To: **International Swaps & Derivatives Association (ISDA)**
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Re: **ISDA INFORMAL COUNTRY UPDATE** – Republic of Kosovo 2026

The following consists of a general overview of the legal and regulatory framework applicable to over-the-counter (OTC) derivative agreements in Kosovo. It addresses the specific questions outlined below within the context of Kosovo's laws and regulatory practices.

Please note that information contained herein does not constitute legal advice. Its purpose is limited to offering general insights based on the questions presented and on our understanding of the relevant local legislation, regulatory measures, and established market practices in Kosovo.

This report is not intended to provide an exhaustive treatment of all issues that may arise under the ISDA Master Agreement. In preparing this report, we did not consult the ISDA Master Agreement, its Schedules, or Credit Support Annexes. Accordingly, this document should not be regarded as an interpretation or analysis of ISDA documentation. Our assessment is based solely on local laws, regulations, and publicly known practices.

BACKGROUND AND INTRODUCTION

Kosovo operates under a civil law legal system, primarily influenced by continental European legal traditions. The banking system in Kosovo is bank-centric and supervised by the Central Bank of Kosovo ("CBK"), which acts as the primary regulatory authority. There is no established domestic exchange or regulated derivatives market, and Kosovo has not adopted a dedicated legal framework specifically governing derivatives. As a result, any derivatives activity within the jurisdiction would have to be on an over-the-counter (OTC) basis rather than through a centralized or regulated market.

The domestic market for derivative instruments remains underdeveloped, with derivative transactions occurring infrequently and mostly within the banking sector. In the absence of a dedicated derivatives regime, the legal treatment of such transactions is derived from general contract law, private international law, and banking law along with specific banking regulations issued by the CBK. Regulatory provisions in Kosovo address derivatives primarily from a prudential perspective rather than through a comprehensive conduct or market framework. CBK

regulations impose requirements related to capital adequacy, liquidity risk management, and exposure measurement.

For the preparation of this report, we have consulted the following regulatory instruments:

a) Law No. 08/L-304 on Banks (2026), (the "Law on Banks");
b) Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (2012);
c) Law No. 04/L-155 on Payment System (2013);
d) Law No. 04/L-077 on Obligational Relationships (2012);
e) Law No. 05/L-083 on Bankruptcy (2024);
f) Law No. 08/L-028 on Private International Law (2022);
g) Law No. 02/L-75 on Arbitration (2008);
h) Law No. 04/L-042 on Public Procurement in Republic of Kosovo (2011);
i) Law No. 02/L-37 on the Use Languages (2007);
j) CBK Regulation on the Leverage Ratio (2018);
k) CBK Regulation on Bank Liquidity Risk Management (2023);
l) CBK Regulation on Capital Adequacy of Banks (2018);
m) CBK Regulation on Foreign Exchange Risk (2012);
n) CBK Regulation on Net Stable Funding Ratio (2022);
o) CBK Regulation on the Internal Capital Adequacy Assessment Process (2018);
p) CBK Regulation on Reporting of Banks (2023);
q) CBK Regulation on Credit Risk Management (2019);
r) CBK Regulation on the Repurchase of Securities with the Central Bank of the Republic of Kosovo (2019);
s) CBK Regulation on Management of Interest Rate Risk in Banking Book (2016);
t) CBK Rule 17 on Derivative Financial Products (2002) implementing the Regulation on Insurance Matters.

At a strategic/policy level, the Concept Document for the Development of the Regulatory Framework for Financial Markets (2024) does not comprehensively address derivative transactions in consideration of the fact that it is unlikely that a market for commodity derivatives will be established in the near future. That being said, the Concept Document recommends further alignment with the EU regulatory framework, particularly with Directive 2002/47/EC on financial collateral arrangements and Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective

investment in transferable securities (including its Article 51 which addresses derivative transactions.)

1. QUESTIONS

A. Enforceability

1. Do OTC derivatives transactions face an enforceability problem (e.g., due to anti-wagering provisions etc., under local law)?

