



## **Information regarding Investor Compensation Fund**

**October 2023**

# INFORMATION REGARDING THE INVESTOR COMPENSATION FUND

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## Introduction

Merba Ltd (ex. XTrade Europe Ltd) (hereafter “the Company” or “invest”) is a Cyprus Investment Firm (hereafter ‘CIF’) authorized and regulated by the Cyprus Securities and Exchange Commission (hereafter “CySEC”) with License Number 108/10 and operates in compliance to the Investment Services and Activities and Regulated Markets Law 87(I)/2017, registered (Certificate of Incorporation No. HE248449) in the Republic of Cyprus through the Department of Registrar of Companies and Official receiver.

The Company is a member of the Investor Compensation Fund (the “ICF”) for the Clients of Cyprus Investment Firms (“CIFs”) and other Investment Firms (IFs) which are not credit institutions, under the Investment Services and Activities and Regulated Markets Law 87(I)/2017, as subsequently amended from time to time (“the Law”) and Directive DI87-07 for the operation of the ICF.

## 1. Object of the ICF

**1.1** The objective of the ICF is to secure the claims of the covered clients against members of the ICF (“ICF Members”) through the payment of compensation in cases where the member concerned is unable, due to its financial circumstances and when no realistic prospect of improvement in the above circumstances in the near future seems possible.

**1.2** The ICF shall compensate the Company’s covered clients as to the covered investment and ancillary services offered by the Company as these are listed on its authorization and as long as failure by the CIF to fulfill its obligations has been ascertained in accordance with the terms and procedures defined in the Law, notwithstanding a relevant obligation by the member of the ICF 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 member of the ICF is based on the agreement or on wrongdoing.

## 2. Covered Services

**2.1** The ICF shall compensate the Company’s Covered Clients as to the covered investment Services and ancillary services offered by the Company as these are listed on its authorization which can be found in the website of the Cyprus Securities and Exchange Commission at (<https://www.cysec.gov.cy/en-GB/entitis/investment-firms/cypriot/37565/>)

### 3. Covered Clients

The ICF covers Retail Clients of the Company. It does not cover Professional Clients and Eligible Counterparties. For more details see paragraph 4 below.

### 4. Non-covered Clients

**4.1** As mentioned in clause 3.1 above, the ICF shall pay no compensation to individuals against whom criminal proceedings under the provisions of the Prevention and Suppression of the Legalization of Proceeds from Criminal Activities Law of 2007, as amended or replaced, are pending.

**4.2** Subject of provisions of subsection (2) of Paragraph 3 of the Directive, the ICF does not compensate the following investor categories:

a) The following categories of institutional and professional investors:

- ☐ Investment Firms,
- ☐ Legal entities associated with the Company and, in general, belonging to the same group of Companies,
- ☐ Banks,
- ☐ Cooperative credit institutions,
- ☐ Insurance Companies,
- ☐ Collective investment organisations in transferable securities and their management companies,
- ☐ Social insurance institutions and funds,
- ☐ Investors categorised by the Company as professionals, upon their request.

b) States and International Organisations,

c) Central, federal, confederate, regional and local administrative authorities,

d) Enterprises who have close ties with the Company,

e) Managerial and Administrative Staff of the Company,

f) 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,

g) 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 subparagraphs (e) and (f) above

- h) ,Second degree relatives and spouses of the persons listed in subparagraphs (e), (f) and (g) above, as well as third parties acting for the account of these persons,
- i) Apart from investors convicted of a criminal offence pursuant to the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 - 2019, as amended or replaced, 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.
- j) Investors in the form of a company, which due 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,
- k) Other firms in the same group.

**4.3** In the cases of sub-paragraphs (e), (f),(g) and (h) of paragraph 4.2., the Fund suspends the payment of compensation informing the interested parties accordingly, until it reaches a final decision as to whether such cases apply.

## **5. Compensation Payment Procedure**

The ICF compensates the covered Clients for claims arising from the covered services provided by the Company when failure by the Company to fulfil its obligations has been ascertained.

**5.1** The following constitutes failure by the Company to fulfil its obligations:

- a) Either to return Client fund to its covered Clients which are held by the Company indirectly in the framework of the provision by the Company to the said Clients of covered services, and which the latter requested the Company to return, in exercise of their relevant right; or
- b) To return to the covered Clients any financial instruments which belong to them and which the Company holds, manages or administers on their behalf in connection with investment operations.

**5.2** The ICF initiates the compensation payment process in one of the following situations:

- a) CySEC has determined by Resolution that the Company, which is subscribed to the ICF , is unable, at present, to meet such of its duties as arise from its investor-clients' claims in connection with the provision investment services, 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, and has issued its decision on the commencement of the compensation payment procedure by the ICF as well as has published the said decision in the Official Gazette of the Republic of Cyprus as well as on its website on the Internet.

