



**ALBANIAN REPUBLIC**  
**HIGH INSPECTORATE OF THE DECLARATION AND AUDIT OF ASSETS**

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Tirana, date 15 October 2005

### **Commentary**

Law no.9367, date 7 April 2005 on “The prevention of conflict of interest in the exercise of public functions” (that came into force in 26 of May 2005), during the implementation process we came across various problems that need a further implementation an explanation.

The office-holders, the represented authorities and responsible bodies of these public institutions look for a solution concerning the problems that influence explicitly in the prevention of conflict of interests.

HIDAA considers it worthy to make use of this commentary, so that it could better serve to the legal unification and to the further respect of this law.

#### **Raised problems:**

1. *In compliance with the legal functions of the articles 27 – 33, law no. 9367 date 7 April 2005, are there considered the shareholders and the working partners of the commercial companies as members of the management organs?*

**Answer:** According to the law of the commercial companies , the working partners that own active manner shares or parts of capital, or even the assembly of the working partners are organs/agencies of the commercial companies, but not members of the management organs. According to the stipulated restrictions in the articles 27 – 33, law no. 9367, date 7 April 2005, the management organs of the commercial profitable companies, will be considered the “Administrator” in a limited liability company as well as the “The Leading Council and Board of Directors” in an incorporated or bubble company.

2. *Is it considered a conflict of interest for the Mayor of the Municipality, Commune or the Chairman of a Regional Council owning in an active way shares or parts in a capital of a commercial company in the cases when:*

- a. *The company exercises activities within the jurisdiction of the municipality, commune or the regional council;*
- b. *The company exercises activities outside the jurisdiction of the municipality, commune or the regional council;*

Answer: The restrictions of interest for the public function of the Mayor of the municipality, commune or the Chairman of the regional district are clearly stipulated in the article 29, law 9367 date 7 April 2005 as it follows:

- 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 notary 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.

So it is very clear that for the chairmen of the municipalities, Communes and Regional Councils there is no restriction in having in an active manner a share or part in the capital of these commercial companies.

- 3. *To an X public official, according to the function that he holds, it is not permitted to be a leader or a member of the management organs of the profitable organizations , but he is allowed to own in an active manner shares or parts in a capital. Eventually the X public official is a manager of the X limited liability company and according to the law requests he is obliged to leave the position as the manager of this company so that he could avoid the conflict of interest. Is it possible for this manger, holding the position of the working partner, to assign as the manager of this commercial company members of his family?*

Answer: The presence of Interests in Persons Related to the Official and the restrictions related to this issue are stipulated in the article 35, law 9367 date 7 April 2005. This disposition has clearly defined some restrictions for the people related to the public official that have to do with the way of managing the shares in a commercial company, parts in a capital or the further legal actions as a physical entity. In this disposition are not stipulated cases concerning the restriction of managing a company. As a result of this the family members of X public official, might be managers of a commercial company.

- 4. *Is it possible for an employer or any other supervisory body to ask to his/her employee the declaration of its private interests, according to the article 5 of this law?*

Answer: According to the point 2 of the article 7, the employer, according to the information that he/she possesses and if he considers it as reasonable ,that there

might be a case of conflict of interest, then he might feel free to ask for the declaration of interest so that the conflict of interests could be prevented.

5. *An X public official that exercises a public function and according to the law he is not allowed to own in an active manner shares or parts in the capital of a profitable company. Is it possible for him to transfer a part of his/her capitals and shares to a trustee that might be a working partner of the company, a family member or just a close friend of him/her?*

Answer: According to the point 1, letter "c", paragraph "i" and "ii" of the article 38, law 9367, date 7 April it is stipulated that 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; 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.

6. *X subject is registered in the form of a natural commercial person in the commercial activity of chemistry. Later on this subject is elected an MP in the Albanian Parliament. According to the law is it possible for this person to go on with his commercial activity and exercise his position as a natural person?*

Answer: In the article 28, law 9367, date 7 April 2005 are given several restrictions in order to prevent special cases of the conflict of interest for the MPs. In the letter "b" it is stipulated that the MP may not exercise private activity that creates income in the form of a natural commercial person. But the conflict of interest offers at the same solutions when such cases are met. According to these circumstances and in compliance with the articles 37 and 38, law no.9367, date 7 April 2005, the official should resign himself from the private engagements and should close down the his activity registered in the form of a natural commercial person. This case is not the matter of transferring or alienating the shares to a trustee, as we do not have to do with a commercial company in the form of shares or partnership, but we have to do with a natural commercial person.

