

# INVESTOR COMPENSATION FUND



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Athlos Capital Investment Services Ltd (Reg. No HE 362228) – Regulated by the Cyprus Securities and Exchange Commission (CySEC), License No. 348/17

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## 1. Introduction

- 1.1. Athlos Capital Investment Services Ltd is incorporated under the laws of the Republic of Cyprus with Registration Number HE 362228 under the Department of Registrar of Companies and Official Receiver ([www.mcit.gov.cy](http://www.mcit.gov.cy)) (hereinafter the "**Company**"). The Company is authorised and regulated by the Cyprus Securities and Exchange Commission (CySEC) to act as a Cypriot Investment Firm (CIF) with License Number 348/17 and to provide the Investment Services and Activities under Part I of the First Appendix of Law 87(I)/2017 which provides for the provision of investment services, the exercise of investment activities, the operation of regulated markets and other related matters (herein the "**Law**").
- 1.2. The Company is a member of the Investor Compensation Fund (herein the "**Fund**") for customers of CIFs and other Investment Firms (IFs) which are not credit institutions. The Fund has been established pursuant to Article 59(1) and (2) of Law 144(I)/2007 which provides for the provision of investment services, the exercise of investment activities, the operation of regulated markets and other related matters, as amended by Law 87(1)/2017. The powers and functions of the Fund are regulated by the provisions of Directive DI144-2007-15 of CySEC for the continuance of the operation and operation of the CIF Investor Compensation Fund.
- 1.3. The object of the Fund is to secure the claims of the 'Covered Clients' (see paragraph 6) against the Company (or any other CIF which is a member of the Fund) by the payment of compensation for their claims which arise from the 'Covered Services' (see paragraph 7) provided by the Company (or any other CIF which is a member of the Fund), if the conditions for payment have been fulfilled. More details with respect to the conditions which give rise to a compensation can be found in paragraph 8.

## 2. Scope of the Investor Compensation Fund Policy



2.1. The Investor Compensation Fund Policy (herein the "**Policy**") applies to the 'Covered Clients' as defined by the Law for claims arising out of the 'Covered Services' as defined by the Law.

### **3. Purpose**

3.1. The purpose of the Policy is to provide adequate information to the Clients of the Company with respect to the cover provided by the Fund, the Covered Clients, the maximum amount of the compensation payable to the Clients for the total of their claims, as well as the preconditions and formalities for the payment of the compensation.

### **4. Definitions**

4.1. The following terms shall have the meaning set out herein and in accordance with the provisions of the Law:

**"Administrative Committee"** is a five-member committee which is responsible for the administration of the Fund. It exercises all the powers and duties determined by the Directive, represents the Fund in and out of court, while it is competent to decide for every act pertaining to its administration, management of its property and the general pursuit of its object, subject to the provisions of the Law and Directive;

**"AML Law"** means the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007, as amended from time to time;

**"Applicant"** means an Investor who has applied to the Fund for compensation against the Company for the provision of the Covered Services;

**"CIF"** means a Cypriot Investment Firm, established under the provisions of the Law;

**"Client"** means a natural or legal person who has an established business relationship with the Company;



**“Covered Clients”** shall mean the Clients of the Company who is covered by the Fund for claims against the Company, arising from the Covered Services which are provided by the Company as per paragraph 6;

**“Covered Services”** shall mean the services which the Company provides to its Clients as per paragraph 7;

**“CySEC”** means the Cyprus Securities and Exchange Commission, which is the regulatory authority of the Company;

**“Directive”** means Directive DI144-2007-15 of CySEC for the continuance of operation and the operation of the CIF Investor Compensation Fund;

**“IF”** means an Investment Firm whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis;

**“Investors”** shall mean a natural or legal person who is a client of the Company through an established business relationship;

**“Fund”** means the Investor Compensation Fund;

**“Law”** means the Law 87(I)/2017 which provides for the provision of investment services, the exercise of investment activities, the operation of regulated markets and other related matters, as amended from time to time.

