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**No. 9367 dated 7.4.2005**

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### **ON THE PREVENTION OF CONFLICTS OF INTEREST IN THE EXERCISE OF PUBLIC FUNCTIONS**

Amended with law no.9475 dated 9 February 2006 published in the Official Journal no. 19 dated 9 March 2006) and with law 9529 dated 11 May 2006 (Published in the Official Journal no. 56 dated 8 June 2006)

**In reliance on articles 78 and 83 point 1 of the Constitution, on the proposal of the Council of Ministers,**

#### **THE ASSEMBLY OF THE REPUBLIC OF ALBANIA**

**D E C I D E D :**

#### **CHAPTER I GENERAL PROVISIONS**

##### **Article 1 Purpose**

The purpose of this law is to guarantee an impartial and transparent decision-making in the best possible interest of the public and of its trust in public institutions through preventing conflicts between public interests and private ones of an official in the exercise of his functions.

##### **Article 2 Object**

The object of this law is the definition of rules, means, manners, procedures, responsibilities and competencies for the identification, declaration, registration, treating, resolution and punishment of case of conflicts of interest.

##### **Article 3 Definitions**

In this law, the following terms have this meaning:

1. "Conflict of interest" is a situation of conflict between the public duty and the private interests of an official, in which he has direct or indirect private interests that affect, might affect or seem to affect the performance, in an incorrect way, of his public responsibilities and duties.
2. "Performance of duties and responsibilities in a correct way" is the way of performing duties and responsibilities that take material form in a decision-making, in which the public official acts in conformity with the law, with honesty, impartiality, responsibility, dedication, on time, in the defense, in every case, of the public interest and the lawful rights of private persons, as well as for the preservation and strengthening of the credibility and dignity of the institution where he works, the state in general and the figure of the official.

3. "Performance of duties and responsibilities in an incorrect way" is the case when at least one of the requirements of point 2 of this article is not met because and only because of the possible influence of the private interests of the official according to point 1 of this article.

4. A conflict of interests defined in point 1 of this article includes several other definitions of different kinds of its appearance, as follows:

a) "actual conflict of interest" is a situation in which the private interests of the official affect, have affected or might have affected the performance of his official duties and responsibilities in an incorrect way;

b) "apparent conflict of interest" is a situation in which the private interests of the official seem, on their face or by their form, as if they have affected, affect or might affect the performance of his official duties and responsibilities in an incorrect way, but, in fact, the effect has not occurred, is not occurring or cannot occur;

c) "potential conflict of interest" is a situation in which the private interests of the official might in the future cause an actual or apparent conflict of interest to appear, if the official were to be included in certain duties or responsibilities;

ç) "case by case conflict of interest" is a situation with a conflict of interest, in one of the three above kinds, which appears case by case and is related to a particular decision-making;

d) "continuing conflict of interest" is a situation in which a conflict of interest might appear repeatedly and/or often in the future.

5. "Active ownership of shares or parts of capital" is the full exercise of all the rights that come from ownership of shares or parts of capital.

6. "Passive ownership of shares or parts of capital" is a situation in which the owner keeps the right to benefit from the civil fruits of ownership but may not himself exercise any other civil action over this property. All other actions (administration, possession, alienation etc.) are performed by a person trusted by the owner, based on an agreement entered into between them that specifies the criteria for enjoying the fruits of the assets, as well as the other essential rights and obligations. The trusted person does not exchange any opinion or any information with the owner and is not affected by him for the performance of these actions with the assets. The trusted person should act only for the good of the preservation and growth of the assets, with the same motivation as if these actions were performed by the owner himself. The restrictions on selecting the trusted person are given in this law. In any case, the parties retain the right to dissolve this agreement. The owner has the right to retake at any time the rights to perform other civil actions with the ownership when, according to this law, the conditions that dictated this action no longer exist. The other rights and obligations not mentioned above are regulated by the Civil Code of the Republic of Albania.

7. "Official" is every person who performs duties and exercises public functions according to the definition of letters "a", "b" and "c" of point 1 of article 4 of this law.

8. "Public institution" is every subject defined in letters "ç" and "d" of point 1 of article 4 of this law.

9. "Superior of an official" is another official, an organizational unit within the public institution, the highest director of the public institution or an organ of this institution that has the competency directly to appoint, manage, order, evaluate or control this official or to which the competencies designated for the implementation of this law have been given.

10. "Superior institution" is a public institution (or organ of a public institution) that, according to the laws in force, has the competency to regulate, appoint, manage, order, evaluate or control another public institution (or organ of it) in the latter of which an official performs his duties and exercises his competencies. The superior role is exercised in conformity with the laws that

regulate the organization and functioning of the public institutions. Regardless of whether a superior institution may have one of the above competencies, it may not be considered such if this would lead to the infringement of the constitutional principles of the separation of powers and institutional autonomy.

11. "Person related to an official" is every natural or juridical person who turns out to have or to have had ties of interest with the official, a property interest or a non-property personal interest according to article 5 of this law.

12. "Principal of proportionality" is the relation between the importance of the duties, responsibilities and competencies of an official or public institution and the measures for the prevention of a conflict of interests, a relation in which the more important the duties, responsibilities or competencies of the official are, all the more are the restrictions of the interests of the official and all the more severe are the punishments, and the rules, manners, means and procedures for the prevention of conflicts of interest by the public institutions are defined in an even more detailed manner.

13. "Natural commercial person" is used in the meaning defined by the commercial legislation.

#### **Article 4** **Field of Application**

1. The provisions of this law define rules that are obligatory for implementation by:

- a) a) every official, when he takes part in a decision-making for:
  - i) administrative acts and contracts;
  - ii) acts of the judicial organs, notarial acts, acts for the execution of executive titles by the execution organs and acts of the prosecutor's office;
  - iii) normative acts, and only those laws that create juridical consequences for individually specified subjects;
- b) every official of the state institutions, central or local, and every employee of the subjects defined in letter "d" or representatives of the subjects specified in letter "ç" in the subjects mentioned in letter "d," when he takes part in a decision-making about contracts that create juridical civil relations with these subjects as a party;
- c) every official or employee who is in positions, has responsibility, performs duties or exercises competencies of concrete kinds expressly defined in this law in one of the subjects of letter "ç" or "d" of point 1 of this article;
- ç) every state institution, central or local;
- d) every organ or subject created and/or under the subjects of letter "ç," including state or local enterprises, commercial companies with a controlling participation of state or local capital, non-profit organizations and other juridical persons controlled by the subjects of letter "ç" or by the subjects of this letter themselves;
- dh) related persons, to the extent and in the manner defined in this law.

2. For purposes of this law:

- a) decision-making for an act will be considered, in every case, the last moment of the decision-making process during which the final content of the act is decided;
- b) decision-making for an act will also be considered those preliminary moments of decision-making according to letter "a" of this point, which are fundamentally important and determinative for the final content of the act;

c) an official has fundamental and definitive competency for any act if his participation in, effect on and position in the decision-making for this act according to letters “a” or “b” of this point determine the content of the act.

## **Article 5**

### **Private Interests**

1. The private interests of an official are those interests that conform with, contain, are based on or come from:

- a) property rights and obligations of any kind of nature;
- b) every other juridical civil relationship;
- c) gifts, promises, favors, preferential treatment;
- ç) possible negotiations for employment in the future by the official during the exercise of his function or negotiations for any other kind of form of relationships with a private interest for the official after leaving the duty performed by him during the exercise of duty;
- d) engagements in private activity for the purpose of profit or any kind of activity that creates income, as well as engagements in profit-making and non-profit organizations, syndicates or professional, political or state organizations and every other organization;
- dh) relationships:
  - i) i) of family or living together;
  - ii) of the community;
  - iii) ethnic;
  - iv) religious;
  - v) recognized [relationships] of friendship or enmity;
- e) prior engagements from which the interests mentioned in the above letters of this article have arisen or arise.

2. The restrictions of private interests specifically defined in this law are applied together with the restrictions of the same private interest expressly defined in another law, according to the principle that the restriction applied is the one that is more severe.

