



Pursuant to the Article 35, paragraph 1, sub-paragraph 1.1 of the Law No. 03/L-209 on Central Bank of the Republic of Kosovo (Official Gazette of the Republic of Kosovo, No. 77/16, August 2010), Article 85 and Article 114 of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (Official Gazette of the Republic of Kosovo, No. 11/11, May 2012), Board of the Central Bank of the Republic of Kosovo, in the meeting held on 28 April 2016, approved the following:

REGULATION ON GUARANTEE INSTRUMENTS AND AGREEMENTS BETWEEN THE LICENSED FINANCIAL INSTITUTIONS AND KOSOVO CREDIT GUARANTEE FUND

Article 1

Subject matter and scope

1. The Kosovo Credit Guarantee Fund (hereinafter referred to as “the KCGF”) has been established in compliance with the Law No. 05/L-057 on the Establishment of the Kosovo Credit Guarantee Fund (Official Gazette of the Republic of Kosovo No. 2/2016, 08 January 2016 (hereinafter referred to as “the LKCGF”) to facilitate the increased access to finance for micro, small and medium enterprises (hereinafter referred to as “the MSMEs”) in Kosovo, in order to create jobs, increase local production and value added services, improve the trade balance, and enhance financing opportunities for underserved MSMEs.
2. The KCGF provides credit guarantee for eligible licensed financial institutions, as set out in the LKCGF, on selected loans to MSMEs. In order for the KCGF to issue such guarantees, a guarantee instrument or agreement between the KCGF and any relevant financial institution should be applied. This Regulation sets out the items to be included in such instruments and agreements.
3. This Regulation applies to all guarantee instruments and agreements reached between the KCGF and banks, foreign banks branches, microfinance institutions and non-bank financial institutions licensed and registered by the CBK to operate in the Republic of Kosovo (hereinafter referred to as “licensed institutions”).

Article 2

Definitions

1. For purposes of this Regulation, the following definitions shall apply:

(a) **Guarantor:** the KCGF;

(b) **Guarantee:** commitment of the KCGF made to a licensed institution to pay a part of the principal amount of the liability of a debtor owed to that licensed

institution in case of non-payment by the debtor, in compliance with the loan agreement reached between the debtor and licensed institution, following the enforcement and collection by the financial institution in compliance with the time limits and conditions of the guarantee agreement or instrument reached between the KCGF and licensed institution.

- (c) **Loan Agreement:** any legal contract based on which a licensed institution ensures funding for one MSME, the latter being client of that institution;
- (d) **Debtor:** client MSMEs, whose funding by the licensed institution is guaranteed by the KCGF;
- (e) **Licensed institution:** licensed institution that will receive the amount agreed by the KCGF in case of debtor's failure to pay the debt;
- (f) **Non-payment:** any case specified in the Loan Agreement reached between the debtor and licensed institution, resulting in non-payment or inability of the debtor to settle its liability owed to the licensed institution in line with the Loan Agreement.

Article 3

Mandatory information in the Credit Guarantee Agreements and Instruments

1. Credit Guarantee Instrument or Agreement reached between the licensed institutions and the KCGF shall contain the following provisions:
 - 1.1. Identity of the Parties to Agreement:** the KCGF and licensed institution;
 - 1.2. Conditions under which the KCGF will provide the guarantee;**
 - (a) In case of the non-payment by the debtor, as defined in the Loan Agreement
 - (b) Submission of written notification on such a thing by the licensed institution to the KCGF;
 - (c) Deadline for submission of notification;
 - (d) Confirmation by the licensed institution that:
 - (i) it has addressed the borrower with a written request whereby requiring full payment of all outstanding amount;
 - (ii) it has carefully followed all allowed legal remedies to enforce and collect the amount; and
 - (iii) has settled all outstanding balance of credit principal as bad debt expenses;

1.7. Guarantee percentage: percentage of remaining outstanding amount of the debt principal or other liabilities which the KCGF agrees to pay to the licensed institution in case of debtor's failure to pay, which shall be less than fifty (50%) of the remaining outstanding amount of the principal following the enforcement and collection;

1.8. Limit of liability: the provision whereby the KCGF liability under the guarantee instrument or agreement will not exceed the percentage specified in the guarantee instrument or agreement.

1.9. Currency used for guarantee and guarantee fee: EUR;

1.10. Guarantee Fee: The provision concerning the payment of fees by the licensed institution to the KCGF, including:

- (a) the amount of these fees, or the method of their calculation;
- (b) consequences of failure to pay these fees on time, including the right of the KCGF, upon its choice and with prior written notice to the licensed institution, to terminate or suspend (and consequently terminate, under its discretion) the guarantee instrument or agreement, and after such a termination or suspension, to have no other liabilities towards the licensed institution under the guarantee instrument and agreement, maintaining the right to collect outstanding fees;

1.11. Replacement: if the KCGF is obliged to make payments for the guarantee, then the KCGF shall be replaced with the licensed institution to the level to which the KCGF has paid the guarantee and may pursue all legal remedies that the licensed institution might have pursued against the debtor under the Loan Agreement, provided that:

- (a) replacement provision will not exclude the KCGF from pursuing legal remedies available to the licensed institution, or the licensed institution from pursuing legal remedies available against the debtor, in line with the Loan Agreement;
- (b) in case the KCGF has paid the claim under the guarantee instrument or agreement, and licensed institution receives or returns funds related to or complied with the principal amount that the debtor owes to under the Loan Agreement, then the licensed institution shall immediately reimburse the KCGF on a pro rata basis before the deduction of expenses or other amounts incurred as a result of its efforts to collect the debt or other reasons;

1.12. Procedures for modification of guarantee instrument or agreement: should include a request whereby any change shall be made in written and signed by all the parties to the guarantee instrument or agreement;

1.13. Procedures for suspension or termination of guarantee instrument or agreement: a provision providing for that Bank or KCGF may terminate the agreement with prior notice and as agreed in the Guarantee Agreement.