**“Republic”** means the Republic of Cyprus.

## **5. Object and Scope of Application of the Fund**

5.1. The object of the Fund is to secure the claims of the Covered Clients against the Company through the payment of compensation, provided that at least one of the following preconditions is fulfilled:

5.1.1. CySEC has determined by Resolution that the Company, as a member of the Fund, is unable, at present, to meet such of its duties as arise from its



investor/Clients' claims in connection with the provision of investment services for which the Company is licensed or the ancillary service of Safekeeping and administration of financial instruments for the account of Clients provided that such inability is directly related to its financial circumstances in respect of which there is no foreseeable realistic prospect of improvement in the near future, or

5.1.2. A court has, on reasonable grounds directly related to the financial circumstances of the Company, issued a ruling which has the effect of suspending the Investors ability to lodge claims against the Company.

5.2. The Fund shall pay no compensation in respect of claims arising out of transactions involving individuals convicted of a criminal offense offence for the said transactions, pursuant to the provisions of the AML Law.

5.3. The Fund shall compensate all Investors of the Company in respect of claims arising out the Covered Services, including Clients of the Company's branches established in Member States. It is noted that the Company has no established branches in any Member States.

## **6. Covered Clients**

6.1. The Fund covers the Clients of the Company, with the exception of the following categories:

6.1.1. Institutional and Professional Investors, such as:

- (a) IFs;
- (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 organisations in transferable securities and their management companies;
- (g) Social insurance institutions and funds;
- (h) Investors categorised by the Company as professionals, upon their request.

6.1.2. States and supranational organisations.

6.1.3. Central, federal, confederate, regional and local administrative authorities.

6.1.4. Enterprises who have close ties with the Company.

6.1.5. Managerial and administrative staff of the Company.

6.1.6. Shareholders of the Company, whose participation directly or indirectly in the capital of the Company amounts to at least 5% of its 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 the Law, such as its qualified auditors.

6.1.7. Investors having in enterprises connected with the Company and, in general, of the group of companies, to which the Company belongs, positions or duties corresponding to the ones listed in paragraphs 6.1.5 and 6.1.6.

6.1.8. Second-degree relatives and spouses of the persons listed in paragraphs 6.1.5, 6.1.6 and 6.1.7, as well as third parties acting for the account of these persons.

6.1.9. Apart from the investors referred paragraph 6, any other investors/Clients of the Company responsible for facts pertaining to the Company that have caused its financial difficulties or have contributed to the worsening of its financial situation or which have profited from these facts.

6.1.10. Investors in the form of a company, which due to its size, is not allowed to draw a summary balance sheet in accordance with the Companies Law or a corresponding law of a Member State.



- 6.2. In cases of paragraphs 6.1.5, 6.1.6, 6.1.7 and 6.1.8, the Fund suspends the payment of compensation informing the interested parties accordingly, until it reaches a final decision as to whether such cases apply.
- 6.3. If there are pending criminal proceedings for the legalisation of proceeds from illegal acts of activities under the provisions for the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 against an investor/Client who would otherwise, be considered as a Covered Client under the provisions of paragraph 6, the Fund suspends the payment of compensation until the completion of such proceedings.

## **7. Covered Services**

7.1. The Covered Services are the investment and ancillary services offered by the Company as per its license, which include the following:

7.1.1. Investment Services:

- (a) Reception and Transmission of Orders;
- (b) Execution of Orders.

7.1.2. Ancillary Services:

- (a) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.

7.2. The Covered Services include the provision of the following Financial Instruments:

- (a) Transferable securities.
- (b) Money-market instruments.
- (c) Units in collective investment undertakings.
- (d) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or



yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

- (e) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).
- (f) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market or/and an MTF.
- (g) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph 6 of Part III and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- (h) Derivative instruments for the transfer of credit risk.
- (i) Financial contracts for differences.
- (j) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contract relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Part, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

## **8. Compensation of Covered Clients and Payment Formalities**

### 8.1. Failure of the Company to fulfil its obligations toward its investors/Clients:

8.1.1. The Fund compensates the Covered Clients for claims arising from the Covered Services provided by the Company, so long as the failure by the Company to fulfil its obligations has been ascertained, notwithstanding a relevant obligation by the Company in accordance with the legislation and the terms which govern its agreement with the Covered Client and regardless of whether the said obligation of the Company is based on the agreement or on wrongdoing.

### 8.1.2. Failure by the Company to fulfil its obligations consists of its failure to:

- (a) Either to 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 framework of the provision by the Company to the Covered Clients of the Covered Services, and which the latter requested the Company to return, in exercise of their relevant right; or
- (b) 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 the case where the Company is responsible for the administrative management of the said financial instruments of the Covered Clients.