1.1. There are no legislative barriers, including any wager-related provisions, in Kosovo's regulatory framework which render OTC derivative transactions unenforceable, or which would otherwise directly undermine their validity.

1.2. As mentioned above, Kosovo has not adopted any standalone legislative acts dedicated to the regulation of derivative transactions. However, such transactions are recognised by the general legal framework, particularly under the recently adopted Law No. 08/L-304 on Banks and several regulations issued by the CBK pertaining to prudential requirements for banks, including capital adequacy, liquidity risk management, and netting arrangements. Furthermore, Rule 17 on Derivative Financial Products was adopted in 2002 within the framework of Insurance Regulations and establishes that licensed insurance companies and insurance intermediaries cannot enter into any derivative agreement without prior approval from the Banking and Payments Authority, the institution that preceded the CBK.

1.3. The Law on Banks permits licensed banks to engage in transactions involving futures, options, and other instruments linked to interest rates, foreign exchange, and commodity prices, as well as contracts for the future purchase or sale of foreign currencies. In addition, derivatives are integrated into the risk management framework as banks are explicitly required to address them within their risk management systems. Pursuant to Article 51, banks must develop and maintain written policies and procedures covering, forward contracts, swap agreements, futures, options, and other derivatives related to currencies, securities, and interest rates.

1.4. Despite this, derivative activity is not widespread in the domestic market, and the lack of a unified legal regime is likely to create some degree of legal or administrative uncertainty for parties wishing to engage in such arrangements.

2. Are there provisions (of a statutory, customary, common law etc. nature) in local law that provide for the enforceability of close-out netting both pre and post insolvency? Is close-out netting defined in addition to set-off under local

law? Does local law allow netting in accordance with the terms of the underlying contract (e.g. the ISDA Master Agreement; sample attached)? In the absence of close out provisions, are you aware of any current efforts to pass primary legislation in this regard?

2.1. Kosovo law supports the enforceability of netting arrangements both pre- and post-insolvency, although the term "close-out netting" is not itself explicitly used. Article 134(5) of the Law on Banks ensures that, in liquidation, effect shall be given to the termination provisions of eligible financial contracts, and that "the net termination value… shall be a claim" between the parties, which functionally captures close-out netting, as it allows mutual obligations under a financial contract (including explicitly repo agreements and master agreements) to be reduced to a single "net termination value" (defined as the net amount obtained **after setting off the mutual obligations** between the parties) which is enforceable as a claim in liquidation. This applies after insolvency has commenced.

2.2. With respect to the relationship between close-out and set-off netting, the Law on Banks does not define them separately. Instead, it distinguishes implicitly between set-off netting as a mechanism for offsetting mutual obligations (Article 134(4)(6)(7)), and contractual termination and netting under eligible financial contracts (Article 134(5)), which corresponds to close-out netting as previously mentioned.

2.3. Additionally, netting is allowed in accordance with the terms of the underlying contract, including standard master agreements (such as ISDA-type agreements). Article 134(5) explicitly includes master agreements within the definition of eligible financial contracts and provides that the net termination value is to be determined in accordance with such contracts. In addition, the CBK Regulation on the Leverage Ratio requires that derivative transactions be governed by a "single master netting agreement (MNA)" that must be legally enforceable and effective including in the event of default and bankruptcy or insolvency.

B. Scope

3. If there are netting provisions under local law, do they apply to all types of counterparties, e.g. financial institutions, corporates (commodity trading firms, utilities, manufacturers etc.), SPV, public law entities (municipalities, central bank, development banks etc.)?

3.1. Netting and set-off provisions as defined in the Law on Banks are not restricted to specified classes of counterparties. Article 134 provides that in determining rights and obligations during liquidation, effect shall be given to the termination provisions of eligible financial contracts between a bank and its "contractual counterparties," a term that may capture any party to such an agreement.

