

**LAW NO. 04/L-133
ON AMENDING AND SUPPLEMENTING THE LAW NO. 03/L-216 ON THE ESTABLISHMENT OF
A DEPOSIT INSURANCE SYSTEM FOR FINANCIAL INSTITUTIONS IN KOSOVO**

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo;

Approves:

**LAW ON AMENDING AND SUPPLEMENTING THE LAW NO.03/L-216 ON THE ESTABLISHMENT
OF A DEPOSIT INSURANCE SYSTEM FOR FINANCIAL INSTITUTIONS IN KOSOVO**

Article 1

1. Article 2 of the basic law subparagraph 1.1. shall be reworded with the following text:

1.1. **Bank** – an entity defined by the Law on Banks, Microfinance Institutions and Non Bank Financial Institutions - hereinafter: The Law on Banks.

2. Article 2 of the basic law subparagraph 1.3. shall be reworded with the following text:

1.3. **Deposit** - a sum of money paid to a deposit-taking Financial Institution on condition that it is to be repaid in full by the institution, with or without interest or premium either on demand or at an agreed time under the legal and contractual conditions applicable.

3. Article 2 of the basic law subparagraph 1.5. shall be reworded with the following text:

1.5. **Insured depositor** - a natural or legal person, not excluded from insurance pursuant to Article 6 of the basic law that has insured deposits in one or more accounts at a deposit taking financial institution.

4. Article 2 of the basic law subparagraph 1.6. shall be reworded with the following text:

1.6. **Eligible deposits** – the aggregated deposits of an insured depositor minus the excluded deposits of this depositor plus the accrued interest.

5. Article 2 of the basic law subparagraph 1.7 shall be reworded with the following text:

1.7. **Insured deposits** – eligible deposits of an insured depositor minus the overdue obligations of that depositor against the insured institution, up to the amount pursuant to Article 3 paragraph 1. of this law.

6. Article 2 of the basic law subparagraph 1.9, item 1.9.1 shall be added with the following text:

1.9.1. **Deposit taking financial institution** – a financial institution that has been licensed by the Central Bank to receive deposits pursuant to Article 44 of the Law on Banks.

7. Article 2 of the basic law subparagraph 1.10 shall be reworded with the following text:

1.10. **Problem Institution** – a deposit taking by financial institution which is subject to enforcement measures as set forth in Article 58 of the Law on Banks.

8. Article 2 of the basic law subparagraph 1.12, the words "**Deposit Insurance Fund**" shall be replaced by the words "**Fund assets**".

9. Article 2 of the basic law subparagraph 1.13 shall be reworded with the following text:

1.13. **Initial premium** – the one-time premium to be paid by a deposit taking financial institution.

10. Article 2 of the basic law subparagraph 1.14 shall be reworded with the following text:

1.14. **Deposit Insurance system** - the sum of the legal, financial and organizational arrangements as well as the operational activities undertaken by DIFK in order to reach the objectives pursuant to Article 3 of the basic law.

11. Article 2 of the basic law subparagraph 1.15 shall be reworded with the following text:

1.15. **Insured event** - the revocation of a license and the initiation of receivership pursuant to Article 71 paragraph 1 of the Law on Banks.

12. Subparagraph 1.17 shall be deleted from the text of the basic law.

13. Article 2 of the basic law, after subparagraph 1.16 new subparagraphs 1.17, 1.18, 1.19 and 1.20. shall be added with the following text:

1.17. **Legal person** – a legal entity created by law or registration in line with the laws in force.

1.18. **Transfer of liabilities** – an action of the administrator or the receiver of a bank in line with the Articles 68.4 and 73.22 of the Law on Banks.

1.19. **Payout date** – the day when the Fund makes the amount of reimbursement for insured deposits available to the depositors.

1.20. **Related parties** – this definition is equal with the definition of the “**bank related persons**” given in Article 3 of the Law on Banks.