7. *X public official is assigned in the public function of a minister. But at the same time his father-in-law is a share holder in a commercial company having a percentage of shares in this company. Is it to be considered a case of conflict of interest and if yes, what would be the solution?*

Answer: According to the article 35 of the above mentioned law, as a result of the restrictions because of the a public function that the official holds, related persons to the official will be considered the spouse, adult children and parents of the official and spouse will be considered as well related persons to the official. 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. In order to avoid the conflict of interest and to make possible the solution of such a case, according to the articles 37 and 38 of the law to following steps have to be taken into consideration:

a – **Transferring the shares** to a trustee, but bearing in mind the restrictions stipulated in point 1. letter “c” of the article 38. (A trustee can not be the spouse, his/her parents, the adult children and their spouses, parents of the official, his/her brothers or sisters and their spouses, persons with a known friendship with this official , an official or other person ties of dependency , even indirect ones, because of the public function, with the official in question;

b – **Alienating or selling** the shares to another person and the buyer should take into consideration the restrictions stipulated in point 2 of the article 38 of the law (the restrictions for the buyer of the shares are the same as the one of the trustee, as mentioned above)

c – **Resigning from that public function**

8. *X commercial company, limited liability company, has had a three-year contract for service concerning the cleanliness and greenness of an X city, at the beginning of the year 2004. A member in the capital of this company is even the father of the spouse of the Mayor of the municipality of that city where the contract of service is bound. Taking into consideration the fact that the law on the conflict of interest, no.9367, came into force in 7 April 2005, is this contract going to be considered as a conflict of interest for the Mayor of the municipality in the exercise of the public function.*

Answer: In the point 1 and 2 of the article 21, law 9367, date 7 April 2005, are clearly stipulated all the restrictions and prohibitions of entering into contracts with public institutions and natural persons or other commercial companies that are directly related to the public official that manages the institution with which the contract is bound. Concretely:

I. The following may not enter into a contract with an public institution:

a) any natural person, as the case may be, in the civil or commercial meaning, when he coincides with a person who is an official in the functions defined in section 2 of this chapter;

b) any commercial company, partnership or simple company, in connection with which an official who belongs to the categories mentioned in letter “a” of point 1 of this article owns, actively or passively, shares of parts of capital in any amount.

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 these units, the prohibition of contracts according to letters “a” and “b” of point 1 of this article is applied only in the case of entering into contracts with the municipality, commune or region where the official exercises functions, as well as in the case of entering into contracts with public institutions under the municipality, commune or region. For these officials and for the restriction of this point, within the meaning of letter “b” of point 1 of this article, the prohibition is applicable for any amount of the ownership of shares or parts of capital and for every level of total annual gross revenues of the company.

3. Notwithstanding the definitions in points 1 and 2 of this article, a contract may not be entered into between the public institution in which the official exercises his functions 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 partnership among these persons, on the other side, when:

- a) the official has fundamental and definitive competence in the evaluation of the offers 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.

In such cases we have three alternatives of solutions:

1. **To void the contract** with the X, limited liability commercial company, and to start the procedures for the selection of another contractual company, in which the X commercial company might be out of the competition;
2. **Selling the X limited liability company** but the purchaser, according to the article 38 point 2, should be under these restrictions:  
It can not be the spouse, his/her parents, the adult children and their spouses, parents of the official, his/her brothers or sisters and their spouses, persons with a known friendship with this official , an official or other person ties of dependency, even indirect ones, because of the public function, with the official in question.

*Procedures that well-define the subject that have the legal obligation to disclose their assets.*

**a. In the cases when the subject starts the work:**

According to article 15, point, letter “a”, law no 9367, date 7 April 2005, the declaration form should be filled in within 30 days since the day they start work. Assets, interests, financial liabilities that were accumulated until the day when the subject started work. The declaration form should be handed in

to the Represented Authority of each institution and it is the obligation of the Represented Authority to hand it in to HIDAA.

**b. In the cases when the subject holding a certain public function has accomplished the obligation of handing in the first declaration form in the institution where he holds a certain public function and later on he has another public function according to which the disclosed declaration form should be submitted to HIDAA.**

The subject and the Represented Authority should always let HIDAA know these movements by passing this declaration form from the Represented Authority to HIDAA.

