

## ALBANIA LEGAL ANNEX

### **REVIEWED LAWS:**

1. Constitution 1998, amended 2007
2. Law on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials No. 9049 of April 10, 2003, published in the Official Journal no. 31 of May 15, 2003, amended by the law No. 9367 of April 7, 2005, published in the Official Journal No. 31 of May 11, 2005, and by the law No. 9475 of February 9, 2006, published in the Official Journal No. 19 of March 9, 2006, and by the law No. 9529 of May 11, 2006, published in the Official Journal no. 56 dated 8 June 2006.
3. Law on the Prevention of Conflicts of Interest in the Exercise of Public Functions (Law No. 9367 of April 7, 2005, published in the Official Journal No. 31 of May 11, 2005, amended by the law No.9475 of February 9, 2006 published in the Official Journal No. 19 of March 9, 2006 and by the law No. 9529 of May 11, 2006 published in the Official Journal No. 56 of June 8, 2006
4. Criminal Code (Law No. 7895 of 27 January 1995 The Criminal Code of the Republic of Albania), consolidated version of December 1, 2004
5. Law on the Right to Information Over Official Documents (Law No. 8503 of June 30, 1999)
6. High Inspectorate of the Declaration and Audit of Assets (HIDAA) Legal Commentaries No. 1 and 3 (case study).
7. The order no. 6 dated 10 Feb. 2006 on an amendment of the order 16 dated 25 Nov 2004 issued by the Inspector General “On the ratification of the types of the declaration form of the private interest and the relevant authorization” – see in a separate file.

### **(\*) Law(s) reviewed but not containing relevant articles for this study.**

1. Law “On the State Supreme Audit Institution” No. 8270 of December 23, 1997, amended by the law No. 8599 of 01.06.2000 On some changes and amendments to law No. 8270 of December 23, 1997 “On the State Supreme Audit Institution” and by the Decision of the Constitutional Court No.212, date 29.10.2002)
2. Civil Service Law (Law No. 8549 On the Status of the Civil Servant of November 11, 1999)

3. Electoral Code (Law No. 9087 The Electoral Code of the Republic of Albania, dated 19.6.2003, amended by the law No. 9297 dated 21.10.2004 and by the law No. 9341, dated 10.1.2005)

4. Ethics in the Public Administration Law (Law No. 9131 On the Rules of Ethics in the Public Administration of September 8, 2003)

5. Code of Administrative Procedures (Law No. 8485, dated 12.5.1999)

### **RELEVANT ARTICLES:**

#### **1. Constitution 1998**

##### **Article 69**

1. Without resigning from duty, the following may not run as candidates or be elected deputies:

a. judges and prosecutors;

b. military servicemen on active duty;

c. staff of the police and of the national security;

ç. diplomatic representatives;

d. mayors of municipalities and communes as well as prefects in the places where they carry out their duties;

dh. chairmen and members of the electoral commissions;

e. the President of the Republic and the high officials of the state administration contemplated by law.

2. A mandate won in violation of paragraph 1 of this article is invalid.

##### **Article 70**

1. Deputies represent the people and are not bound by any obligatory mandate.

2. Deputies may not simultaneously exercise any other public duty with the exception of that of a member of the Council of Ministers. Other cases of incompatibility are specified by law.

3. Deputies may not carry out any profit-making activity that stems from the property of the state or of local government, and may not acquire the property of either of the latter.

4. For every violation of paragraph 3 of this article, on the motion of the Speaker of the Assembly or of one-tenth of its members, the Assembly decides on sending the case to the Constitutional Court, which decides on the incompatibility.

## **Article 71**

1. The mandate of the deputy begins on the day when he is declared elected by the respective electoral commission.

2. The mandate of the deputy ends or is invalid, as the case may be:

a. when he does not take the oath;

b. when he relinquishes the mandate;

c. when one of the conditions of ineligibility or incompatibility contemplated in articles 69 and 70, paragraphs 2 and 3, is ascertained;

ç. when the mandate of the Assembly ends;

d. when he is absent from the Assembly for more than six consecutive months without reason;

dh. when he is convicted by final court decision for the commission of a crime.

## **Article 131**

**The Constitutional Court decides on:**

a. the compatibility of a law with the Constitution or with international agreements as provided in article 122;

b. the compatibility of international agreements with the Constitution, prior to their ratification;

c. the compatibility of normative acts of the central and local organs with the Constitution and international agreements;

ç. conflicts of competencies among the powers as well as between central government and local government;

d. the constitutionality of parties and other political organizations, as well as their activity, according to article 9 of this Constitution;

dh. removal from office of the President of the Republic and verification of his inability to exercise his functions;

e. issues related to the eligibility and incompatibilities in exercising the functions of the President of the Republic and of the deputies, as well as the verification of their election;

ë. the constitutionality of a referendum and the verification of its results;

f. the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.