Article 2

1. Article 4 of the basic law, paragraphs 1. and 2. shall be reworded with the following text:

1. All deposit-taking financial institutions in Kosovo are mandatory members of the Fund. A foreign bank licensed to take deposits in Kosovo through one or more branches is only a member, when the home country provides deposit insurance with a lower coverage than prescribed by this law.

2. In the case of an insured event, the Central Bank shall immediately inform the Fund on the decision on initiating receivership against the deposit taking financial institution and the Fund shall promptly start the operation for reimbursing insured deposits.

2. Article 4 of the basic law after paragraph 2., new paragraphs 3. and 4. shall be added with the following text:

3. The Fund shall pay out of the Fund’s assets, only if the payment value is lower than the reimbursement value of insured deposits, the difference up to the insured amount to another bank in the case, the administrator or the receiver of a bank is transferring liabilities to another bank in line with the Articles 68.4 and 73.22 of the Law on Banks. The administrator and the receiver shall involve the Fund as early as possible in such transaction.

4. The participation of a deposit taking financial institution under receivership in the deposit insurance scheme ends upon the finalization of compensation payments to the depositors of an institution in liquidation and the obligation to pay insurance premiums ends on the day of the insured event.

Article 3

1. Article 5 of the basic law, paragraphs 1., 2. and 3. shall be reworded with the following text:

1. In the case of an insured event, the Fund shall reimburse each insured depositor up to the maximum insured amount of two thousand (2.000) Euros. After the payment of committed contributions, the limit of the insured deposits shall be increased up to the maximum amount of three thousand (3.000) Euro from 1st January 2014; up to the maximum amount of four thousand (4.000) Euro from 1st January 2016; and up to a maximum amount of five thousand (5.000) Euro from 1st January 2018. The calculation shall be done as follows:

1.1. all deposit accounts of the insured depositor are to be aggregated;

1.2. the amount is to be reduced by the excluded deposits, and the accrued interest up to the date of the insured event is to be added to determine the eligible deposits, thereafter;

1.3. the amount of the eligible deposits is to be reduced by any amounts owed by the insured depositor to the member institution that are overdue, and the remaining amount is to be reimbursed up to the maximum insured amount”;

2. In the case of a joint account the share of each depositor are divided equally among the account holders. If a depositor is a trustee for the account of a third party, the third party shall have the total for the deposit added to all other deposit accounts in his or her name in applying the deposit coverage limit.

3. When insured deposits have been assumed by an acquiring financial institution such a deposit assumption would be considered a fulfilment of DIFK’s obligation to reimburse insured depositors.

2. Article 5 of the basic law, paragraph 4 shall be deleted from the text of the law.

Article 4

1. Article 6 of the basic law shall be reworded with the following text:

Article 6

Exclusions from the Deposit Insurance

1. The following shall be excluded from the definition of insured deposit:

1.1 accounts for which the depositor has not been identified or reported to the Financial Intelligence Unit in compliance with the Law on Prevention of Money Laundering and Terrorist Financing.

1.2. legal persons and the shareholders of such legal persons with majority votes of fifty percent (50%) or more and natural persons with direct or indirect participation in the bank capital or voting rights arising from at least five percent (5%) share in the bank capital, their families and related parties;

1.3. directors and senior managers as defined in the Law on Banks, as well as their families and related parties;

1.4. persons in charge for performing the external audit of the institution’s financial statements over the past three (3) years before the initiation of the liquidation proceedings.

1.5. deposits of banks, Financial Institutions, insurance and collective investment undertakings, pension and retirement funds, local and central government and administrative authorities;

1.6. deposits kept at branches of foreign deposit-taking Financial Institutions in Kosovo whose home country provides a deposit insurance system for the branches of similar or greater coverage as determined by the Management Board; and

1.7. branches of Financial Institutions of Kosovo that operate outside the country.

Article 5

1. The title of the Article 7 of the basic law shall be reworded as following:

Article 7 Membership Certificate

2. Article 7 of the basic law paragraph 2. the words “**or otherwise offering deposit insurance**” shall be deleted.

3. Article 7 of the basic law paragraph 3. shall be deleted from the text of the law.

Article 6

1. The title of the Article 8 of the basic law shall be reworded with the following text:

Article 8 Announcement of the Reimbursement

2. Article 8 of the basic law paragraph 1. shall be deleted from the text of the law.

3. Article 8 of the basic law paragraph 2. shall be reworded with the following text:

2. In the insured event explanations regarding the process of reimbursement of insured deposits will be published by the Fund in one or more newspapers of general circulation.