CySEC can issue such decision when at least one of the following preconditions is fulfilled:

- (i) The Company submits to the ICF or to CySEC a written statement declaring its failure to fulfil its obligations towards its Clients; or
  - (ii) The Company files an application for liquidation in accordance with the provisions of Part V of the Companies Law of Cyprus; or
  - (iii) CySEC has revoked or suspended the Company's authorization to provide investment services 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 concern a temporary lack of liquidity which can be dealt with immediately.
- b) A judicial authority 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.

**5.3** Upon issuance of a decision by the Court or by the CySEC on the commencement of the compensation payment procedure, the Fund will publish in at least three (3) national newspapers an invitation to the covered client to make their claims against the Company arising from the covered services, designating the procedure for the submission of the relevant applications, the deadline for their submission and their content.

**5.4** The compensation applications of covered Clients with which they make their claims against the Company are submitted to the ICF in one (1) of the following two (2) ways in and must include:

- (i) By filling in the online application form which can be found on CySEC's website, or
- (ii) By post or by hand, a compensation application (in a form of simple letter) to the offices of the ICF, accompanied by all supporting evidence, to the following address: Investor Compensation ICF for IF Clients, 27 Diagorou Str., 1097, Nicosia, Cyprus.
- (iii) The name, Identity card/Passport of the claimant-Client;
- (iv) The address, telephone and fax numbers as well as any email address of the claimant-Client;
- (v) The name of the Company
- (vi) The Client code that the claimant-Client had with the Company;
- (vii) Copy of the covered services agreement between the Company and the claimant-Client;
- (viii) The type and amount of the alleged claims of the claimant-Client;
- (ix) Copy of account statement from the transactions platform the Claimant-Client has used.
- (x) Copy of documents that prove the claimant-Client deposits to the Company (e.g. swift transfers, deposit orders, debit advice, etc.).
- (xi) Reference and copies of any correspondence with the Company regarding the alleged claim.
- (xii) Written confirmation of the claimant-Client that the information included in the application/letter as well as all the documents accompanied it are correct and true.
- (vi) The exposition of the particulars from which the alleged claims of the claimant-Client and their amount are delivered;

(vii) Any other information the ICF might or will request.

**5.5** Upon submission of the compensation applications, the Administrative Committee of the ICF shall check whether the following conditions are fulfilled:

- (i) The initiation of the compensation payment procedure;
- (ii) The existence of a valid claim by a covered Client against the Company which derives from an investment operation of a duly completed application claimant-Client falls within the category of covered Clients;
- (iii) The submission in time of a duly completed application form accompanied by the necessary supporting documents;
- (iv) The claims do not arise from transactions in connection with which there has been a criminal conviction for money laundering as defined in the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 - 2019;
- (v) There are no criminal proceedings pending and/or the claimant-Client is not convicted of a criminal offence pursuant to the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 - 2019;
- (vi) The conditions for the valid submission of compensation applications are fulfilled pursuant to Limitation of Actionable Rights Law, as amended.

**5.6** The Administrative Committee rejects the compensation application in case the claimant-Client does not fulfil the conditions referred to in paragraph 5.5. above, or if at the Administrative Committee's discretion, the claimant-Client used fraudulent means in order to secure the payment of compensation by the ICF, especially if it knowingly submitted false evidence.

**5.7** Upon completion of the valuation, the ICF:

- (i) 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 five (5) working days from its issue; and
- (ii) Communicates to each affected Client its finding no later than fifteen (15) days from the issue of the aforementioned minutes determining the total compensation amount this Client is entitled to receive.

## **6. Payable Compensation**

**6.1** The amount of 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 any set-off rules applied for the calculation of the claims between the covered client and the Company.

**6.2** 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 the Client is a beneficiary, the currency and place of provision of these services within the European Union.

**6.3** The total payable compensation to each covered Client of the Company is defined as the lower of 90% of the cumulative covered claims of the covered Client and the amount of twenty thousand Euros (EUR 20,000).

**6.4** In case whereby beneficiaries of a joint account of the Company are in their majority covered Clients:

- a) the maximum amount payable to all co-beneficiaries of the account comes up to the amount of twenty thousand Euros (EUR20.000), and
- b) in the calculation of the coverage provided for in paragraph 6.3 above, the share attributable to each covered Client shall be taken into account
- c) the claims shall be allocated equally amongst covered Clients pursuant to the provisions of paragraph 6.3 unless there exist special provisions and subject to the exceptions of point (c) of this paragraph
- d) the claims resulting from joint investment operation where two (2) or more persons have rights as partners of a private company, association or entity of similar nature, without legal personality, for calculation purposes pursuant to the provisions of paragraph 6.3, are consolidated and are considered as an investment of one and the same investor.

**6.5.** The currency in which compensation is paid to covered Clients shall be the Euro. Where the funds and/or financial instruments are expressed in a currency other than the Euro, for purposes of calculation of the compensation amount, the exchange reference rate of the said currency against the Euro fixed by the European Central Bank at the end of the day the compensation payment procedure has been effected, shall be used.