### 8.2. Preconditions for the initiation of the compensation payment procedure by the Fund:

8.2.1. The Fund shall initiate the compensation payment procedure when at least one of the following preconditions are fulfilled:

- (a) If the Company submits to the Fund or to CySEC a written statement declaring its failure to fulfil its obligations toward its Clients;

- (b) If the Company files an application for liquidation in accordance with the provisions of Part V of the Companies Law, or
- (c) If CySEC has revoked or suspended the Company's authorization to provide investment services in accordance with the provisions of the Law and ascertains that the Company is not expected to be in a position to fulfil its obligations toward its Clients in the near future, for reasons which do not consist a temporary lack of liquidity which can be dealt with immediately.

8.2.2. CySEC may request from the Company to set out its views within a short period of time, which cannot be less than 3 (three) working days from the date of invitation. In forming its decision, CySEC will take into consideration whether the smooth operation of the capital market is guaranteed and weight the interests of the Investors and the Company. Upon reaching its decision, CySEC will publish the said decision in the Official Gazette of the Republic as well as on its website.

### 8.3. Procedure relating to the invitation of Covered Clients to submit applications

8.3.1. Upon the issuance of a decision by the Court in accordance with paragraph 5.1.2 or by CySEC in accordance with paragraph 5.1.1, on the commencement of the compensation payment process, the Fund publishes in at least three newspapers of national coverage, an invitation to the Covered Clients to make their claims against the Company arising from Covered Services, designating the procedure for the submission of the relevant applications, the deadline for their submission and their content.

8.3.2. The publication contains at least the following:

- (a) the name and address of the headquarters of the Company, to whom the Covered Client compensation process has been activated through the Fund;

- (b) the deadline for the submission of compensation applications, which cannot be less than five months and greater than nine months from the last publication;
- (c) the mode and address of submission of applications; and
- (d) 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 Fund.

#### 8.4. Interruption of deadline for submission of applications

8.4.1. In case a Covered Client, was neither informed about the invitation to apply for compensation nor was in a position to submit the application within the deadline, by reasons of force majeure i.e. reasons beyond his control, the deadline for submission may be interrupted. It is noted that it must be proved that the force majeure reason prevented the Covered Client from being able to meet the deadline for the submission of the compensation application and/or from collecting and submitting the required information.

8.4.2. Indications of what might constitute a force majeure event include the following:

- (a) 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;
- (b) 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
- (c) his stay in a correctional institution for a period which includes at least half of the deadline for the submission of a timely application.

8.4.3. A Covered Client who submits an application late to the Fund 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 on time and where necessary attach any supporting evidence to prove his allegations.

#### 8.5. Content of compensation applications submitted to the Fund

8.5.1. The compensation applications of Covered Clients for their claims against the Company must be submitted to the Fund in writing.

8.5.2. The compensation applications must include:

- (a) the name of the applicant;
- (b) the address, telephone and fax numbers as well as any email address of the applicant;
- (c) the client code that the applicant had for the Company;
- (d) the particulars of the Covered Services agreement between the Fund and the applicant;
- (e) the type and amount of the alleged claims of the applicant; and
- (f) the particulars from which the alleged claims of the applicant and their amount are derived.

8.5.3. The Fund 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 Company.

#### 8.6. Procedure relating to the recording and evaluation of the alleged compensation claims

8.6.1. The Fund designates at least one qualified auditor and at least one lawyer with knowledge on capital market issues, who after having checked initially that (a) the applicant falls within the category of Covered Clients and (b) the application was submitted on time, they evaluate the claims submitted to the

Fund and recommend to the Administrative Committee their acceptance in total or in part or their rejection.

8.6.2. The persons appointed for the evaluation of the applications, may:

- (a) Ask from the Company to express its opinion about the grounds of the claims alleged by the applicants and, in case of doubt, to present the relevant supporting documents; and
- (b) evaluate, based on the information they have, the applications determining the amount of the compensation for each applicant.

8.6.3. The persons appointed for the evaluation of the applications have full access to the books kept by the Company, 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.

8.7. Decision of the Administrative Committee on submitted applications

8.7.1. Upon submission of the applications in accordance with paragraph 8.5, the Administrative Committee has control especially if:

- (a) the claimant falls within the category of covered clients;
- (b) the application was submitted on time;
- (c) the case of claims arising out of transactions involving individuals convicted of a criminal offense under the AML Law; and
- (d) the conditions of the Law and the Directive for the valid submission of compensation applications are fulfilled.