Article 7

Article 9 of the basic law the words “**with the law in force**” shall be replaced by the words “**with the Law on Banks**”.

Article 8

The title of Article 11 of the basic law shall be reworded as following:

Article 11 Differential Premium

Article 9

1. Article 12 of the basic law paragraph 1. shall be reworded with the following text:

1. Upon timely presentation of evidence of ownership as defined under rule by the DIFK, the process for reimbursement in Euros of insured depositors shall begin as soon as possible and shall be completed on the payout day, but not later than thirty (30) days of the insured event. The Fund shall have the authority to pay the insured deposits in a single payment or a series of payments over the course of the thirty (30) days.

2. The receiver of a deposit taking financial institution under receivership shall submit to the Fund, in electronic format, data and other documents necessary for the calculation and payout of the insured deposits under this law within three (3) business days following the insured event date.

3. On the basis of data and documents under paragraph 1. and 2. of this Article, the Fund shall verify and determine the amount of the insured deposit for every insured depositor.
4. On the basis of paragraph 3. of this Article, the Fund shall make the compensation available to the insured depositors either through employing a payout agent bank or other means as selected by the Fund.
5. To facilitate prompt payment, the Fund shall set the rules for the procedure of the insured deposits payout.
6. To be reimbursed the depositor has to present an evidence of its ownership, and any other natural person may be authorized to take the reimbursement for the depositor with a written and signed authorization of the depositor.
7. In case of deposits used as collateral, the Fund shall effect any payment only, if the grounds for receiving the insured deposit can be determined without any doubt based on the parties' agreement or under resolution of a Court or competent authority in Kosovo.
8. Upon payment of insured depositors, the Fund shall subrogate to the claim position of insured depositors as set forth by the Law on Banks.
9. Deposits not denominated in Euros that are instead denominated in a convertible currency shall be reimbursed in Euros at the daily exchange rate published by the European Central Bank as of the date of the insured event.
10. Depositors will lose their right to get reimbursed by the Fund if the compensation amount has not been collected within two (2) years after the announcement of the notification. The Fund shall set the rule for uncollected compensation.

Article 10

Article 13 of the basic law, paragraph 2. the words **“and is accountable to the Central Bank”** shall be deleted.

Article 11

1. Article 14 of the basic law paragraph 1. shall be reworded with the following text:

1. The Fund shall have the authority to:

- 1.1. require from member institutions, based on a rule adopted by the Managing Board in line with Article 19 paragraph 1., subparagraph 1.4 of the basic law, to provide information in a format that will facilitate insured deposit determination.
- 1.2. set the rate for and collect premiums for insurance of deposits;
- 1.3. invest directly or through delegation of authority the assets of the Deposit Insurance Fund pursuant to the limitations of this Law;
- 1.4. pay off insured depositors pursuant to the provisions of this Law;
- 1.5. participate, in collaboration with the Central Bank, in the resolution of the failed bank and to pay for the transfer of liabilities in line with this law and with the Law on Banks;
- 1.6. cooperate with the Central Bank in exchanging information relevant to the Funds' individual objectives;
- 1.7. coordinate with the relevant deposit insurance authorities or with home country supervisors through Central Bank with regard to branches and subsidiaries of foreign-owned institutions in Kosovo and with branches and subsidiaries of Kosovo-owned institutions;

1.8. borrow in case of insufficiency of funds, but not from member institutions, so to ensure Fund's objective is met.

1.9. determine administrative sanctions against member institutions in line with Article 23 of the basic law;

1.10. issue secondary legislation provided for under this law.

Article 12

Article 15 of the basic law shall be reworded with the following text:

Article 15 Financing the Deposit Insurance Fund

1. Premium of deposit insurance paid according to the basic law, as well as other incomes mentioned in paragraph 2. of this Article, shall be kept in a special account and constitute the Deposit Insurance Fund.

