



Under Article 35, paragraph , 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/ August16, 2010), Article 1, Article 44, paragraph 1, sub-paragraphs 1.4 and 1.18 and Article 85 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/ May 11, 2012), the Board of the Central Bank of the Republic of Kosovo in the meeting held on August 31, 2016, approved the following:

## **REGULATION ON LETTER OF CREDIT AND BANK GUARANTEE**

### **Article 1 Aim and Scope**

1. The purpose of this Regulation is to define the rules and procedures for the issuance of letter of credit and bank guarantees.
2. This Regulation applies to all banks licensed by the CBK to operate in Kosovo.
3. Issuance of this Regulation is in accordance with Article 1058, paragraph 3 of the Law No. 04 / L-077 on Obligational Relationships and other applicable laws at the time of its issuance.

### **Article 2 Definitions**

1. All terms used in this Regulation have the same meaning with the terms defined in Article 3 of the Law No. 04 / L-093 on Banks, Microfinance Institutions and Non-bank Financial Institutions (hereinafter: the Law on Banks) and / or the following definitions for the purpose of this regulation:

**1.1. Letter of Credit** - means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honor a complying payment on condition that the documents requested by letter of credit are presented in accordance with the terms and conditions of the letter of credit, applicable provisions of the rules and uniform practices of ICC on documentary credits (UCP 600);

**1.2. Banking Demand Guarantee or Bank Guarantee** - means any signed undertaking, however named or described, physically or electronically that creates an obligation for the guarantor to make the payment on condition that the documents requested by guarantee are presented in accordance with the terms and conditions of the guarantee and uniform rules on demand guarantees - URDG 758, referred to in Article 14 of this Regulation;

**1.3 Issuing /Guarantee bank** - means the bank that issues a letter of credit or guarantee at the request of an applicant or on its own behalf;

**1.4. Confirming bank** – means the bank that adds its confirmation to a letter of credit upon the issuing bank's authorization or request;

**1.5. Applicant** - means the party on whose request the letter of credit or guarantee is issued;

**1.6. Beneficiary** - means the party in whose favor the letter of credit or guarantee is issued;

**1.7. Presentation** - means the delivery of documents under a letter of credit to the issuing bank or nominated bank;

**1.8. Presenter** - means a beneficiary, bank or other party that makes a presentation of documents;

**1.9. Nominated bank** - means the bank through which the payment is done based on the letter of credit or any bank in the case that a letter of credit is valid/ available;

**1.10. Transferring bank** - means a nominated bank that transfers the letter of credit or in cases when a letter of credit is valid /available with any bank, a bank that is specifically authorized by the issuing bank to transfer and that transfers the letter of credit. An issuing bank may be a transferring bank;

**1.11. Counter-guarantee** means any guarantee, bond or other payment undertaking, however named or described, given by the counter-guarantee of another party to ensure the issue of another guarantee or counter-guarantee by that party that enables payment on condition that the documents requested by guarantee are presented in accordance with the counter - guarantee issued in favor of that party.

### **Article 3** **Letter of credit**

1. Issuing Bank, on the occasion of the issuance of letter of credit at the request of the applicant, the beneficiary is obliged to pay the letter of credit certain amount of money specified in the letter of credit, on the due date for payment, if fulfilled conditions determined by the letter of credit issued.

2. The Letter of Credit must be in writing form and signed by hand or / and electronic authenticated signature.

3. For the purposes of paragraph 2 of this article, authentication is the process by which the party the document is presented to is able to verify the identity of the sender and if data received have remained complete and unchanged.

4. Letter of credit must contain, inter alia, the obligation for payment determined by the issuing bank, the applicant and beneficiary data, documents to be submitted and the deadline for submission of required documents.

#### **Article 4** **Obligation of the bank and the applicant**

1. Bank takes irrevocable obligation towards beneficiaries since the moment of the issuance of letter of credit.

2. The applicant has irrevocable obligation towards the issuing bank starting from the moment of signing of the application for issuance of letter of credit and other documents required by the bank.

#### **Article 5** **Independence of letter of credit**

1. The letter of credit is completely independent and separate from the underlying contract under which the letter of credit is issued or any other transaction.

2. Issuing bank executes the payment based on the presentation of documents under specific terms and conditions of the letter of credit, regardless of the performance of the contract in question or any other transaction.

#### **Article 6** **Documentary Letter of Credit**

1. A documentary letter of credit is an obligation of the bank to pay a given sum of money to the beneficiary within a specified time, providing that the documents presented comply with the terms laid down in the letter of credit.