3. If in this law, in connection with a specific private interest of an official, no quantitative limit of this interest has been defined, while in another law, with the purpose of preventing a conflict of interests, the same interest is expressly restricted according to a quantitative boundary, then that limitation is also applied for this law, and vice versa.

4. Every kind of private interest of an official of those defined in this article, every tie or inter-relationship between two or more of them is considered a cause for the emergence of a conflict of interest if because of this interest or because of the going outside of the obligatory restrictions of this interest, a situation with a conflict of interests appears, according to the definitions of points 1 and 4 of article 3 of this law.

## **Article 6**

### **Manner of Performance of Public Duties and the Obligation to Prevent Conflicts of Interest**

1. On his election or appointment and on an on-going basis, an official has the duty to prevent and to resolve himself, as soon as possible and in the most beneficial manner possible, every situation of a conflict of his interests. If the official is not convinced of the existence of a conflict of interests connected to him, he should consult with his superior as soon as possible.

2. Every superior and superior institution should take all necessary measures to prevent and resolve cases of conflicts of interest.

## **CHAPTER II PROCEDURES AND MEANS FOR IDENTIFYING AND REGISTERING CONFLICTS OF INTEREST**

### **Section 1**

#### **Identification and Registration of Interests under Conditions of Case by Case Conflicts of Interest**

### **Article 7**

#### **Case by Case Declaration of the Private Interests of an Official**

1. Every official, in the exercise of his public duties or the exercise of his competencies, on the basis of his knowledge and in good faith, is obligated to make a self-declaration in advance, case by case, of the existence of his private interests that might become the cause for the emergence of a conflict of interests.

2. The case by case declaration of private interests is done by the official whenever this is requested by the superior or by the superior institution. As a rule, the declaration should be requested and made in advance. When this is not possible or when it has not happened, the declaration may be requested and made as quickly as possible.

3. The self-declaration or the declaration on request is as a rule done in writing, when the official is included in a decision-making for an act. The declaration in writing is not essential when verbal declarations of the official can be registered and documented, according to the procedures defined by law and/or in the internal rules of the public institution where the official exercises his functions.

4. A declaration of interest for the cases defined in letter “dh,” “iii,” “iv” and “v” of point 1 of article 5 of this law, as well as the belonging to political organizations within the meaning of letter “d” of point 1 of article 5 of this law, is done only with the free will of the official.

### **Article 8**

#### **Identification of Private Interests of an Official by Third Persons**

The offering of information on private interests of an official is:

- a) a duty of every other official who has knowledge, in particular of his superior;
- b) a duty of every public institution that has knowledge;
- c) the right of interested parties who are affected by the actions of the official;
- ç) the right of every person who has knowledge and who has an interest in general and which comports with the purpose of this law.

### **Article 9**

#### **Other Sources of Information about Private Interests of an Official**

Other sources of information about private interests of an official may also be

- a) public or private registers kept in accordance with the legislation in force;
- b) data from the media;
- c) data or complaints from the public;
- ç) every other lawful source.

## **Article 10**

### **Active Role of Public Institutions in Collecting Information about the Private Interests of an Official**

1. The authority or structure responsible for the implementation of this law according to article 41 point 2 of it, in conformity with the amount, manner and order defined in this law and/or in substatutory acts and internal rules of a public institution issued in implementation of this law, is authorized, in the name of the respective institution, actively:

a) to collect from lawful sources of information all data about the private interests of an official;

b) to accept information obtained in a lawful manner;

c) to verify the credibility of this information;

ç) to make known to the official information obtained about him;

d) to give the official the possibility to prove the contrary if the official so requests;

dh) to record the private interests of the official.

2. No later than 30 days from the entry of this law into force or from the date when work relations begin at a public institution, every official is obligated to issue an authorization in favor of the public institution where he exercises his functions, through which he authorized this institution to check and obtain personal data about the official, wherever they are recorded. This authorization also has the same value for every superior institution.

3. According to the hierarchy, every superior institution is also authorized actively to perform all the actions defined in point 1 of this article for the heads of the other institutions in its jurisdiction.

## **Article 11**

### **Case by Case Registrations of Conflicts of Interest**

For every case of the appearance of a case by case conflict of interests, the identity of the official, his private interests, the reason for a conflict of interest, the essence of the conflict, the interested parties, the source of the data, the manner in which it was received and verified, and the decision taken based on the data, also including the decisions taken by the superiors, the superior institutions or the courts, are registered.

The

registration is done by the authority responsible according to article 41 of this law.

## **Article 12**

### **The Right of the Public to Become Aware of Registrations about the Private Data of Officials, in Cases of a Case by Case Conflict of Interests**

1. Abrogated.

2. For purposes of an administrative proceeding, the registrations of interests are put at the disposition of the parties to the proceeding in a reasonable time, according to the time periods and procedures defined in the Code of Administrative Procedures.

3. The provisions of points 1 and 2 of this article are not applicable to meetings of the Council of Ministers or closed meetings of the Assembly, the council of a commune or municipality and other central or local collegial organs.

4. The registrations are always available in a judicial proceeding or arbitration or for a parliamentary investigative process.

### **Article 13**

#### **Special Procedures**

1. The definitions of point 2 of article 7 of this law are not applicable to the President of the Republic, except in cases when he exercises functions as a member of a collegial organ or which have to do with a judicial proceeding against him.

2. For judicial proceedings and parliamentary investigations, the identification and registration of interests according to this chapter is done only for those actions that are performed before and outside of a concrete civil judicial proceeding, a criminal proceeding or a parliamentary investigation. Within the proceeding, the identification and registration of the interests is performed according to the rules defined, as the case may be, in the codes of civil and criminal procedure, or the legislation that regulates the process of a parliamentary investigation.

### **Section 2**

#### **Periodic Registration and Identification of Private Interests**

### **Article 14**

#### **Officials who Have the Obligation to Make a Periodic Declaration of Private Interests**

1. All the officials defined in point 1 of article 3 of law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees,” – **applicability to the MPs** - together with the categories of officials defined in articles 27 to 33 of this law and the officials of management level of the Directory of Coordination for the Fight against Money Laundering, are obligated to make a periodic declaration of interests to the High Inspectorate of the Declaration and Audit of Assets.

1/1. The declaration before beginning work and the declaration after leaving work are special cases of the periodic declaration.

2. Abrogated.

3. For purposes of the periodic declaration, among the persons related to an official, only the spouse and adult children have the obligation to make a declaration.

4. Other persons related to an official according to this law make a declaration of interests on the request of the Inspector General when this is considered essential by the latter for the needs of verification of the declaration of the official. A trusted person within the meaning of articles 3 point 6 and 38 point 3 of this law is considered a related person.

5. The declaration of interests is accompanied by a special authorization, in which the declarant authorizes the organs defined in this law to verify all subjects, private and public, inside and outside of the country, about the data of the declaration.

### **Article 15**

#### **Types of Private Interests that are Declared Periodically**

1. The private interests that are declared periodically are:

a) assets, financial obligations and all requirements defined in article 4 of law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees;”

b) those defined in letter “c” of point 1 of article 5 of this law, excluding promises and favors, including the identity of the natural or juridical person from whom the gifts or preferential treatments come or by whom they are created. Gifts or preferential treatments are not declared when their value is less than 10 000 (ten thousand) lek, or when two or more gifts or preferential treatments given by the same person together do not exceed this value during the same declaration period;

c) those defined in letter “d” of point 1 of article 5 of this law, including every kind of income created by this activity or engagement.

2. The private interests defined in letter “dh”, “iii”, “iv” and “v” of point 1 of article 5, as well as the belonging to political organizations within the meaning of letter “d” of point 1 of article 5 of this law, are not declared and are not required to be declared.

3. Private interests of the kinds other than those defined in article 5 of this law may be required to be declared periodically, if this is possible and appropriate for subcategories of interests within these types, according to the definitions of the Inspector General.