**c. In the cases when the subject is transferred from one institution to another, but it is still HIDAA's subject**

HIDAA should be aware of this fact and it is the responsibility of the Represented Authority to let HIDAA know when a subject changes his position or he/she simply moves from one agency to another

9. *The subjects that disclose their assets and interest before they start work for the year 2005, do they need to submit an annual declaration form as well.*

Answer: The declaration form will be filled in and submitted just like for the other subject as well, within the 31 of March, but the subject has to declare the chances since the moment that he/she got that position until the 31 of the previous December.

10. *Is there any conflict of interest in the fact that two members of a family, work in the same directory of the same institution, holding the same positions but having no dependency relationship between them? Is it a case of conflict of interest?*

It should be taken into consideration the fact that when two people having familiar relationships between them, do not have any dependency relation or work assessment, which means no personal interest between them, it means that we do not have to do with any kind of conflict of interest. However it is the responsibility of the supervisor or office-holder to look after and to arrange the job description of their duties and of their responsibilities in that way that the conflict of interest or any relation between them, of any kind, can be avoided.

11. *The officials that are on probation, but that because of the position that they hold they are obliged to submit their declaration forms, should they fill in their forms since they started work, which is the period that they are on probation, or fill it in as soon as their probation period is over?*

Answer: The official that hold such a legal function and has the legal obligation to declare his/her assets and interests should fill in the declaration

form of his/her assets sine the moment she/he started work until, which is the probation period until he/she will hold that position and should submit it to the Represented Authority of the institution where she/he exercises the public function, within 30 days.

*12. According to the article 10, point 2, law no. 9367, date 7 April 2005, who are the officials of an institution who have the legal obligation to fill in the authorization of the above mentioned article?*

Answer: Issuing this authorization, first of all is in the interest of the public institution. By making use of this authorization, the institution has the authority to control and to provide personal information for every official, which means that every official is obliged to issue such an authorization, no later than 30 days since the law no.9367, date 7 April came into force, or within 30 days since the public servant started work in a public institution. A pattern of this authorization was sent to all the public institutions by the General Inspector of HIDAA, holding the protocol no. 877, date 24 June. (In this commentary you will find a copy of this authorization)

*13. Concerning the 15% increase of the monthly payment designated to the authority or the responsible structure for the prevention of the conflict of interest in the exercise of the public function, who will profit from that payment increase?*

Answer: The Represented Authority that is in charge of the prevention, control and the solution of the conflict of interest between the public servants, according to the article 41, point 2, letter "b", will be considered all the directories, human resources units, or even other units established on purpose, in compliance with the needs and the possibilities of every institution. The Represented Authority is approved by the office-holder of the institution according to the above mentioned disposition and in compliance with the Internal Memo on "The prevention of the conflict of interests in the exercise of public functions"

Being based in the articles 10 and 11, law no. 9367, date 7 April 2005, the represented authority in every institutions has a key function and an active role in collecting the information and the data concerning the private interest of the officials and it deals with the case by case conflict of interest.

Concerning his job that he performs in the help of HIDAA, being based in the article 42, point 3, law no. 9367, date 7 April these authorities profit an increase in their payment of about 15% of their monthly payments.

**This means that this amount of money is not given for the overall activity of the Represented Authority, but only for the work that they accomplish on behalf of HIDAA.**

This is because the performance of this duty, which is mostly of legal nature, is not part of their job description.

*14. In the cases when the subject that declares the assets or his/her family members (spouses or adult children) have their own commercial activity registered under their name in the Tax Offices or in the Judicial Organs, what do they have to declare in their declaration form?*

Answer: a) When the family members of the official (spouses or adult children) are partners in an incorporated company, they will declare the spent value on the assets purchase, the amount of money spent on dividends (the net profit/gain), payments and compensations that they might have got from the company, as well as the sum of the money that the subject might have taken to the company or vice-versa. In the declaration form no movable or immovable property that is under the name/or registered on the company, will be included.

b) When the family members of the official (spouses or adult children) are partners in a limited liability company, the subject has to declare only the value spent on the shares purchase of the main/initial capital of the company, the divided profit/gains at the end of the annual economic activity, salaries or compensations that he/she might have had from the company, as well as the sum of money that the subject might have taken from the company or vice-versa. In the declaration form no movable or immovable property that is under the name/or registered on the company, will be included.

c) When the subject is registered/signed in as a natural person or a juridical person and in the Tax Office is registered as a small business, it means that he has to declare all the assets of that physical person as they were personal assets of the subject himself. For e.g. the official or the subject wants to declare his/her store, warehouse or immovable properties that are signed under his/her name, profits/gains from this activity as it is registered under the name of the subject etc.