2. Letter of credit is irrevocable even if it is not specified as such in the contract.

3. A documentary letter of credit has independent and direct obligation of the bank towards the beneficiary.
4. At the request of the issuing bank, a documentary credit letter can be confirmed by another bank (the confirming bank, another bank from the issuing bank) which undertakes independent and direct commitment towards the beneficiary.
5. Notification of letter of credit of beneficiaries by any other bank (notifying bank) does not automatically present the confirmation of letter of credit itself.

#### **Article 7**

#### **Obligations and responsibilities of the bank for documentary letter of credit**

1. Bank that opens a documentary credit letter is obliged to make payments under the terms defined by documentary letter of credit.
2. The Bank is obliged to examine whether the documents are in accordance with the conditions specified in the letter of credit, as requested by the applicant.
3. Nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of 5 (five) working days following the day of request presentation to determine if a request is in compliance with letter of credit criteria.
4. If one of the banks mentioned in paragraph 3 of this article, observes the discrepancy of documents and decides to refuse payment or negotiation, it shall within 5 (five) working days, starting from the work day following day of observance of discrepancy of documents, it must give a single notice to that effect to the presenter stating each discrepancy in respect of which the bank refuses to honor or negotiate.
5. The Bank does not take upon itself any responsibility if the documents as presented in accordance with the terms of the letter of credit.
6. Banks bear no responsibility in terms of goods, services or performance to which the documents may relate.

#### **Article 8**

#### **Transfer of documentary letter of credit**

1. Transferable documentary letter of credit means a letter of credit that specifically states it is "transferable".

2. A transferable letter of credit may be made available in whole or in part to another beneficiary ("second beneficiary") at the request of the beneficiary ("first beneficiary").
3. Letter of credit may be transferred partially to more than one beneficiary provided partial drawings or shipments are allowed.
4. A transferred letter of credit cannot be transferred at the request of a second beneficiary to any subsequent beneficiary. The first beneficiary is not considered to be a subsequent beneficiary.

### **Article 9**

#### **Bank guarantee**

1. The bank guarantee is an irrevocable undertaking of a bank to pay a certain amount to the beneficiary, not exceeding the specified limits of the guarantee, provided that the request presented for payment is in full compliance with the terms of the guarantee.
2. Bank guarantee must be issued via SWIFT in written or electronic form.
3. If another bank has confirmed responsibility arising from the guarantee, the recipient may apply according to the bank guarantee of issuing or confirming bank.

### **Article 10**

#### **Obligations and responsibilities of the bank for the guarantee**

The bank pays the obligation arising from the guarantee in cash, even when the guarantee provides non-monetary obligation.

### **Article 11**

#### **Counter-Guarantee**

If at the request of another bank ("counter-guarantee"), the bank ("guarantee") issues a guarantee in favor of the beneficiary, the beneficiary must submit its request to the bank that issued the guarantee.

## **Article 12**

### **Guarantee Transfer**

1. Guarantee transfer means a guarantee that may be made available by the guarantor to a new beneficiary (beneficiary of the transfer) at the request of the existing beneficiary (applicant of the transfer). Even if a guarantee specifically stipulates that it is transferable, the guarantor is not obliged to execute the transfer of guarantee request after its issuance, unless the guarantor has expressly agreed to perform the transfer.
  
2. A guarantee may be transferred only if the applicant has presented a signed statement to a guarantor, stating that the beneficiary of the transfer has acquired the rights and obligations of the applicant requesting the transfer as stated in basic agreement. Whether or not the guarantee states that is transferable and in accordance with the provisions of applicable laws, the beneficiary may transfer to another party any right over income owned or possible future income under the guarantee.

## **Article 13**

### **Demand bank guarantee**

1. If the bank guarantee contains a clause "on demand" or any other word with the same meaning, the bank cannot raise objections to the beneficiary that applicant as the debtor may raise to the beneficiary under the insured obligation.
  
2. The applicant is obliged to pay the bank any amount paid by a bank under the bank guarantee issued pursuant to clause in paragraph 1 of this Article.
  
3. The beneficiary of the bank guarantee shall debit the amount received by the applicant under this guarantee, which otherwise he would not have the right to do due to the applicant's reasonable objections.

## **Article 14**

### **Final provisions**

Anything that is related to letter of credit and bank guarantee and is not defined by this Regulation will apply *mutatis mutandis*, the standard rules of International Chamber of Commerce (the Uniform Customs and Practice for Documentary Credits - UCP 600 and Uniform Rules for Demand Guarantees - URDG 758).

## **Article 15**

### **Entry into force**

This Regulation shall enter into force on September 15, 2016.

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

---

Prof. Dr. Bedri Peci