4. When the official transfers the rights of active ownership of shares or parts of capital according to point 3 of article 38 of this law, for so long as this situation continues, he declares in the periodic declaration only the situation of those rights before the transfer and the fruits of the assets that he has effectively received during the year for which the declaration is made.

5. In the case of a declaration before beginning work, in one of the positions that they have the obligation to make a periodic declaration, only the following are declared:

a) the interests defined in letter “a” of point 1 of this article, collected up to the day of beginning the duty and the sources of their creation;

b) the interests defined in letter “d” of point 1 of article 5 of this law, but only those engagements and activities that exist on the date of beginning work, including every kind of income created from these engagements or activities from the date 1 January until the date of beginning work of the year of the declaration.

6. A declaration after leaving the function, in the same meaning of this term expressed in article 8 of law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees,” is made only once, except when the official starts work in another duty that, according to this law, continues to carry the obligation to make a declaration.

7. In the period declaration, only the changes that occurred in the private interests previously declared according to point 1 of this article, the interests that arose during the year being declared and all income earned during the entire year for which the declaration is made are given.

All officials and other related persons who have the obligation to make a declaration according to points 1, 2 and 3 of article 14 of this law are obligated to submit their declaration, sealed in an envelope, by 31 March of each year, to the responsible structure or authority of the public institution provided in letter “b” of point 2 of article 41 of this law.

For the official mentioned in point 6 of this article, and when they do not have the obligation to make a declaration, point 7 is applied for the period from the last declaration until the date of leaving. The declaration is made no later than 15 days from the date of leaving the function. The declaration before beginning work is submitted no later than 30 days from the date of beginning work



**Article 16 (Abrogated)**  
**Informing the Public about the Declarations of Interests**

**Article 17**  
**Verification of the Declaration of Interests**

1. The verification of the declaration of interests is done only for the truthfulness and exactness of the data contained in the declaration. The verification includes preliminary processing, arithmetic and logical checking, as well as a full audit, in the same methodological meaning of these terms used in law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees.”

2. A full audit to verify the truthfulness and exactness of the data contained in the declaration is done:

- a) every two years for the officials defined in articles 27, 30 and 33 of this law;
- b) every three years for the officials defined in article 29 (only for the mayors of municipalities or communes with over 10,000 residents and for the chairmen of regional councils); in articles 31 and 32 (only for officials of the high management level defined in those two articles); for prefects, appellate judges, appellate prosecutors and prosecutors from the Office of the General Prosecutor;
- c) every four years for deputies, for the heads of central or local state institutions, and members of the collegial organs of these institutions not included in the above letters of this point.

3. For all other categories of officials subject to the periodic declaration (including those defined in the above letters of point 2), the audit is performed each year for a number of at least 4 percent of the total number of declarations. The selection of the declarations is done by lot, in the presence of the representatives of syndicates, various groups of officials (if they exist), the media, civil society and representatives of the parliamentary groups. The selection of an official/declaration in one year does not exclude the official/declaration from the lots for the next year.

4. For the cases defined in point 2 letters “a,” “b” and “c” and in point 3 of this article, the double performance of an audit of the same declaration of the same official made in the same year should be avoided, excluding cases of point 5 of this article.

5. A full audit or re-audit of a declaration is done whenever it is considered necessary by the Inspector General, when he has data, from lawful sources, that cast doubt on the truthfulness and exactness of the data contained in the declaration of an official, or when there is a discrepancy resulting from the arithmetic and logical audit showing that the resources do not cover or do not justify the property rights of the declarant.

**Article 18**  
**Administrative Investigation**

1. When from the results of a verification of a declaration, it turns out that the resources do not cover or justify the assets, or when for a declaration, regardless of whether it has passed to a full audit or not, there are data from lawful sources of the hiding of interests and any other piece of private data that is obligatory to be declared, or false declarations, the Inspector General may begin an administrative investigation.

2. The collection of data, the performance of an audit and an administrative investigation are done in conformity with the Code of Administrative Procedures.

**Section 3**  
**Joint Provisions for the Two Systems**  
**of Identification and Registration of Interests**

**Article 19**  
**Connection between the Two Systems**  
**and the Right of Information**

**Protection for the Giving of Information**

1. Declaration of interests, according to sections 1 and 2 of this chapter and all documents that accompany them are official documents. The data obtained from the making of a declaration according to this law are available to the public, in conformity with law no. 8503 dated 30 June 1999 “On the right to get information about official documents”

2. The case by case system and the periodic system of the identification and registration of interests are built up and applied in such forms and means that they assist one another for:

- a) the most fruitful prevention possible of conflicts of interest;
- b) the fullest and easiest access possible for the public to the data of the interests registered.

**Article 20**  
**Protection for giving of Information**

2. Every official or every subject who offers well-grounded information about cases of conflicts of interests not declared by the subjects of this law earn, as the case may be, a special administrative protection as follows:

a) the official about whom the information is given may not exercise any administrative competency with punitive effect over the informing subject nor be an obstacle for the earning of lawful rights by the latter because of the giving of the information;

b) when the taking of a measure against the subject who informs is determined by another legal reason, it is taken only by an official who is in a vertical relationship of dependency over the official about whom the information was given, except when the the administrative measure is taken under the conditions of article 37 point 6 of this law.

**CHAPTER III**  
**RESTRICTION OF PRIVATE INTERESTS FOR THE PREVENTION OF CONFLICTS**  
**OF INTEREST IN PARTICULAR QUESTIONS AND CASES**

**Section 1**  
**Restrictions of the Private Interests of an Official**  
**for Preventing Case by Case Conflicts of Interest for Particular Instances**

**Article 21**  
**Prohibition of Entering into Contracts**

1. Any natural person may not enter into a contract with a public institution, when this person coincides with an official in any of the functions defined in chapter III , section 2 of this law, or any commercial company, partnership or simple company in which this official owns, actively or passively, shares or parts in a capital in any amount.

The following are excluded from the implementation of this disposition:

a) civil servants of the middle and low management level, specialists, judges and prosecutors of the first instance court and of the appeal court;

b) civil servants of the local government units, that, for this prohibition, are treated according to point 2 of this article.

2. When the official is mayor or deputy mayor of a municipality or commune or the chairman of a regional council, member of the respective council or official of a high management level of a unit of local government, in the relative meaning of that term for the relevant laws, the prohibition according to point 1 of this article, because of the private interests of the official, specified in this point, is applied only in the case of entering into contracts, as the case may be, with the municipality, commune or region where the official exercises functions. This prohibition is applied even in the cases of entering into contracts with public institutions, under the dependancy of this unit.

3. Notwithstanding the definitions in points 1 and 2 of this article, a contract may not be entered into between the public institution and any public institution under this institution on the one side and a natural, civil or commercial natural person, or a juridical person, or any other form of partnership on the other side, when the following conditions are met at the same time :

a) the official, that exercises his function in this public institution, has fundamental and definitive competence in the decision-making process in the evaluation of the offerors and the offers and the determination of the terms of the contract;

b) the official has private interests according to the definition of article 37 of the Code of Administrative Procedures and/or article 709 of the Civil Code or has an interest in the types of interests specified in points 1 and 2 of this article.

4. Excluded from the prohibitions of points 1, 2 and 3 of this article are cases when the entering into of the contract:

a) has to do with the employment of the official himself in the public institution or with his legal status;

b) has to do with the receipt by the official of a compensation that is offered by the public institution or bodies and subjects created by or under the control of the public institution, when the services have been contemplated in the object of activity of the public institution, and on the condition that the service is not given to the official in a manner that favors him or as preferential treatment in relation to the others;

c) is based on separate laws for public purposes or for special treatment of various categories of officials;

ç) is essential for the performance of the public function and there is no other alternative;

d) has to do with a gift, favor or preferential treatment, in any case without counter-payment, that the subjects defined in point 1 letters "a" and "b" and in point 2 of this article do in favor of a public institution.