15. What about the cases, when in the same family, there is more than one subject (spouses/adult children) that has the legal obligation to declare the private interest, how is the procedure in such cases?

Answer: In cases when one of the subjects (spouses or adult children) have the legal obligation to declare to HIDAA ( according to the article 3, law 9049, date 10 April and to the article 27 and 33, law 9367, date 7 April 2005) the declaration form of the spouses and adult children will be attached to declaration of the main subject (the one that is HIDAA's subject), unless they are in the same family certificate with the main subject. The Represented Authority of the institution in which the subject submits the declaration form of his/her spouse and of the adult children, issues a written attestation that would serve to represent it as a document to the Represented Authority of the institution of which family members of the subject are part of. In such cases the other family members are obliged to talk to the Represented Authority of their institution and tell him about the declaration as well as show the attestation. It is the responsibility of the Represented Authority to register/sign in



this fact in the alphabetical register of the subjects that declare there and keep a photocopy of this attestation.

Following these guidelines the High Inspectorate will provide further information and will offer continuous assistance concerning all the problems that you might come across during the declaration process. Concerning every discrepancy, problem or question you are free to use the free phone number 0800 9999 or visit our web site **Info: [www.hidaa.gov.al](http://www.hidaa.gov.al)**.

**Memorandum of understanding  
Between  
High Inspectorate of Declaration and Audit of Assets  
And  
Ministry of Foreign Affairs**

The High Inspectorate of Declaration and Audit of Assets and the Ministry of the Foreign Affairs, now and on referred as the “ parties”,

**With its main objective:**

- The accomplishment of the common collaboration between the two parties in the fight against corruption and organized crime.
- The acceleration of the legal procedures concerning the investigation and the verification process of illegal assets abroad.
- The coordination of the actions taken by the Diplomatic Representatives of the Albanian Republic and the foreign institutions that accomplish the process of the fight against corruption;

**We agreed on as it follows:**

For the purpose of this memorandum the term “MPJ” applies to the Ministry of Foreign Affairs and the term “ILDKP” applies to the High Inspectorate of Declaration and Audit of Assets.

Both parties in compliance with the letter “c” of the article 17, law no.9049, date 10 April 2003 “On the declaration and audit of assets, financial obligations of elected persons and certain public officials”, will be committed in a collaboration with the main objective the fight against corruption and the economic crime.

ILDKP/HIDAA, as soon gets the information as a result of the disclosed document “declaration form”, concerning the assets of any different subject abroad, in compliance with point 5, article 14, law no. 9367, date 7 April 2005 “On the prevention of conflicts of interest in the exercise of public functions” will be addressed, in a form of an official request, to MPJ to collaborate for the collection of the data (by means of official documentation) concerning the verification of the data disclosed in the declaration form.

This collaboration will be accomplished by means of the Diplomatic Representatives of the Albanian Republic, accredited in the countries where the possession of the assets of different subjects is declared. In such cases, ILDKP/HIDAA will make available to the Diplomatic Representatives an authorization by means of which it allows the collection of different data and various documents of the assets of the mentioned subjects, wherever they are in the country where the Diplomatic Representatives are accredited .

MPJ, by means of its Diplomatic Representatives will be committed to collect the required information, in the private and public sector, of the countries where the Albanian diplomatic representatives are accredited , in full compliance with the legislation of the Albanian Republic and of the other countries, as well as with the international multilateral dispositions.

MPJ, being upon the request of ILDKP/HIDAA, will be committed to set contacts with the counterpart institutions of ILDKP/HIDAA in other countries as well as to conclude the bilateral agreements of collaboration, so that the coordination and the personal data collection related to the illegal assets of the public servants and of the elected ones will be met.

This Memorandum of Understanding enters into force since it was signed.

This Memorandum of Understanding is compiled in 2 original copies in the Albanian language, one of which is stored at MPJ and the other is stored at ILDKP/HIDAA.