2. Sources of the Deposit Insurance Fund are:

2.1. initial capital paid in the amount of fifteen million euro (15.000.000);

2.2. initial premiums paid by member institutions;

2.3. on-going premiums paid by member institutions;

2.4. revenues from invested funds;

2.5. revenues from the claims of the DIFK in liquidation proceedings of financial institutions;

2.6. donations;

2.7. borrowings;

2.8. revenues by the issuing the securities;

2.9. other revenues in accordance with the basic law and this law.

3. DIFK shall use the Deposit Insurance Fund only for the purpose of depositors' reimbursement and for financing the operation of DIFK, as it is defined in Article 12 and Article 16 of the basic law.

4. DIFK shall invest the resources of the Deposit Insurance Fund, as it is defined in Article 25 of the basic law and rules of DIFK.

Article 13

Title of the Article 16 of the basic law shall be reworded with the following text:

Article 16 Budgeting

Article 14

Article 17 of the basic law shall be reworded with the following text:

Article 17 Emergency or Extraordinary Funding

1. If upon the basis of a review of the financial plan or other supporting financial information, the Managing Director or the Management Board of the DIFK determines that the Deposit Insurance Fund does not have sufficient financial resources to carry out its objectives, the Management Board shall approve a plan, in keeping with principles of financial sector soundness, to undertake one or more of the following actions:

1.1. charging an additional premium from member institutions by increasing the level of the ongoing premium levied against insured institutions on a temporary basis up to two (2) times its level at the time of the emergency in one (1) year, with the Management Board determining whether such emergency premiums will be credited against future premiums; or

1.2. issue bonds in compliance with the applicable laws in Kosovo and Central Bank rules.

1.3. borrow funds, except from member institutions, guaranteed by the Republic of Kosovo or the Central Bank in line with the laws in force.

Article 15

1. Article 18 of the basic law paragraph 2. sub-paragraph 2.2 the words “**Economy and**” shall be deleted.

2. Article 18 of the basic law, paragraph 3. the word “**President**” shall be replaced with the word “**Chairperson**”.

3. Article 18 of the basic law, paragraph 4. shall be reworded with the following text:

4. The Management Board shall invite representatives with no voting rights, who will not be permitted access to confidential information, from the following list:

4.1. one (1) representative of the Kosovo Banks' Association;

4.2. one (1) representative of Association of Microfinance Institutions of Kosovo; and

4.3. others representatives as the Management Board shall see fit.

4. Article 18 of the basic law, paragraph 5. after the word “**expert**” word “**independent**” shall be deleted from the text of the law.

5. Article 18 of the basic law, paragraph 6. shall be reworded with the following text:

6. Members of the Management Board as mentioned in Article 18 paragraph 2, subparagraphs 2.3., 2.4. and 2.5. of the basic law will serve for a period of five (5) years and will have the right of a re-selection for one mandate. The Board members must be individuals who have recognized integrity and professional higher education and experience in financial, banking or legal matters, and every Management Board member has to be without any political mandate for the previous year. Additionally, the Board members are without prior employment history with any insured institution in Kosovo that receives deposits for at least one (1) year prior to its board membership.

6. Article 18 of the basic law, paragraph 9 after the word “**Members**” word “**independent**” shall be deleted, and after the abbreviation “**DIFK**” the words “**with the exception of the Managing Director of the Fund**” shall be added.

7. Article 18 of the basic law, paragraph 11. the sentence “**unless unanimously approved by the remaining members of the Management Board**” shall be deleted and words “**and voting**” shall be added at the end of paragraph.

Article 16

1. Article 19 of the basic law, paragraph 1, subparagraph 1.7 the word “**changing**” shall be replaced with the word “**setting**”.

2. Article 19 of the basic law, paragraph 1., subparagraph 1.10. shall be reworded with the following text:

1.10. approving methods of payments by the Fund for the reimbursement of depositors in an insured event or approving in consultation with the Central Bank the use of funds connected with the transfer of liabilities in line with this law.