3.2. For derivative transactions, CBK Regulations, in particular the Regulation on Leverage Ratio, requires that netting must be managed under legally enforceable master netting agreements (MNAs) that create a single net obligation upon default, concluded between the entities counterparty in the derivatives transaction. These rules apply irrespective of the type of counterparty. The scope of eligible counterparties for netting under the Regulation on the Leverage Ratio explicitly includes public sector entities and multilateral development banks, which are classified within the qualifying category for credit risk treatments. While the Law on Bankruptcy restricts government institutions and publicly owned enterprises from being treated as "debtors" subject to its specific reorganization or liquidation procedures, these entities are not prohibited from being counterparties to a bankruptcy estate.

3.3. Additionally, the Law on the Payment System ensures the enforceability of netting within payment, clearing, and securities settlement systems between "system participants". A system participant is defined as “a member of a payment, clearing or securities settlement system or a party to an arrangement that establishes a system," including banks, insurance companies, pension funds, and other entities that exercise financial activities. Within this framework, the law mandates that the obligation of a system participant, a clearing house or a central counter-party to make payments to a system participant is to be netted.

3.4. Outside these frameworks, netting would primarily rely on general contract law and insolvency rules. Special Purpose Vehicles (SPV) are recognized in the regulatory framework with regard to liquidity risk alongside derivative transactions, but there is no reference to these as potential counterparties in netting arrangements.

4. Is the scope of eligible transactions restricted in any way, e.g. to certain products (rates, currencies, equities, credit etc.). What about commodity products (gas, coal, oil, metals, agricultural etc.) and “new” products (emissions allowances, freight rates, weather variables etc.)? Is there a different treatment for financially settled transactions as opposed to physically settled ones (i.e. where the underlying product is delivered)?

4.1. To the extent that derivative transactions are covered by local law, there is no prohibition on what products can be covered by them, albeit they are largely used for simple transactions and there is no developed market for “new” products or otherwise sophisticated arrangements.

4.2. Pursuant to Article 11(3) of the Law on Banks, banks may be authorised to engage in buying and selling for a bank’s own account or for the account of customers of money market instruments, debt securities, futures and options, and other instruments relating to debt securities, interest rates, foreign exchange rates, and commodity prices.

4.3. The Law on Banks further defines eligible financial contracts to include a currency or interest rate swap agreements, basis swap agreements, "commodity swap agreements, any derivative or option agreement, and any agreement of a kind prescribed by regulation of the CBK.

4.4. For regulatory purposes, particularly the calculation of the net stable funding ratio, the CBK categorises derivatives into interest rate contracts, foreign exchange contracts and contracts relating to gold, and other “contracts of a similar nature... that relate to other referent items or indexes". The CBK Regulation on Net Stable Funding Ratio also distinguishes between "physically traded commodities" and "commodity derivatives,". However, there is no comprehensive differential legal treatment for financially settled transactions as opposed to physically settled ones beyond these asset classifications and their stable funding factor requirements.

4.5. The CBK Regulation on Bank Capital Adequacy also recognizes climatic variables, freight rates, and emission allowances in its list of financial instruments to be taken into account in the calculation of required stable funding.

C. Foreign Law

5. Are there any issues with foreign law governed contracts (mainly English and New York law) when used for cross-border transactions into your jurisdiction? For example, some countries may restrict the use of foreign law and language documents when it comes to contracting with local public law or state entities.

5.1. Kosovo’s regulatory framework follows the principle of party autonomy. Under Article 75 the Law on Private International Law, parties to cross-border transactions are generally free to choose the applicable law, subject to restrictions when public interests are involved. The choice of law may be made expressly or inferred from the terms of the agreement and may apply to the contract in its entirety or be limited to particular provisions. Where no choice of law is made, the applicable law is determined depending on the type of agreement being entered into, through connecting factors such as the place of performance or the country most closely connected to the contract.

5.2. The application of a foreign law can be refused if it conflicts with mandatory provisions of Kosovo law or with public policy (*ordre public*). Pursuant to Articles 14 and 15 of the Law on Private International Law, mandatory national rules protecting the public interest (including political, social, and economic structures) prevail over any other applicable law. Courts may exceptionally give effect to overriding mandatory provisions of another closely connected state, after considering the purpose and consequences of applying such rules. Furthermore, a provision of foreign law will not be applied if its effects "would be manifestly contrary to the public order of the Republic of Kosovo".