This Memorandum of Understanding was signed in Tirana, date 9 November 2005

**For the High Inspectorate of  
Ministry of  
Declaration and Audit of Assets  
Affairs**

**THE GENERAL INSPECTOR  
FATMIRA LASKA  
MUSTAFAJ**

**For the  
Foreign**

**THE MINISTER  
BESNIK**

## **DRAFT MEMO**

### **“On the prevention of conflict of interest in the exercise of public functions”**

#### **I – Legal background and its implementation**

1- This internal memo is compiled in compliance of the article 46, first paragraph, law 9367, date 7 April 2005 **“On the prevention of the conflict of interest in the exercise of public function”**. This memo gives clear and detailed guidelines concerning the implementation of the requests stipulated in the law, but in compliance with the conditions of the institution -----

2 – The purpose of this memo to guarantee a transparent decision – taking process, an impartial one, but supporting the accomplishment of the objectives and main functions of the institution \_\_\_\_\_ in a better interest of the public and its trust in the institution \_\_\_\_\_, to better serve to the prevention of conflict of interests of the public and private interests of a public official in the exercise of the decision-taking functions in the institution \_\_\_\_\_.

3 – The main objective of this memo is to set rules and procedures for a better identification, declaration, registration, solutions and the sanctions taken in cases of conflict of interest in the institution \_\_\_\_\_.

#### **II – The establishment and the function of the structures/bodies in charge of the prevention of the conflict of interest in the exercise of public functions.**

1 – The represented authorities in charge of the implementation of this law in the institution \_\_\_\_\_ are:

- a) The office-holder of the institution \_\_\_\_\_ and the supervisors of the office-holder according to the hierarchy order/rank
- b) the Department of the Human Recourses in the institution \_\_\_\_\_
- c) The superior institutions \_\_\_\_\_

2 – Dependant institutions:

- a) which have established a structure/body in charge of the implementation of the law are: \_\_\_\_\_
- b) which have not established a structure/body in charge of the implementation of the law are: \_\_\_\_\_

For those institutions that have not established a structure/body in charge of the implementation of the law, the legal obligations will be implemented by the Represented Authority of the institution \_\_\_\_\_

3 – The Represented Authority stipulated in the letter “b” provides assistance and accomplishes the assigned duties by the General Inspector, so that the periodic declaration process will be easier and adventurous/useful.

Concerning the work they perform, helping the High Inspectorate, the Represented Authority makes a profit of about 15% of his/her monthly salary.

4 – The Represented Authority in compliance with the law no. 9367, date 7 April is authorized, in the name of his/her institution, to be proactive in the following duties:

- To gather, from legal recourses, information about the private interests of a public official,
- To accept the information provided in a legal way,
- To verify the credibility of this information,
- To make known to the public official about the information provided for him/her,
- To give the possibility to the public official to prove the opposite, if he/she requires such a thing,
- To register the private interests of the public official,

No later than 30 days, since this law entered into force or within 30 days that the public official starts work, an authorization should be issued in favor of the institution where the public official exercises his/her function, authorizes this institution to control and to provide personal records/information about the public official and this authorization is of the same value/importance for every superior institution;

- When there is a case by case conflict of interest it is registered the identity of the public official, his/her private interest, the reason of this conflict, what was it all about, the interested parties, the source of the data/information, the way how this information was provided and the verification process, as well as the decision that was taken, by being based in the above mentioned information and sources, including the decisions taken by the office-holders, superior institutions and by the courts.
- The whole documentation that is related to the declaration and audit of assets will be archived according to the rules and it will be stored for a period of 10 years.

### **III – Identifying and registering the interest in case by case conflict of interest.**

#### **Limitations:**

**The case by case conflict of interest** is the conflictual state.

The interest that appears case by case is related with a special decision taking process such as in the following cases:

- **A factual conflict of interest** is a state in which the private interests of the public official have influenced or still do influence in the performance of duties and the functions of an official not in the rightful way.
- **An apparent conflict** is the in which the private interest of the public official apparently or either in their form they seem as they have influenced or they still do in the performance, not in a rightful way, of the duties and

the responsibilities of the public official, but in fact there is no such an influence, it has never been such an influence or there is no possibility for it to happen.

- **A possible conflict of interest** is the state in which the private interest of a public official, in the future, might cause a factual conflict of interest or an apparent conflict of interest if the public official was involved in certain duties or responsibilities.