5. In the exceptional case of letter "ç" of point 4 of this article, the public institution that enters into the contract, according to the laws and substatutory acts that regulate its functioning:

a) asks for the consent of the nearest superior institution;

b) notifies the High Inspectorate and makes the contract public, in the absence of the institution or when receiving consent conflicts with the principle of the independence of the institutions.

6. For the officials defined in article 30 of this law:

a) it is prohibited to enter into contracts between the official, whether as a civil or natural commercial person, and any person in relation to whom the official has an interest of the kind defined in letters "a", "b", "c", "ç", "d", "dh", "i" (up to the second level) and "e" of point 1 of

article 5 of this law, on the one side, and commercial operators-subjects who exercise activity in the sphere of the jurisdiction or influence of this authority, on the other side;

b) excluded from this prohibition are contracts entered into that are related to the receipt of services by the official or related persons from these operators and supplies that related persons may give to these operators, but on the condition that the service is not given to the official or to persons related to him or the supplying of the latter is not done in a special manner or with special or individually preferential treatment because of this connection, in relation to their other clients and/or beneficiaries. If a contract is entered into in conformity with this permission, the non-opposition of the respective regulatory entity is always required in advance, based on an official and reasoned request, and the contract is always made public by the regulatory entity itself. The absence of a response within 30 days by the regulatory entity is considered non-opposition.

## **Article 22**

### **Prohibitions on Receiving Income Because of a Particular Function**

1. It is prohibited for every official to own, in an active manner, shares or parts of capital, or any other kind of benefit that does not come from passive ownership, from commercial companies that have been exempted from or have received reductions in customs or tax obligations, or when these companies exercise activity in free zones, if the official has fundamental and definitive competency in granting any of the above-mentioned treatments to the company.

2. An official who is the representative of a public institution in the ownership of shares or parts of the capital of commercial companies is during the exercise of this function prohibited from:

a) the receipt, directly or indirectly with the intermediation of third parties, of every financial benefit, including the creation of a future financial resource, that is related to or gained because of his duty as representative;

b) the acceptance in his favor of gifts or parts of capital from the company, its members or organs;

c) the purchase of parts of capital, shares or assets of these companies;

ç) direct or indirect benefits from suppliers or clients of these companies.

## **Article 23**

### **Prohibition of Receiving Gifts, Favor, Promises or Preferential Treatment**

1. It is prohibited for an official to seek or to accept, directly or indirectly, gifts, favors, promises or preferential treatment, given because of his position, from an individual, natural person or private juridical person, when this may cause the emergence of a conflict of interest of any kind.

2. Excluded are only the cases defined in acts of the competent organs that permit the receipt of gifts or preferential treatment for reasons of protocol.

3. An official to whom gifts, favors, promises or preferential treatment is offered according to point 1 of this article should:

a) refuse them and, if the offer was made without his knowledge or in advance, return it to the offeror or, if this is impossible, surrender it officially to his superior or to the nearest superior institution;

b) try to identify the person who offers them and his motives and interests;

c) in any case, immediately inform his superior or the nearest superior institution about the gift, favor, promise or preferential treatment offered or given, the identify of the offeror, when he can be identified, and the circumstances, as well as giving his judgment about the possible reasons for this event and its relations to his duties as an official;

ç) continue the exercise of duty normally, especially for the problem for which the gift, favor, promise or preferential treatment was offered, and continually keep his superior informed about every possible development;

d) if the offering or granting of the above-mentioned goods is related to the commission of a criminal offense, report it to the organs competent for criminal prosecution.

#### **Article 24**

##### **Restriction of the Interests of Persons Related to an Official**

1. The circle of persons related to an official, in implementation of the prohibitions defined in article 21, points 1, 2 and 6 and in article 22 of this law, consists of the spouse, adult children and parents of the official and the spouse.

2. In addition to those defined in point 1 of the article, the circle of persons related to an official, in implementation of article 23 of this law is also broadened to every natural or juridical person who, in connection with the gift, favor, promise or preferential treatment, plays the role of intermediary or person who exchanges the interests arising from this action.

3. The prohibitions and restrictions for an official defined in this section are also applicable to persons related to him, in conformity with the above points of this article.

4. The restrictions on ownership of shares or parts of capital are also the same as those defined in article 21 of this law:

- a) for every person related to the official, each separately;
- b) for the entirety of the interests of the official and persons related to him;
- c) for the entirety of the interests of the persons related to the official.

5. The prohibitions and restrictions of this section are not applicable to persons related to persons related to an official.

#### **Article 25**

##### **Indirect Possession of Interests**

1. By the juridical persons mentioned in this section, juridical persons resident and non-resident in the Republic of Albania are meant.

2. The prohibition of entering into contracts according to each case of article 21 of this law is also applicable to the case when owning shares or parts of capital is related to a commercial company, partnership or simple company, which owns shares or parts of capital in a commercial company, partnership or simple company, when the latter appears to be party of entering into a contract.

#### **Section 2**

##### **Restriction of Private Interests for the Prevention of Particular Cases of a Continuing Conflict of Interests**

#### **Article 26**

##### **General**

1. The types and restrictions of private interests of the categories of officials defined in this section do not exclude the types and restrictions defined in other laws for these categories of

officials, applied for the same purpose, but, in any case, the more severe restriction is applied, in conformity with the definitions of article 5 of this law.

2. For other officials not dealt with in this section, restrictions defined in separate laws for the same purpose are applied.

When by law it is specified that these officials may not perform any private activity, this also means the prohibition of the ownership in an active manner of shares or parts of capital in commercial companies under those conditions for which private activity is prohibited.

3. By juridical persons mentioned in this section, all juridical persons registered in the territory of the Republic of Albania according to the legislation in force are meant.

4. When an official possesses interests connected to natural or juridical persons registered outside the territory of the Republic of Albania, which own or control a juridical person registered in the Republic of Albania, and from which, in an indirect manner, rights over this person are created, the restriction of the interests of the official and/or the juridical person owned or controlled are applicable to the extent that this indirect action will give the same result.

#### **Article 27**

##### **Restrictions for a Member of the Council of Ministers and a Deputy Minister**

The Prime Minister, Deputy Prime Minister, a minister and deputy minister:

a) may not be managers or members of the management organs in profit-making and not-for-profit organizations, syndicates or professional organizations and every other organization, with the exception of political and state organizations as well as cases when such a position is dictated because of the function.

b) may not exercise private activity that creates revenues in the form of a natural commercial person, partnership of natural commercial persons of any form, or the free professions of advocacy, the notarial profession, licensed expert, or consultant, agent or representative of the organizations defined in letter "a" of this article, nor be employed full time in another duty;

c) may not own in an active manner shares or parts of capital of a commercial company, regardless of the field of its activity.

#### **Article 28**

##### **Restrictions for a Deputy**

A deputy:

a) may not be a manager or member of the management organs of profit-making organizations;

b) may not exercise private activity that creates income in the form of a natural commercial person, partnership of natural commercial persons of any form, the free professions of advocacy, the notarial profession, licensed expert or consultant, agent or representative of the organizations defined in letter "a" of this article and may not be employed full time in another duty;

c) may not possess, in an active manner, any share or part of capital of a commercial company, if it turns out to have a dominant position in the market.

#### **Article 29**

##### **Restrictions for the Mayor of a Municipality or Commune and the Chairman of a Regional Council**

The mayor of a municipality or commune and the chairman of a regional council:

a) may not be managers or members of the management organs of profit-making organizations that exercise activity within the territory of their jurisdiction;

b) may not exercise private activity that creates revenues in the form of a natural commercial person, partnership of natural commercial persons of any kind, the free professions of advocacy, the notarial profession, licensed expert or consultant, agent or representative of the organizations defined in letter “a” of this article and may not be employed full time in another duty.