5.3. Regarding the use of foreign languages in documents with state or public relevance, the official languages in Kosovo are Albanian and Serbian and public organs conduct administrative proceedings and issue official documentation in these languages. In the banking sector, the documents provided for in the bank license application must be provided in one of these languages. However, in public procurement proceedings, documentation (tenders submissions, requests for participation, or other required documents that are filed in procurement), may be submitted by operators in Albanian, Serbian, or English.

6. Are financial collateral arrangements governed by foreign law recognized under local law? In particular, would title transfer and security interest arrangements (under English and New York law) be enforceable (e.g. ISDA credit support documentation)? Please also note any issues in relation to the collection of collateral and permissibility of such an arrangement in respect of derivative transactions under a standard form of ISDA credit support annex.

6.1. Under the Law on Private International Law, agreements governed by foreign law are generally recognized on the basis of party autonomy. This extends to financial collateral arrangements, including both title transfer structures and security interests. As such, as a matter of contract, these arrangements are in principle valid and enforceable, subject to applicable limitations as detailed in the answer to Question 5 of this Report.

6.2. The proprietary implications of financial collateral are governed by the law of the location of the asset. When the collateral is located in Kosovo, Kosovo law determines the existence, content, transfer, and third-party effects of the security or ownership right. In these cases, the effectiveness of a title transfer or security interest even when governed by foreign law would still depend on compliance with Kosovo law, including any applicable registration requirements. Title transfer arrangements, since they involve a transfer of ownership are subject to less local registration/perfection rules. Security interests, however, are subject to Kosovo property law requirements, and failure to comply may affect their opposability to third parties. In general bankruptcy, a security interest may be rendered unenforceable if an applicable law requires the registration of the lien in any public registry; and the creditor had not, as of the commencement of bankruptcy proceeding, taken all steps necessary to provide such notice.

6.3. In the banking sector, the Law on Banks provides that netting agreements are enforceable upon default, regardless of insolvency and protects set-off netting and title transfer financial collateral arrangements, including in the context of moratoriums and liquidation. In liquidation, whether through a Repo or a Pledge, a foreign counterparty would be protected because a Kosovo-based liquidator is required by Article 134 to respect the netting calculations defined in that foreign-law contract.

6.4. There is a degree of uncertainty as to how courts in Kosovo may characterize certain collateral structures and their enforcement, particularly in complex or cross-border

arrangements. The outcome would likely depend on the nature of the underlying asset and the specific form of collateral involved. Neither the general law No. 08/L-256 on Bankruptcy nor the Law on Banks provides explicit statutory treatment for collateral in derivative transactions.

7. Is there any observation on the local regime for foreign (e.g. English, New York) judgments and foreign arbitral awards?

7.1. The recognition of foreign judgments and arbitral awards is governed by Law No. 08/L-028 on Private International Law and Law No. 02/L-75 on Arbitration, respectively.

7.2. Under Article 158 of the Law on Private International Law, a foreign judgment (including court settlements and other decisions that are considered equivalent to a court judgment in the relevant state) does not have legal effect in Kosovo unless it is recognized by a competent Kosovo court. The court does not re-examine the issues of fact but verifies whether specific legal conditions are satisfied (Articles 160-165). Once recognized, the foreign judgment is treated as equivalent to a domestic judgment and may be enforced. Recognition may be refused on certain grounds, such as cases where national courts would have had exclusive jurisdiction, where the foreign court exercised jurisdiction in a manner considered excessive, where the judgment conflicts with an existing decision, or where recognition would violate public policy (ordre public). In addition, under Article 166, recognition must be refused if the defendant was not afforded adequate procedural protection, such as proper notice or the opportunity to present a defence.