1 - According to the articles 4 and 10 of the paragraph 2, law no. 9367, date 7 April 2005, in an institution, the officials that will have to fill in the authorization concerning the verification of conflict of interests case by case will be: (according to the functions)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2 –With regard to an institution - the meaning of a decision making process concerning an act/regulation and related to the competencies of a public official and to the above mentioned functions, will be as it follows:

\_\_\_\_\_  
\_\_\_\_\_

3 – With regard to an institution – the subtypes of interest or the concrete interests that might become the reason/cause of a conflict of interest, as well as its restrictions will be:

\_\_\_\_\_  
\_\_\_\_\_

4 – The criteria and the performance and assessment indicators that will be made available for a more concrete and objective accomplishment of the duties and of the responsibilities for the prevention of the conflict of interest, will be as the following:

\_\_\_\_\_  
\_\_\_\_\_

5 – The identification and registration process of the private interest of the public officials \, concerning the cases by case conflict of interest in the institution - will be accomplished as it follows:

\_\_\_\_\_

6 – Every subject or public official that offers information based on the conflict of interest that were not declared by the subjects that have this obligation, according to the case, profits a certain administrative protection.

7 – The prevention of special cases of case by case conflict of interest will be accomplished as it follows:

a - Every public official that when he/she exercises his/her public function, by being based on his/her acknowledgement and his/her confidence too, is obliged to make a preliminary self-declaration, cases by case of the existence of his/her private interest that might be a reason for a conflict to start.

b – The case by case declaration of private interest might be accomplished any time by the public official , in cases when it is **required** by the office-holder or by a superior institution.

8 – The restrictions of a public official' private interests, concerning the prevention of case by case conflict of interest, on specific matters will be as the following:

a – the prevention of contractual agreements

b - the prevention of providing income as a result of a special function.

To determine the cases and special functions in the institution \_\_\_\_\_

c – the prevention of gifts, favors, promises or preferential treatment.

To set procedures so that the implementation of these restrictions will be available in the institution \_\_\_\_\_

d - the related people of the public officials that would implement the above mentioned restrictions is made of the spouses, adult children, the parents of the public official and of his/her spouse, as well as every physical or juridical person, who, concerning the gifts, favors or the preferential treatments would have the role of the intermediary or of the exchanger as a result of this action.

9 - With regard to the institution \_\_\_\_\_ beside the above mentioned restrictions of the private interests of the public official, there will be included even these additional restrictions:

a) \_\_\_\_\_

b) \_\_\_\_\_

#### **IV – The identification and the registration of the periodic private interests.**

1 - According to the article 3 of the law 9049, date 10 April 2003 and the articles 27 – 33 of the law 9367, date 7 April 2005, it is the responsibility of the Represented Authority of the institution \_\_\_\_\_ to register/sign in all the public officials, that have the legal obligation, in the main register according to the pattern that was passed by the General Inspector's order issued in the 13<sup>th</sup> January 2004.

a - For a public official that starts work, he will be announced of the legal obligation that he has to declare and will have a copy of the declaration form that he has to submit along with the documentation that proves that he started work.

The declaration should be submitted to the Represented Authority of the institution where he/she exercises his/her public function, within 30 days. The Represented Authority must submit the declaration form of the public official at HIDAA within 15 days.

b - For a public official that leaves work, he will be announced of the legal obligation that he has to declare and will have a copy of the declaration form that he has to submit along with the documentation that proves that he left work. The declaration should be submitted within 15 days. The Represented Authority must submit the declaration form of the public official at HIDAA within 15 days.

c - In the periodic declaration are given only the changes of the private interests, previously declared, interests that came out during that year of declaration and any provided income during that year. The public officials that have the legal obligation of periodic obligation should submit their declaration form, enclosed in an envelope until the 31 of every year, at the Represented Authority of the institution \_\_\_\_\_, trying to show the private interests, (of assets, of financial liabilities, of the provided income, gifts, as well as the interests concerning the business) until the 31<sup>st</sup> of December of the previous year. It is the responsibility of the Represented Authority to submit the all the declaration forms at HIDAA within the 15<sup>th</sup> of April every year.

d - It is the Represented Authority that identifies, in every case the public officials, that have the legal obligation to declare and the one that do not fulfill this obligation, and in this way they have even to spot out the reasons of not submitting the declaration form.

e - It is the Represented Authority that has to provide all the necessary and needed technical assistance concerning the way a declaration form has to be filled in and the consequences he/she has in case they go through a false declaration.

f - The Represented Authority of the institution \_\_\_\_\_ within the 15<sup>th</sup> January, every year, sends to HIDAA the list that contains all the public officials that have the legal obligation to submit the periodic declaration forms, that was passed by the office-holder of the institution.

## **V - Sanctions**

1 - Every violation of the obligations defined in this law, when it does not constitute a criminal offense, constitutes an administrative offence and is punished by a fine according to the limits defined in the article 44 of this law.