### **Article 30**

#### **Restrictions for a Member of the Organ of a Regulatory Authority**

For a member of organ of a regulatory authority or for the protection of competition, including the Governor of the Bank of Albania, the Deputy Governor and the members of its Supervisory Council:

a) all the restrictions and permissions defined in article 31 of this law are applicable;

b) the condition is also applicable that such an official may not possess any right, directly or indirectly, within the meaning of article 25 point 2 of this law, in connection with any subject that exercises activity in the sphere of the jurisdiction or influence of this authority, including the complete prohibition of ownership, in an active or passive manner, of shares in those companies.

### **Article 31**

#### **Restrictions for an Official of the High and Medium Level, Director of the Public Administration, Other Public Institutions, the State Police and the Armed Forces of the Republic of Albania**

A civil servant of the high and middle management level, according to the definition of article 11 of law nr. 8549 dated 11 November 1999 “Status of the civil service,” an official of the high and middle level of the State Police and the Armed Forces, according to the system of ranks and duties applicable to those public institutions, officials of the high and medium level equivalent to those of the civil servant in regulatory entities (and those according to article 30 of this law) and in all other public institutions, as well as the prefect:

a) may not be managers in profit-making organizations;

b) may not be members of the management organs of a commercial company or a not-for-profit organization, when they exercise activity in a sphere that is the same as or overlaps with the sphere of jurisdiction of the official and his competency to act, with acts issued by him, or when the official has a fundamental and definitive role in the issuance of these acts, with acts that create juridical consequences, benefits or costs for those companies or organizations or other companies or organizations that cooperate or compete with the company in question, excluding cases when this position in the company or organization comes because of the function and/or status;

c) may not exercise private activity that creates revenues in the form of a natural commercial person, partnership of natural commercial persons of any form, the free professions of advocacy, the notarial profession, licensed expert or consultant, agent or representative of the organizations defined in letter “a” of this article, and may not be employed full time in another duty;

ç) may own, in an active manner, shares or parts of capital of a commercial company, without any limitation, with the exception of the case when the company exercises activity in a sphere that is the same as or overlaps with the sphere of jurisdiction of the official and his competency to act, with acts issued by him or when the official has a fundamental and definitive role in the issuance of these acts, which create juridical consequences, benefits or costs to these companies or other companies that cooperate or compete with the company in question, in which case the official may own shares or parts of capital only in conformity with the conditions defined in letter “c” of article 27 of this law.

## **Article 32**

### **Restrictions for an Official of a Tax or Customs Organ**

In addition to the restrictions defined in article 31 of this law, the following restrictions are also applicable to an official of the customs and tax administration who deals directly with the collection of customs or tax revenues:

- a) an official of the customs organ may not own, in an active manner, any share or part of capital in commercial companies that perform import-export activities;
- b) an official of the tax organ may not own, in any active manner, any share or part of capital in commercial companies that pay tax obligations or exercise activity in the field or territory of jurisdiction of the branch of taxes-fees where this official exercises functions. For officials of the central management organ, the entire territory of the Republic of Albania is considered the territory of the jurisdiction

## **Article 33**

### **Restrictions for Certain Other Officials in High State Functions**

The President of the Republic, a judge of the Constitutional Court, a judge of the High Court, the Chairman of High State Control, the General Prosecutor, the People's Advocate, a member of the Central Election Commission, a member of the High Council of Justice and the Inspector General of the High Inspectorate of the Declaration and Audit of Assets may not own shares in an active manner or parts of capital in a commercial company of any form.

## **Article 34**

### **Assessment of the Dominant Market Position of a Company**

1. For the needs of implementation of this law, the Competition Authority assesses, in conformity with law nr. 9121 dated 28 July 2003 "On the protection of competition," with or without a request, whether a company has a dominant position in a market.

2. When a company has been preliminarily characterized by this authority as a company with a dominant position in the market, every official, superior, public institution and superior institution take this fact as given.

3. If a company in which an official owns shares or parts of capital has not been characterized in advance by this authority as a company with a dominant position in the market, and when the superior or superior institution, on the basis of official data, judges that it is in order to assess the market position of this company, it officially asks the Competition Authority for a judgment about the position of this company. The request should also be accompanied by full and credible data in order to facilitate the assessment process of the Competition Authority. When the official to whom the question is related is interested, he makes a request to the Competition Authority, through the public institution where he exercises functions or through the superior institution.

4. For the needs of implementation of this law, the Competition Authority is obligated to respond officially on the basis of its best knowledge with an assessment that affirms or denies [the dominant position], whenever this is requested by a public institution, as quickly as possible but no later than one month from the date the request is received. For justified reasons, the Competition Authority may extend the time limit and determine a possible time limit for giving a response, notifying the applicant of this.



5. Until the receipt of a final answer from the Competition Authority, the official continues to enjoy his rights as if this dominant position did not exist, but this should not hinder the official, his superior or superior institution from taking all appropriate alternative preventative measures, according to the definitions of article 37 of this law, with the purpose of anticipating the possibility of an assessment as a company with a dominant position in the market.

### **Article 35**

#### **Presence of Interests in Persons Related to the Official**

1. For the purpose of articles 27 to 33 of this law for the restrictions of the private interests of officials defined in the other articles of this section, only the spouse, adult children and parents of the official and spouse are related persons.

2. If shares or parts of capital are registered in the name of a related person, they are considered the same as if they were registered in the name of the official himself and the property rights of the related person in them are restricted to the same extent and manner as in the case of the official himself. These restrictions are not applicable to persons related to persons related to an official.

3. The restrictions of point 2 of this article are applicable alike, and respect the same limits, for the following cases:

- a) the entirety of shares or parts of capital of the official and persons related to him;
- b) the entirety of shares or parts of capital of persons related to the official.

4. A person related to an official may not exercise activity as a natural commercial person or partnership of natural commercial persons of any form, if the activity is the same as or overlaps with the sphere of jurisdiction of the official and his competency to act, with individual or normative acts issued by him, or when the official has a fundamental and definitive role in the issuance of these acts, which create juridical consequences, benefits or costs to this natural person or commercial company or other natural persons who cooperate or compete with the related person. This point is not applicable when at least one of the following conditions is met:

- a) the only means with which the official may create the above effects is a law or a decision of the council of a municipality, commune or region or a judicial decision;
- b) the activity and/or several commercial activities of a related person taken together create total annual gross revenues that do not exceed a limit of 10 million lek.

### **Article 36**

#### **Connections Between the Interests and Conflicts of Sections 1 and 2**

1. Even when an official possesses private interests within the limits permitted in section 2 of this chapter, or brings them within the limits permitted according to the definitions of point 3 of article 38 of this law, he is not released from the other obligations, restrictions or prohibitions of this chapter, nor is he released *a priori* from the danger of falling into a case by case or continuing conflict of interests.

2. The passive ownership of shares or parts of capital may constitute a reason for falling into a case by case conflict of interests. The official and the trusted person are jointly responsible for taking all necessary measures to prevent the official from falling into such a conflict and for communicating between them to the extent necessary for this purpose. The burden of proof as to the inability of communicating in the appropriate time in relation to the participation of the official in the decision-making falls on the official and the trusted person.

## **CHAPTER IV WAYS OF TREATING AND RESOLVING CONFLICTS OF INTEREST**

### **Article 37 The Basic Ways of Treating and Resolving Conflicts of Interest**

For the earliest possible and most effective prevention of every conflict of interest of any kind whatsoever:

1. The official, in the exercise of his functions, ahead of time, according to the circumstance, the need, in a graduated manner or in proportion to the importance of the situation, avoids and resolves himself every situation of conflict of interests of any form whatsoever, using, as the case may be and as appropriate, one or more of the following ways:

- a) transferring or alienating private interests;
- b) excluding himself ahead of time from the concrete process of decision-making, with the exception of cases when the delegation of the competencies of an official to another official is impossible because of the law or because of the situation;
- c) resigning from the private engagements, duties or functions that are in conflict with his public function;
- ç) resigning from the public function, especially in the conditions of the emergence of continuing conflicts of interest.

2. The official notifies his superior or superior institution, as the case may be, of the resolution suggested or taken by him and gives evidence of and documents the resolution.