8.7.2. The Administrative Committee will reject applications in the following instances:

- (a) The applicant does not fulfil the conditions of paragraph 8.7.1;
- (b) The applicant used fraudulent means in order to secure the payment of compensation by the Fund, especially if he knowingly submitted false evidence; or

- (c) The damage suffered by the applicant substantially derived from concurrent negligence or offence on his behalf in relation to the damage he suffered and to its underlying cause.

8.7.3. The Administrative Committee shall decide upon and determine the amount of compensations for each Covered Client taking into consideration the recommendations of the persons appointed for the evaluation of the applications.

#### 8.8. Unjustifiably paid compensation

8.8.1. The Fund may demand at any time from a Covered Client to return the compensation paid to it, if it finds out that there was a reason to reject its application in accordance with the provisions of the Directive.

#### 8.9. Fixing the amount of payable compensation

8.9.1. To ascertain the claims of an applicant against the Company, as well as any counterclaims of the Company against the applicant, the books kept and the particulars issued by the Company as well as the supporting evidence produced by the applicant are taken into consideration.

8.9.2. 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 Company, subject to the set-off rules applied for the calculation of the claims between the Covered Client and the Company.

8.9.3. 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 - (a) of publication of the court ruling as per paragraph 5.1.2; or (b) of publication of the decision of CySEC as per paragraph 5.1.1.

8.9.4. The calculation of the payable compensation derives from the sum of total established claims of the Covered client against the Company, arising from all Covered Services provided by the Company and regardless of the number

of accounts, of which it is a beneficiary, the currency and place of provision of these services.

8.9.5. Where the amount of the claim exceeds to amount of compensation determined by the Directive i.e. 20,000 EUR (Twenty Thousand Euro), the applicant receives as compensation the lump sum of the amount of 20,000 EUR (Twenty Thousand Euro).

#### 8.10. Valuation of claims of Covered Clients and its notification process

##### 8.10.1. Upon completion of the valuation, the Fund

(a) issues minutes listing the Clients of the Company 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 Company within 5 (five) working days from its issue; and

(b) communicates to each affected Client its finding no later than 15 (fifteen) days from the issue of the minutes determining the total compensation amount this Client is entitled to receive.

8.10.2. Where CySEC finds any errors or inaccuracies as to the evaluation by the Fund of the applications for the payment of compensation and the fixing of compensation, may demand from the Fund to correct the payable compensations with a decision communicated to the Fund within 45 (forty-five) days from the communication of the minutes as per paragraph 8.10.1.

#### 8.11. Deadline and procedure relating to the payment of compensation

8.11.1. The Fund is obliged to pay to each Covered client the compensation within three months from sending to CySEC the minutes as per paragraph 8.10.1.

8.11.2. The payment of the compensation by the Fund is deposited to a bank account of the Covered client designated by the latter in writing to the Fund.

8.11.3. Every compensation payable to a Covered Client burdens initially the property of the Fund corresponding to the individual shares of its members and then the assets of the fixed reserve.

## 8.12. Effects of the payment of compensation

8.12.1. The payment of any compensation by the Fund entails ipso jure subrogation of the Fund to the rights of the compensated Covered client against the Company for an amount equal to the compensation payable to it.

## 9. Amount of Compensation

9.1. The maximum amount of compensation paid to Covered Clients, who have been deemed as eligible for compensation, is 20,000 EUR (Twenty Thousand Euro). The said coverage applies to the total amount of claims by an applicant against the Company, irrespective of the number of accounts, the currency and the place of provision of the Covered Service.

9.2. The calculation of the amount of an Investor's claim is carried out in accordance with the set-off regulations, which may be determined by way of directives issued by CySEC, which are applied for the assessment of the amount of capital or of the value of the financial instruments belonging to the Investor which the Company is unable to dispense.

9.3. The compensation from the Fund presupposes the existence of a reasonable claim from the Investor toward the Company, which arises from a Covered Service offered by the Company to the said Investor.

## 10. Review

10.1. The Policy shall be reviewed by the Compliance Function at least on annual basis or sooner in response to any change in the legal and regulatory framework affecting this Policy. Any persons which are directly affected by any changes in the provisions of this Policy shall be informed accordingly.