2 - 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/the status of official in the institution \_\_\_\_\_.

3 - According to the article 45 point 4, law no. 9367, date 7 April 2005, the failure to provide an authorization according to point 2 of article 10 and point 5 of article 14 of this law, brings about the interruption of work relations according to the procedures defined in the legislation that regulates work relations.



4 - According to the article 5, law no. 9049, date 10 April 2003, refusal to make a declaration entails the loss of function and punishment in conformity with the Criminal Code.<sup>1</sup>

This memo is effective in \_\_\_\_\_ (date)

## The office-holder of the institution

### DECLARATION

#### Case by case declaration of the private interests of the public official In the exercise of the public functions

- **Who has the legal obligation to declare:**

All the public officials, according to the article 4, law no. 9367, date 7 April 2005 as well as the one included in each memo of the institution.

- **Kinds of declaration:**

1 – A preliminary self-declaration, of the case by case existence of the private interests, that might be a reason for a conflict of interest to start.

2 – A case by case declaration of the private interests of the public officials in cases when it is required by the office-holder or by a superior institution.

- **Personal information:**

Name – Fatherhood – Surname – Function – Institution.

\_\_\_\_\_

The kind of declaration: ( Tick the kind of declaration you apply)

a - Upon a request

b – A self-declaration

**I attest that the following declarations, filled in on my own side are complete, exact and I am responsible for their veracity.**

\_\_\_\_\_

1 – A detailed description of the private interest that seem to be the cause of a conflict of interest:

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2 – The definition of the legal restrictions in the exercise of the public official that become a cause for the conflict of interest:

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3 – The way of solving the conflict of interests:

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Date of submitting the declaration \_\_\_\_\_

Name Surname, signature

**Institution**.....

The register of the conflict of interests

No	Name of the public official	The date of the declaration	A detailed description of the conflict and the interested parties	The steps that will be taken in the solution of the conflict The decisions that were taken	Source of information	Signature



**REPUBLIC OF ALBANIA**  
**(Name of institution)**

Address: Street.....; Tel.....; fax.....

**A U T H O R I Z A T I O N**

**TO THE DIRECTOR OF HUMAN RESOURCES AND SERVICES**  
(the name of the Represented Authority of the institution)

**HERE**

I, the entitled (name, surname and function) in compliance of the article 10, law no. 9367, date 7 April 2005 "On the prevention of conflict of interest in the exercise of public functions" authorize ( the name of the represented authority) to get information and to control in every in every public or private institution about my personal data, wherever they are registered, within and outside the Albanian Republic.

This authorization is valid and it can be used for as long as I exercise this public function

(the function that the public official holds) As soon as I leave this function, this authorization is not valid any more.

**THE AUTHORIZER**

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**INSTITUTION \_\_\_\_\_**  
**THE REPRESENTED AUTHORITY FOR THE PREVENTION OF CONFLICT  
OF INTERESTS**

**The list of the public officials that have the legal obligation of the annual declaration of interests in the 31<sup>st</sup> December every year.**

No.	Name	Fatherhood	Surname	Function	Institution

Date \_\_\_/ \_\_\_/ \_\_\_

**Represented Authority**  
( \_\_\_\_\_ )

Note: Within January, the 15<sup>th</sup> of every year, the list of all the public officials that have the legal obligation of the annual declaration of interests, is sent by means of an official documentation signed by the office-holder of the institution.

**INSTITUTION \_\_\_\_\_**  
**THE REPRESENTED AUTHORITY FOR THE PREVENTION OF CONFLICT  
OF INTERESTS**

**The list of the public officials that have submitted the  
declaration of interests until the 31<sup>st</sup> December of the year \_\_\_\_.**

No.	Name	Fatherhood	Surname	Function	Institution	Date of declaration submission

Date \_\_\_\_/ \_\_\_\_/ \_\_\_\_

**Represented Authority**  
( \_\_\_\_\_ )

Note: Within the 15<sup>th</sup> April every year is sent the list of the public officials that have submitted the declaration of interest until the 31<sup>st</sup> March every year.

**INSTITUTION \_\_\_\_\_**  
**THE REPRESENTED AUTHORITY FOR THE PREVENTION OF CONFLICT  
OF INTERESTS**

**The list of the public officials that have not submitted the  
declaration of interests.**

No.	Name	Fatherhood	Surname	Function	Institution	The reason of not declaring.