3. Notwithstanding the application of points 1 and 2 of this article, the official is not released from responsibility for falling into a conflict of interest when the measures taken by him do not turn out to be effective in preventing and avoiding the conflict of interest.

4. The superior of the official or superior institution, starting from the closest one, ahead of time, according to the circumstance, the need, in a graduated way or in proportion to the importance of the situation, avoid and resolve every situation of a conflict of interests of a subordinate official of every kind whatsoever, using, according to the case and the appropriateness, one or more of the following ways:

- a) restricting the official from specified information related to the exercise of his function;
- b) not assigning duties to the official that might lead to the appearance of a conflict of interests;
- c) not permitting the official to take part in the process of decision-making;
- ç) reviewing or changing the duties and competencies of the official;
- d) transferring the official to another duty that avoids the conflict of interests;
- dh) taking measures necessary to avoid the appointment or selection of an official to functions in which conflicts of interest might arise or exist;
- e) in the case of an act taken in the presence of an actual conflict of interests, however this is observed, if he has this competency, annulling or revoking as soon as possible the acts taken by the official, and if possible before they have brought consequences;
- ë) the act may also be annulled or revoked when it is judged that the act was taken under the conditions of an apparent conflict of interests that might appear case by case or in a continuing manner;
- f) the act is not annulled or revoked by the superior when he judges that the consequences that might come from the annulment or revocation obviously exceed the benefits from this annulment or revocation.

5. In special cases, when:

a) the conflict of interests is related to the highest manager of a public institution, the treating and resolution are done by the superior institution, if there is one and if this does not infringe on the principle of the independence of the institutions;

b) the conflict is related to an official who is equivalent to or is a member of a constitutional organ, the treatment and resolution is done by the competent organs defined in the Constitution.

6. An official is permitted to exercise his function and perform his duty on condition that the only unavoidable conflict of interest is an apparent one, when the following conditions are met:

a) when he:

i) either cannot be replaced in the exercise of his functions;

ii) or his self-exclusion is impossible according to letter “b” of point 1 of this article;

iii) or none of the resolutions of point 4 of this article is possible;

b) and when:

i) his decisions, according to the regulations in law, are not subject to the approval, revocation or repeal by a superior institution;

ii) the alienation of the private interest according to letter “a” of point 1 of this article is not possible either, because of its nature (such as family or community ties, etc.);

iii) there is no sense in his obligatorily resigning from the function for such a case of conflict.

In such a case, the decisions of this official are subject to a special check and assessment by the institutions charged by law with checking these decisions. The decision and the results of the check are always made public.

7. The superior notifies the official in a conflict of interest of the resolution given, as well as his own superior or superior institution, in writing and in a reasoned manner.

8. Notwithstanding the implementation of points 1 and 2 of this article by the official himself and/or of points 4, 5 and 6 of this article by the superior or superior institution, the officials responsible for the prevention and avoidance of a concrete conflict of interests are not released from responsibility when the measures taken do not turn out to be effective in preventing and avoiding it.

9. The ways of treating and resolving conflicts of interest according to this article should be based on good understanding and cooperation between the official and his superior or superior institution, aiming together at the use of the best way to prevent and resolve the situation that has a conflict of interest.

### **Article 38**

#### **Resolution of Particular Cases of Continuing Conflicts of Interest**

1. For the categories of officials defined in chapter III section 2 of this law, when the treatment and resolution of a continuing conflict of interest cannot be achieved through the ways given in article 37 of this law, for the official to continue to stay in the same function, he must:

a) resign from the management functions or membership in the management organs, in every case when this is prohibited according to chapter III section 2 of this law, as quickly as possible but no later than 15 days from the moment this obligation arises, and make this fact known and document it immediately and no later than 10 days from its performance;

b) interrupt the exercise of the activities prohibited according to chapter III section 2 of this law within 30 days, and within this time period, but as soon as possible, ask the competent organs to deregister these activities according to the law. The official makes known and documents the fulfillment of these obligations immediately but no later than 10 days from the **above time limit, as**

well as making known and documenting the deregistration performed by the competent organs at any time and immediately after they are performed;

c) transfer the rights of active ownership of the shares or parts of capital that he owns to another person, according to the definitions of point 6 of article 3 of this law, but [provided] that:

i) the trusted person may not be his/her spouse and parents, adult children and their spouses, parents of the official, his brothers and sisters and their spouses, persons with a known friendship with this official, an official or other person with ties of dependency, even indirect ones, because of the public function, with the official in question;

ii) the trusted person may not be a natural commercial person, whether or not one of the persons mentioned above, a company in which the official owns directly or indirectly within the meaning of article 25 of this law shares or parts of capital, [or] a not-for-profit organization in which the official has had or has interest relationships of any kind.

2. If the official resigns from all the rights of ownership over the shares or parts of capital and alienates them to another person, the latter may not be any of the subjects mentioned in letter “c” of point 1 of this article for the trusted person. The official should make this action known and document it immediately but no later than 15 days from its performance.

3. A transfer according to letter “c” of point 1 of this article or alienation according to point 2 of this article is done as soon as possible, but no later than two months from the moment the obligation arises. The official makes known and documents the fulfillment of this obligation immediately, but not later than 15 days from the performance of this action.

The trusted person of an official defined in article 30 of this law alienates, as quickly as possible but no later than six months, shares or parts of capital owned in a passive way by this official, with the purpose of respecting the restrictions of the interests of this official according to article 30 of this law. The trusted person makes the fulfillment of this obligation known the same as in the case of the official.

4. The time periods defined in the above points of this article may be extended by the superior or superior institution when the official presents reasonable cause for lateness. In every case, the reasons for extension and the new time periods are recorded and documented, but these time periods may never be more than twice the time periods defined above, with the exception of cases when the extension is dictated by the obligatory procedural time periods specified by the Constitution, by procedural laws, commercial legislation and/or the rules of public institutions for the issuance of official documents and/or the performance of juridical actions, or when the time period is extended because of the need of the Competition Authority, in order to assess the dominant position of a company in the market.

5. With the disappearance of the causes that dictate the restrictions defined in chapter III section 2 of this law, the official may again enjoy these rights.

6. This article is also applicable, to the extent it pertains to him, to a person related to the official according to the definitions of article 35 of this law.

7. If the official or related person is not willing to implement the requirements of the points of this article, then the official is obligated to resign from the function within the time periods defined in this article.

8. If the resignation is not given within the time periods defined in this article, the superior or closest superior institution, in order, applies one or more of the ways defined in letters “ç” and/or “d” of point 4 of article 37 of this law, which enables the most effective resolution, no later than 10

days from the final time limit, with the exception of cases when this action is not possible or this time period cannot be respected, because of other procedural time limits according to the definitions of article 39 of this law.

### **Article 39**

#### **Procedures for the Treating and Resolution of Conflicts of Interest**

1. The competencies of superiors or superior institutions for the treatment and resolution of conflicts of interest, including the prohibitions or restrictions according to chapter III of this law, the resolution of which is done according to the ways given in articles 37 and 38 of this law and the procedures for the exercise of these competencies, are defined by:

- a) the Code of Civil Procedure and the Code of Criminal Procedural, for judicial processes and criminal proceedings;
- b) the Code of Administrative Procedures, for all public institutions subject to this Code;
- c) separate laws that regulate the activity of public institutions or the rights and obligations of various categories of officials;
- ç) the Constitution, when the conflict is related to an official who is equivalent to or is a member of a constitutional organ.

2. The procedures and competencies according to point 1 of this article, as the case may be, also define the way the official himself or a related person against whom the measures for the treatment and resolution of a conflict of interests have been applied, may appeal when he judges that these measures were taken in excess of the definitions of this law.

## **CHAPTER V**

### **INVALIDITY OF ACTS TAKEN UNDER CONDITIONS OF A CONFLICT OF INTERESTS AND THE CONSEQUENCES**

#### **Article 40**

##### **Invalidity of Acts and the Consequences**

1. Administrative contracts and acts of every public institution, and appealing against them, issued under the conditions of an actual or apparent conflict of interests, are invalid according to the meaning of this term and the principles and procedures defined in the Code of Administrative Procedures.