7.3. As for arbitral awards, the Article 39 of the Law on Arbitration regulates the recognition and enforcement of foreign arbitral awards in Kosovo and provides that arbitral awards rendered outside Kosovo are recognized as binding and enforceable by Kosovo courts, provided they go through a formal recognition process. The request must be submitted to the Commercial Court and the applicant is required to provide the original or a certified copy of the arbitral award and the arbitration agreement. Recognition and enforcement may be refused under specific conditions, typically upon request of the opposing party. These include incapacity of a party or invalidity of the arbitration agreement, lack of proper notice or inability to present a case, excess of jurisdiction by the arbitral tribunal, irregularities in the composition of the tribunal or procedure, or if the award is not yet binding or has been annulled or suspended in the country of origin. In addition, the court may refuse recognition ex officio if the dispute is not arbitrable under Kosovo law or if recognition or enforcement would violate Kosovo public policy.

7.4. When foreign legal documents like judgments or arbitral awards are used for enforcement, they must be accompanied by a certified translation of the foreign judgment into the official language of that court or a duly certified translation of the arbitration agreement and the arbitral award into an official language of Kosovo.

7.5. Practically speaking, arbitral awards obtained in accordance with English or New York law are generally enforceable in Kosovo provided the above conditions are met.

D. Other

8. Does local law/language standard documentation (sometimes referred to as "local ISDA agreement") exist or do market participants use bespoke documentation for domestic transactions (as opposed to cross-border transactions)? Does a local repo document or GMRA (which is the global MA for securities repurchase agreements) annex exist?

8.1. Domestic transactions for derivative instruments are not common. In practice, they are generally used for simple cross-border transactions (such as interest swaps) and are governed by master agreements. We are unaware of any standardized local documentation (local ISDA).

8.2. Transactions between banks and the Central Bank of Kosovo (CBK) are regulated by the Regulation on repurchase agreements with the CBK. However, the Financial Collateral Directive has not been transposed into the national legal framework. Consequently, there is no positive ICMA opinion and Kosovo is unable to enter into Global Master Repurchase Agreements (GMRA) with counterparties in international financial markets. As such, Kosovo does not rely on the GMRA but on locally defined agreements. Repo transactions with the Central Bank are conducted under a General Master Repurchase Agreement authorized by the CBK. There is no indication in the regulation that a GMRA annex is formally used or incorporated.

9. Are there efforts underway to enact legislation on bank resolution?

9.1. While no standalone legislation is known to be in development, bank resolution is comprehensively covered by the new Law on Banks, which has been in force since February 2026.

9.2. The Law on Banks establishes a framework for bank recovery and resolution to avoid adverse effects on the financial system and ensure the continuity of critical functions of banks. In this regard, it has adopted a more comprehensive and proactive approach, as opposed to the previous law which primarily relied on receivership to facilitate liquidation. Under Chapter III of the Law on Banks, banks are required to prepare and maintain a recovery plan specifying "measures to restore its financial position following a significant deterioration of its financial situation." If a bank's financial health deteriorates or it violates capital requirements, the CBK may apply early intervention

measures, for instance, by compelling the board to implement recovery measures, replacing management, or appointing an official administrator for up to one year.

9.3. When a bank is officially failing or likely to fail and private measures cannot save it, the Central Bank acts as the resolution authority to protect the public interest. The primary tools available as set out in Arts. 107-120 of the Law on Banks include selling the bank's business, transferring critical functions to a temporary bridge institution, moving bad assets to a separate management vehicle, and a bail-in tool under which authorities can write down or convert the claims of shareholders and creditors to cover losses, so that they bear the costs of any failure. These tools may be applied separately or in combination with each-other.

9.4. In the event of a crisis where these tools are insufficient, the Ministry of Finance may provide temporary public financial support as a final resort, but only after shareholders and creditors have already absorbed a significant portion of the losses. In support of these initiatives, the new law provides for the establishment of a National Resolution Fund to be financed by the banking sector. As of now, the fund has not operationalised as the CBK has yet to adopt the specific regulation required to establish it. Once established, safeguards are in place to ensure that insured deposits are never reduced and that no creditor is left worse off than they would have been in a standard liquidation.

9.5. The Law on Banks also grants the CBK the authority to close out and terminate financial contracts or derivatives contracts during resolution procedures.

10. Any other issues under local law (e.g. conflict of law rules; jurisdiction issues (e.g. arbitration recommended)?

No.

Sincerely,

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