutes listing the clients of the member of the ICF which are compensation beneficiaries along with the amount of money each one of them is entitled to receive, and, communicates it to CySEC and the member of the ICF within five working days from its issue; and
- communicates to each affected client its finding no later than fifteen days from the issue of the minutes referred to above communicates to each affected client its finding no later than fifteen days from the issue of the minutes determining the total compensation amount this client is entitled to receive.

CySEC, in order to ensure that the provisions of the legislation in force in the Republic are fulfilled during the examination of the applications and the calculation of the amount of the corresponding compensation per covered client, may:

- request from the ICF, the member of the ICF and the claimant to produce information and particulars;
- run any investigation required, implementing the relevant provisions of CySEC (Establishment and Responsibilities) Laws of 2001 and 2002, as in force, and especially those provisions enacting the powers of the CySEC for entry and investigation.

The claimant to whom the ICF communicates the total compensation amount to which it is entitled, in case it disagrees with the ICF's decision, has the right within ten days from the communication of the decision, to appeal to CySEC, justifying sufficiently its alleged claim.

The CySEC, in as long as it finds errors or inaccuracies as to the evaluation by the ICF of the applications for the payment of compensation and the fixing of the compensation for each claimant, taking into consideration any memos submitted to it by claimants, may demand from the ICF to correct the payable compensations with a decision communicated to the ICF within forty-five days from the communication to it of the minutes of the compensation beneficiaries.

#### **15. DEADLINE AND PROCEDURE RELATING TO THE PAYMENT OF COMPENSATION**

The ICF is obliged to pay to each covered Client-Claimant the compensation within three months from sending to CySEC the minutes with the compensation beneficiaries.

The payment of the compensation by the ICF is deposited to a bank account of the covered client-claimant designated by the latter in writing to the ICF.

Every compensation payable to a covered client burdens initially the property of the ICF corresponding to the individual shares of its members and then the assets of the fixed reserve.

## **16. EFFECTS OF PAYMENT OF COMPENSATION**

The payment of any compensation by the ICF entails ipso jure subrogation of the ICF to the rights of the compensated covered Client-Claimant against the member of the ICF for an amount equal to the compensation payable to it.

## **17. MISCELLANEOUS**

The presented ICF Policy can be available on Greek language, upon request at [support@priorcapital.eu](mailto:support@priorcapital.eu).