2. Every civil contract entered into in violation of points 1, 2, 3 and 6 of article 21 and point 3 of article 24 of this law, or in any other case when it was entered into in the presence of an actual or apparent conflict of interest, does not create any juridical consequence.

3. The acts defined in letter “a”, “ii” of point 1 of article 4 of this law, issued in the presence of an actual or apparent conflict of interest, are reviewed and reverses for this reason by the respective organ, in conformity with its competencies to decide in connection with this question, according to the definitions and, as the case may be, in the Code of Civil Procedure or in the Code of Criminal Procedure or in other laws that regulate the regime of these acts.

4. The acts defined in letter “a” “iii” of point 1 of article 4 of this law, issued in the presence of an actual conflict of interest, are relatively invalid according to the same meaning used for administrative acts in the Code of Administrative Procedures.

5. An apparent conflict of interest does not constitute a cause for invalidity according to points 1 and 3 of this article only it appears under the conditions defined in point 6 of article 37 of this law.

6. When an act of a public institution becomes invalid according to the definitions of points 1, 2, 3 and 4 of this article:

a) the public institution, when it judges that the official has acted in bad faith:

i) undertakes procedures for disciplinary punishment against the official who caused the invalidity of the act;

ii) uses all legal means to pass the burden of indemnification to this official;

iii) also asks the competent court to order compensation in favor of the institution for the moral damage caused;

iv) makes a criminal denunciation against the official, if it judges that the violation committed by him constitutes a criminal offense;

b) in a case when the public institution itself does not take this initiative according to letter “a” of this point, the superior institution, starting from the closest one and in order, according to the legal competencies, applies the duties defined in letter “a” of this point. If they do not act, the duties defined in letter “a” of this point are implemented by the High Inspectorate together with the State Advocate’s Office;

c) the definitions of letter “a” of this point may also be applied against every other responsible official who by his actions or inactions has not prevented the conflict of interest that was the cause of the invalidity of the act, or for the failure to implement the obligations according to letter “a” of this point;

ç) the definitions of letter “a” of this point are applied for the official in a conflict of interest that was the cause of invalidity of the act according to the following cases:

i) in the case of a deputy, for the vote given as deputy, only letter “a” “i” of this point is applicable;

ii) in the case of a judge, for judicial decisions given by him or for his vote in a judicial decision, letter “a” “ii” and “iii” of this point are not applicable;

iii) in the case of a prosecutor in the exercise of duty, letter “a” “ii” and “iii” of this point are not applicable;

d) for other officials who exercise audit or investigative functions, the definitions of letter “a” “ii” and “iii” of this point are not obligatory, but it remains to the superior to assess them and, in his absence or failure to act, to the superior institution.

7. The actions defined in point 6 of this article are performed by the public institution, as the case may be, also against a related person, a trusted person or any other person who is jointly responsible.

## **CHAPTER VI INSTITUTIONS RESPONSIBLE FOR THE PREVENTION OF CONFLICTS OF INTEREST**

### **Article 41 Authorities Responsible for the Prevention, Audit and Resolution of Conflict of Interest Situations**

1. The central authority responsible for the implementation of this law is the High Inspectorate for the Declaration and Audit of Assets, which is mentioned in this law with the abbreviation “High Inspectorate.”

2. The authority or structure responsible for the implementation of this law in the public institutions is:
- a) the superiors of the officials, according to the hierarchy, within a public institution;
  - b) the directorates, units of human resources or units especially charged, according to the need and the possibilities of every public institution;
  - c) the superior institutions.

**Article 42**  
**Competencies of the High Inspectorate**  
**for the Declaration and Audit of Assets**

1. The High Inspectorate, in the quality of the central authority responsible for the implementation of this law, performs the following duties and has the following responsibilities:
- a) the management and improvement of the polices and mechanisms of preventing and avoiding conflicts of interest;
  - b) the offering of technical assistance for advising and supporting legal and substatutory initiatives undertaken by the public institutions for the prevention of conflicts of interest;
  - c) the offering of recommendations for the Assembly of the Republic of Albania, for the assessment of draft laws that have to do with the question of conflicts of interest, when requested by that institution;
  - ç) the strengthening of the capacities for the administration of conflicts of interest in the public institutions;
  - d) the monitoring, audit and assessment of the compatibility with the principles and obligations of this law of the substatutory acts and internal rules approved by public institutions for conflicts of interest;
  - dh) the monitoring, audit and assessment of the implementation of this law, as a whole, for the prevention of conflicts on interest in public institutions, as well as the respecting of this law in particular cases of conflicts of interest;
  - e) the periodic registration of the private interests of officials according to chapter II section 2 of this law;
  - ë) the definition of the model of a case by case declaration of interests, as well as the registration of the data that are related to such a conflict;
  - f) counseling particular officials, superiors, and superior institutions, at their request, about specific cases of the appearance of a conflict of interests and questions of ethics related to them, as well as on the period registration of interests;
  - g) the verification and administrative investigation of the periodic declarations of interests;
  - gj) the verification and administrative investigation of case by case conflicts of interest, as well as the prohibitions and the restrictions of interests defined in chapter III of this law, at the request of the public institution or superior or when it considers it necessary, also on its own initiative;
  - h) the setting of punitive administrative measures in its competency, according to the definitions in this law
  - i) every other competency, given in this law.

2. In implementation of its competencies and responsibilities, the High Inspectorate issues substatutory acts in the form of orders and instructions in conformity with the Code of Administrative Procedures.

3. The authorities defined in letter “b” of point 2 of article 41 of this law meet and send to the High Inspectorate by the date of 15 April of each year the completed declarations of interests as well as making known to it cases of failures to make declarations. These authorities rely on and perform the duties assigned by the Inspector General for the facilitation and beneficial development of the

process of the periodic declaration of interests. Every year they represent to the High Inspectorate, regarding the previous year, but no later than January 31, a report on the activity performed on the implementation of this law, including cases of conflict of interest, the manner used to prevent and resolve them, the performed results as well as cases related to periodic declaration. ~~For the work performed in the service of the High Inspectorate, the officials of these authorities earn a supplement of 15 per cent above their monthly pay. (Abrogated. Ref. Article 1, law no 9690, date 5.3.2007)~~

4. The low inspectorates, in conformity with law no. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected persons and certain public officials”, no longer exist upon the entry of this law into force.

## **CHAPTER VII SANCTIONS**

### **Article 43 General**

The treatment and resolution of conflicts of interest according to the articles of chapter IV of this law are not considered as sanctions according to this chapter.

### **Article 44 Administrative Infractions**

1. Every violation of the obligations defined in this law, when it does not constitute a criminal offense, constitutes an administrative infraction and is punished by a fine according to the limits defined below:

a) for failure to make a self-declaration or a declaration on request, in conformity with points 1 and 2 of article 7 of this law, the official is punished by a fine of from 5,000 (five thousand) lek up to 10,000 (ten thousand) lek;

b) for failure to issue an authorization according to point 2 of article 10 or point 5 of article 14 of this law, the official is punished by a fine of from 10,000 (ten thousand) lek up to 20,000 (twenty thousand) lek;

c) for failure to make the periodic declaration on time and without good cause, the official or related person who has the obligation to make a declaration is punished by a fine of from 20,000 (twenty thousand) lek up to 30,000 (thirty thousand) lek;

ç) for a violation of article 21 points 1, 2, 3, and 6 article 22, article 23 point 1 and article 24 point 4 of this law, the official or related person, the trusted person or manager of the company is punished by a fine of from 10,000 (ten thousand) to 100,000 (one hundred thousand) lek;

d) for a violation of points 1, 2, 3, 5 and 8 of article 38 of this law, the official or related person is punished by a fine of from 100,000 (one hundred thousand) lek up to 200,000 (two hundred thousand) lek;

dh) when the situation defined in letters “a” and “c” of point 6 of article 40 occurs, the official is punished by a fine of from 200,000 (two hundred thousand) lek up to 400,000 (four hundred thousand) lek;

e) in cases of the above letters of this point, the fine is given by the Inspector General, on the proposal of the superior or superior institution or, when the violation is directly verified, by the High Inspectorate;

ë) for other violations of this law, the Inspector General, on the proposal of the superior of the structure of the institution, in the meaning of letter “b” of point 2 of article 41 of this law, of the superior institution or, when the violation is directly verified by the High Inspectorate, punishes the



responsible persons by a fine in the amount of 5,000 (five thousand) lek up to 10,000 (ten thousand) lek;

f) for every administrative measure, the Inspector General notifies the superior or superior institution of the official punished.