3. Article 19 of the basic law, paragraph 1., subparagraph 1.13. the phrase “**as recommended by the Managing Director of the Fund**” shall be replaced with the phrase “**Article 17 of basic law**”.

Article 17

1. Article 22 of the basic law paragraph 1., subparagraph 1.7. the phrase “**with the approval of the Managing Board**” shall be deleted from the text of the law.

2. Article 22 of the basic law paragraph 1., subparagraph 1.8. the sentence “**including presenting the above mentioned issues in this Article before the Management Board on a regular basis**” shall be deleted from the text of the law.

Article 18

Article 23 of the basic law, paragraph 1., after the phrase “**The Fund shall determine the administrative sanctions**” the phrase “**towards member institutions**” shall be added.

Article 19

Article 24 of the basic law, paragraph 1., shall be reworded with the following text:

1. All insured institutions shall provide any necessary information requested by the Fund and shall be responsible for the accuracy and quality of information provided. The Fund may request the Central Bank to examine onsite in the member institutions the data and information under this law; staff of DIFK shall be allowed to take part in such examinations. Additionally it should be the responsibility and power of DIFK, to regularly undertake with the member institutions tests of the software needed for the transfer of data between the failed institution and DIFK in an insured event.

Article 20

1. Article 25 of the basic law shall be reworded with the following text:

Article 25 Investments

1. The Fund assets shall be invested according to the principles of emphasizing safety and liquidity over return.

2. The Fund assets may be invested in the following financial instruments only:

2.1. fixed income securities or debt instruments that are denominated in Euros, are issued by, or guaranteed by, member countries of the European Union, European governmental agencies and European Union supranational agencies and that carry a high assessment rating, assigned by an internationally recognized rating agency;

2.2. euro deposits with the Central Bank, the European Central Bank or with Central Banks of EU member states;

2.3. euro deposits with European Banks and Euro denominated fixed income securities or debt instruments issued by European Banks except the member institutions which are owned by or guaranteed by one of the institutions as referred to in subparagraph 2.1 of this Article and which carry a high rating assigned by an internationally recognized rating agency.

3. In accordance with paragraph 1. and 2. of this Article, the Management Board of the Fund shall determine the general investment guidelines of the Fund and the investment policy to be pursued during the following business year.

4. In accordance with Articles 14 and 19 of the basic law, the Management Board of the Fund may decide to delegate the management of the Fund assets or parts of it to external asset managers.

Article 21

Article 26 of the basic law shall be deleted from the text of the law.

Article 22

Article 27 of the basic law shall be reworded with the following text:

Article 27

Target Size of the Deposit Insurance Fund

The Management Board of the Fund shall manage the Deposit Insurance Fund consistent with its responsibilities to protect small depositors. The size of the Deposit Insurance Fund may exceed the target of five percent (5%) of the total amount of insured deposits in the banking sector. DIFK shall not stop collecting the premiums from the banks, nor change or decrease the level of the ongoing premium, except as permitted in Article 10 and Article 11 of the basic law.

Article 23

1. Article 28 of the of the basic law, paragraph 3., shall be deleted from the text of the law.

2. Article 28 of the basic law, paragraph 4. shall be reworded with the following text:

3. The Fund shall prepare annual financial statements in accordance with the International Financial Reporting Standards. The Fund's financial statements shall be audited and published without delay, but not later than June 30 for the previous year.

Article 24

1. Title of Article 29 of the basic law, shall be reworded with the following text:

Article 29

Immunity from Corporate Income Tax and Legal Protection

2. Article 29 of the basic law, paragraph 2.,new paragraph 3. shall be added with the following text:

3. The Fund shall bear the costs of protecting the persons under paragraph 2 of this Article in litigations disputing the performance of duties in accordance with the law and regulations issued on the basis of this law.

Article 25

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 04/L-133
13 December 2012

Promulgated by Decree No. DL-062-2012, dated 27.12.2012, President of the Republic of Kosovo Atifete Jahjaga.