Date \_\_\_/\_\_\_/\_\_\_

**Represented Authority**  
**( \_\_\_\_\_ )**

Note: Within the 15<sup>th</sup> April every year is sent the list of the public officials that have the legal obligation of the annual declaration of interest and have not submitted it.

**INSTITUTION \_\_\_\_\_**  
**THE REPRESENTED AUTHORITY FOR THE PREVENTION OF CONFLICT**  
**OF INTERESTS**

Date \_\_\_/\_\_\_/\_\_\_

\_\_\_/\_\_\_/\_\_\_

**ATTESTATION**

Mr. \_\_\_\_\_ with the function \_\_\_\_\_ in the institution \_\_\_\_\_ date  
\_\_\_\_\_ has submitted the declaration of interests for the period of time  
\_\_\_\_\_

Along with his/her declaration, he/she has enclosed the declaration of his/her  
family members, as well, Mr. \_\_\_\_\_, who has the legal obligation of the  
declaration of interests in the institution \_\_\_\_\_

**Represented Authority**  
( \_\_\_\_\_ )



**H. I. D. A. A.**  
**THE HIGH INSPECTORATE FOR THE DECLARATION AND AUDIT OF ASSETS.**

**GUIDELINE**

**ON THE DECLARATION OF INTERETS.**

The Albanian Law, no. 9367, date 7 April 2005, "On the conflict of interests", became efficient in the date 26<sup>th</sup> May 2005.

In cases of infringement and of a not correct implementation of this Law, penalties have been stipulated.

**What is a conflict of interest?**

A "Conflict of Interest" is a situation of conflict between the public duty and the private interest of an official in the time that he/she is exercising his/her public function.

This might happen when an official has direct or indirect private interests that affect, might affect or seem to affect, in an incorrect way his/her public responsibilities and duties.

The conflict might be continuing or a case by case conflict of interest.

**The private interest include:**

1. Property rights and obligations of any kind of nature
2. Any other juridical civil relationship
3. Gifts, promises, favors, preferential treatments
4. Possible negotiations for employment in the future by the official
5. Engagements in private activities
6. Family or living together, ethnic or community relationships.

**Field of application:**

This law includes all the elected public officials as well as the public officials of high and middle management level, the ones that take part in the decision-making process, judges, prosecutors, bailiffs/executors, leaders of joint stock companies with the participation of state capital of more than 50%, civil servants of the Tax and Registry Office, etc.

**What should you do:**

**First**, you should try to solve as quick as possible the conflict of interest, in case you have one.

**Secondly**, it is prohibited to a certain category of public officials and their family members, to set up activities that were stipulated in the conflict of interest law.

**Thirdly**, the self-declaration is considered obligatory, in case when the official is included in a decision-making process which involves a conflict of interest.

Every institution is obliged to collect data/information in cases of conflict of interest

Certain categories of public officials are obliged to fill in an annual declaration form.

The law stipulates the solution of conflict of interest cases.

**Case by case declaration:**

Every public official is obliged to make a preliminary self-declaration, a case by case one, if he is on the basis of his knowledge of the existence of a private interest that might become the cause for the emergence of a conflict of interest.

The case by case declaration of private interest is done by the public official whenever this is requested by the superior.

The declaration should be filed in the registers of every institution. These registers might be public.

**Periodic Declaration:**

All the officials defined in article 3, law no.9049, date 10 April 2003 and in article 4, law 9367, date 7 April 2005 are obliged to make a periodic declaration.

The declaration form includes details on assets, bank accounts and any other information that is required by means of law 9049, date 10 April 2003 “On the declaration and audit of assets.....”, as well as gifts, preferential treatments or the fact of being involved in the governmental and non-governmental organizations.

The declaration forms may also be public.

The deadline to submit them is the 31<sup>st</sup> March of every year.

The first declaration (when you start work) should be lodged in within 30 days.

**Who is in charge of the conflict of interest law?**

Every institution should assign a person in charge of. Generally this person is the director of human resources.

The main represented authority that is in charge of implementing this law is the High Inspectorate for the Declaration and Audit of Assets.

If you do not have sufficient information on this law, you should look for information.

**Additional Information:**

Copies of this law might be found in the Official Gazette no.31<sup>st</sup> May 2005 as well as in the directories of the human resources in every institution.

Additional information might be found even in our website [www.hidaa.gov.al](http://www.hidaa.gov.al) or in the free phone **0800 9999**

**I.L.D.K.P.  
THE HIGH INSPECTORATE FOR THE DECLARATION AND AUDIT OF  
ASSETS.**