2. The fines are higher according to the assessment of the extent of the violation and as the level rises of the position of the official.

3. The procedures for application of the administrative measures and an appeal against them are regulated according to the Code of Administrative Procedures.

4. The fines are paid by the infringer and deposited into the budget of the High Inspectorate no later than 30 days from the communication of the fine. With the passage of this time period, the decision rendered is turned into an executive title and is executed in an obligatory manner by the employer, when the infringer is in work relations, or by the execution office, on the request of the Inspector General.

### **Article 45 Disciplinary Measures**

1. Every violation of the obligations defined in this law by officials constitutes a disciplinary violation, regardless of criminal or administrative responsibility. The disciplinary measures are applied in conformity with the laws that regulate labor relations and/or the status of officials.

2. For officials who are equivalent to or are members of constitutional organs, the disciplinary measures and procedures defined by the Constitution and the respective legal provisions are applicable.

3. For a violation committed by the members of the responsible structure of the institution, within the meaning of letter "b" of point 2 of article 41 of this law, the Inspector General proposes to the head of the institution the removal of that member from the function.

4. Failure to give authorization according to point 2 of article 10 and point 5 of article 14 of this law brings the interruption of work relations according to the procedures defined in the legislation that regulars work relations.

## **CHAPTER VIII PROVISIONS FOR THE TIME PERIODS OF IMPLEMENTATION OF PARTICULAR OBLIGATIONS IN THIS LAW**

### **Article 46 Issuance of Substatutory Acts**

1. In implementation of this law, every public institution, based on the principle of proportionality and the specific nature of its functions and/or each of its officials, issues internal rules, in connection with:

a) the meaning of decision-making for an act and of fundamental and definitive competency of an official, according to the principles defined in point 2 of article 4 of this law;

b) the subcategories of interests or the concrete interests that might become the reason for the emergence of a conflict of interests;

c) the criteria and indicators to enable a measurement and assessment that is as clear and objective as possible of the performance, in a correct manner and/or an incorrect manner, of the duties and responsibilities of an official, for the prevention of conflicts of interests;

ç) the process of identification and registration of the private interests of officials, related to a case by case conflict of interest, according to chapter II section 1 of this law;

d) the implementation of article 20 for data protection;

dh) the ways to treat and resolve a conflict of the interests defined in chapter IV of this law;

e) specific duties, the way of performing them and the organizational form of the authority and structure responsible for the implementation of this law, according to article 41;

ë) the assessment of disciplinary violations and the taking of punitive measures, according to article 45 of this law.

2. The absence of above mentioned acts is not a justification for the failure to implement this law. In their absence, this law is directly applicable. An exception is made only for the periodic declaration of interests, which is made only on the basis of orders and explanatory acts issued by the Inspector General.

## **CHAPTER IX BEGINNING OF THE TIME PERIODS OF APPLICATION OF THE PARTICULAR OBLIGATIONS OF THIS LAW**

### **Article 47**

#### **Beginning of the Time Periods of Application of the Particular Obligations of this Law**

The effects of this law begin immediately after its entry into force, with the following exceptions:

a) the obligations defined in chapter III section 2 of this law, with the exception of the obligations that are in force because of definitions in other separate laws for the same purpose, begin to be applied on 1 October 2005;

b) the periodic declaration of interests according to this law begins to be made for the first time in 2006 for the year 2005;

c) no later than six months from the entry of this law into force, but no later than 1 October 2005, the public institutions and the High Inspectorate issue all the substatutory acts and/or internal rules defined by this law.

## **CHAPTER X PASSAGE FROM THE DECLARATION OF ASSETS TO THE DECLARATION OF INTERESTS**

### **Article 48**

#### **Passage from the Declaration of Assets to the Declaration of Interests**

The periodic declaration of assets and financial obligations is dissolved and is conducted, after the entry into force of this law, as a periodic declaration of interests, based on the definitions of chapters II section 2, VI and VII of this law, as well as the principles, procedures, time periods, competencies and other punishments defined in law nr. 9049 dated 10 April 2003 "On the declaration and audit of assets, financial obligations of elected officials and certain public

employees” that have not been expressly amended in this law of the prevention of conflicts of interest and do not conflict with it.

#### **Article 49**

##### **Periodic Declaration in the Declaration Period of the Years 2004 and 2005**

1. The declaration of assets and financial obligations made in 2005 for the period of the declaration from 1 January 2004 to 31 December 2004, and for declarations before the beginning of work, in every case when such a declaration will be made during 2005, as well as the process of full audit and administrative investigation of these declarations, will be performed according to law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees,” but being amended and adapted, to the extent possible, with the definitions of this law for those questions. On the entry of this law into force, the Inspector General takes all measures necessary for the implementation of this point.

2. Officials who have declared at least once according to law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees,” or according to point 1 of this article, should make a periodic declaration on an on-going basis also for the first declaration that will be made in 2006 according to this law, for the interests defined in letters “a” and “b” of point 1 of article 15 of this law, and it is considered that they make a declaration before beginning work only for the interests defined in letter ~~“b”~~ “c” of point 5 of article 15 of this law.

#### **Article 50**

##### **Repeals**

Article 2 point 4, article 3 second and third paragraph (together with letters “a”, “b” and “c”), articles 8, 10, 18, 19, 20, 23, 25 point 1 third, fourth and fifth paragraph, and point 2, as well as articles 35, 36, 37, 40 and 41 of law nr. 9049 dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected officials and certain public employees,” are repealed.

Article 3 point 1, letter “e”, article 4 the words “the low inspectorates”, article 6, article 9, article 17 letters “c” and “d”, articles 24, 26 dhe 27 the words “and the low inspectorates”, article 28, in the articles 29, 30, 32 and 39 point 2 the words “the chairman of the low inspectorate”, “or of the low inspectorates” “or low inspectorate” of law nr. 9049 dated 10 April 2003, are repealed.

### **CHAPTER XI**

#### **FINAL PROVISIONS AND EFFECTIVE DATE**

#### **Article 51**

##### **Indexation of Monetary Limits**

1. The limits expressed in money in this law rise automatically every three years, with the same co-efficient of growth equal to the norm of the increase of the average pay in the public administration. The average pay is calculated as the ratio of the wage fund, including social and health insurance, divided by the total number of employees of all budgetary institutions for the same three year period.

2. The beginning of the time period of the calculation is the date 1 January 2006. The Council of Ministers approves the average norm of the increase of pay in the public sector within the month of July of 2009. On 1 January 2010, the monetary limits rise automatically according to this norm.

### **Transitory disposition**

The public officials that have begun work for the first time in any function and as a result have the obligation to make a declaration and have made it before beginning work, in conformity with article 15 of the law, they meet the condition of justifying the created sources of their private interests, declared within two months from the entry into force of this law. This obligation is not applicable for those officials that have justified the sources themselves.

### **Article 52 Entry into Force**

**This law is effective fifteen days after publication in the Official Journal.**<sup>1[1]</sup>

PROMULGATED WITH DECREE NR. 4892 DATED 2 June 2006 OF THE PRESIDENT  
OF THE REPUBLIC OF ALBANIA, ALFRED MOISIU

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<sup>1[1]</sup> Tr. note: Since the publication date was stated to be 11 May 2005, the law is effective 26 May 2005.