1.14. The KCGF may suspend or terminate the guarantee instrument or agreement with a 10 working days written notice to the licensed institution, in case:

- (a) the licensed institution does not comply with the conditions under the guarantee instrument or agreement; or
- (b) of any material change of circumstances that results in the inability of the licensed institution to fulfil the requirements derived from the guarantee instrument or agreement, or because the conditions initially set in the guarantee instrument or agreement are not applicable anymore.

1.15. Setting the guarantee instrument or agreement: a prohibition on setting the guarantee instrument or agreement by the licensed institution.

1.16. Dispute settlement: the provisions whereby:

- (a) the parties will make efforts to amicably resolve any dispute that may result within the guarantee instrument or agreement;
- (b) in case they are not able to find an amicably solution, they shall address this issue to the arbitration in Kosovo;
- (c) decision of arbitrator or arbitration shall be final and no party shall file a lawsuit against the other party in relation to any part of the guarantee agreement or instrument, in compliance with the Law on Arbitration in force in the Republic of Kosovo;
- (f) costs and fees related to the arbitration shall be paid in compliance with the applicable law and regulations concerning the arbitration;

1.17. Language of Agreement: The instrument or agreement will be in Albanian and English language. In case of ambiguities, the version in the Albanian language shall prevail;

1.18. Applicable legislation: A provision stipulating that Kosovo laws will apply to the provisions of the agreement, including any dispute that may arise under the guarantee instrument or agreement;

1.19. Procedure for issuing notices: Acceptable means for issuing notices required under the guarantee instrument or agreement (in person, by courier, mail, etc.) addressed to the licensed institution and the KCGF, to which such a notice will be submitted, with the telephone and fax number and identification (according to the title) of the contact person;

1.20. Fraud, false material presentation, or unlawful activities: A provision stipulating that no payment will be made, under the guarantee

instrument or agreement, for any loss arising from the fraud or false material presentation for which the debtor or licensed institution is responsible, or in relation to the unlawful activities of the debtor or licensed institution;

1.21. No withdrawal from the rights of the KCGF: A provision stipulating that the payment within the guarantee instrument or agreement will not be considered withdrawal from the right of the KCGF to object such a later payment according to the reasons referred to in paragraph 1.20 of Article 3 of the present Regulation, or any other reason that will make the payment invalid or in contradiction with the provisions of the guarantee instrument or agreement;

1.22. Provision of information: A provision stipulating that the licensed institution will provide the KCGF with the following information:

- (a) any fact or circumstance occurred following the entry into force of the guarantee instrument or agreement that has a material impact on the guarantee instrument or agreement, or removal of the obligation of the licensed institution, or the truth or accuracy of any representation based on which the guarantee instrument or agreement has been reached;
- (b) any change proposed in legal form of the licensed institution, and any proposal for merging, purchase or change of the control of the licensed institution or debtor, at least 30 days prior to the effective date of the expected event, including:
 - (i) any proposal for purchase or merging with another entity or legal person in such a manner that more than ten (10%) of the capital interests in the licensed institution resulting from such purchase or merging will not be owned by the current owners, or the parent company of current owners of the licensed institution;
 - (ii) any proposed sale of the majority of capital interests in the licensed institution or any other purchase from any entity or legal person that does not own at least ten percent (10%) of the capital interests in the licensed institution since the effective date of the guarantee instrument or agreement;
- (c) final completion of any of the mentions in the sub-paragraph (b) of this paragraph, within 5 working days following such completion;
- (d) existence of any dispute or legal procedure (including any procedure before the court, arbitration or other similar procedures) initiated against the licensed institution, parent company or subordinate entities of the licensed institution, which, in case of an unfavourable decision, may have an adverse impact on the ability of the licensed institution to perform its obligations under the guarantee instrument or agreement, as soon as possible (not later than 3 working days) following the notification for such procedure;

- (e) initiation of any enforcement procedure against the licensed institution, parent company, or subordinate entities of the licensed institution, or their assets;
- (f) emergence of any circumstance or event that would constitute a basis for the suspension or termination of the guarantee instrument or agreement, as soon as possible (not later than 3 working days) following the notification for such circumstance or event;
- (g) emergence of any case of non-payment within the Loan Agreement between the debtor and licensed institution, as soon as possible (not later than 3 working days) following notification for such circumstance or event.

Article 4
Entry into force

This Regulation shall enter into force on 2 May 2016.

Chairman of the Board of the Central Bank of the Republic of Kosovo

Prof. Dr. Bedri Peci