## **2. Law on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials No. 9049 of April 10, 2003**

### **Article 2 (Abrogated point 4)**

#### **Definitions**

Except when otherwise specified, the following terms have these meanings in the law:

1. “Share” is a title of ownership, which represents one of the parts into which the capital of a company is divided and which gives the right to its owner to take part in profits.
2. “Liquidities” are monetary assets, set in *cash*, revolving accounts, deposits, with and without a term, treasury bonds, obligations and loans.
3. “Registered movable property: is all property not included in immovable property and required to be registered in the public registers.
4. **(Ref. Article 3, point 11, law no. 9367 dated 7 April 2005).**

5. “Part of the capital” is the part that a partner owns in the capital of a company.

6. “Transaction” is an action by means of which the transfer of property obligations and rights from one owner to another is assured.

### **Article 3**

#### **Subjects Who Have the Obligation to Make a Declaration**

1. The following have the obligation to make a declaration in the High Inspectorate of the Declaration and Audit of Assets:

a) the President of the Republic, **deputies of the Assembly**, the Prime Minister, the Deputy Prime Minister, the ministers and deputy ministers;

- b) civil servants 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 Servant”;
- c) prefects, chairman of the regional councils, mayors of municipalities, of municipal units and of communes;
- ç) directors of directorates and commanders of the Armed Forces in the Ministry of Defense and in the State Information Service;
- d) prosecutors, judges and enforcement officers [bailiffs] of all levels;
- dh) directors of independent public institutions;
- e) general directors, the directors of directorates and the chiefs of sectors (commissariats) in the center, districts and regions, of the General Directorate of the Police, the General Directorate of Taxation and that of Customs;
- f) directors of all levels of structures for return of and compensation for property, of privatization and the registration of property;
- g) directors of all levels of the CRTs [Commissions for the Regulation of the Territory];
- gj) officials who are elected and appointed by the Assembly, the President of the Republic, the Prime Minister, the ministers or persons equivalent to them;
- h) directors of joint stock companies with the participation of state capital of more than 50 per cent and on the average more than 50 workers.

On the proposal of the Inspector General, the Assembly decides the obligation to make a declaration of assets for other functions not contemplated in this law.

#### **Article 4**

##### **Time Period and Object of Making a Declaration**

The subjects specified in article 3 of this law are obligated to declare to the High Inspectorate of the Declaration and Audit of Assets by March 31 of each year the condition, up to December 31 of the prior year, of their assets, the sources of their creation, and their financial obligations, as follows:

- a) immovable properties and real rights over them;
- b) movable properties that can be registered in public registers;
- c) things of special value over US\$5000;
- ç) the value of shares, securities and parts of capital owned;
- d) the value of liquidities, the condition in *cash*, in revolving accounts, in deposits, treasury bonds and loans, in lek and in foreign currency;
- dh) financial obligations to natural and juridical persons, expressed in lek or in foreign currency;

e) personal income for the year, from salary or participation on boards, commissions or any other activity that brings personal income;

ė) licenses and patents that bring income.

## **Article 5**

### **Refusal to Make a Declaration**

1. Refusal to make a declaration entails the loss of function and punishment in conformity with the Criminal Code.<sup>1</sup> Within 30 days, the Inspector General sends to the responsible organ a reasoned notification about the removal from work of the person who refuses to declare.

Within 30 days from receipt of the notification, the responsible organ is obligated to take measures for the removal from work of the employee who has refused to make the declaration.

2. When the making of the declaration is refused by elected persons or those with immunity, the Inspector General makes the Assembly aware and also, as the case may be, the superior organ of this person.

In all cases of refusal to make a declaration, with the passage of 30 days from notification to the responsible organ, the Inspector General is obligated to make public the cases of refusal to make a declaration.

## **Article 7**

### **Making the Declaration when Requested**

The Inspector General also has the right to request the making of a declaration of assets and the sources of their creation according to the requirements of this law, as well as to order an audit of the accuracy of these declarations, for natural and juridical persons when, from the verifications performed, it turns out that the latter are persons related to the subjects that have the obligation to make a declaration.

## **Article 9**

### **Declaration before Beginning Work**

All the subjects specified in article 3, who have the obligation to make a declaration are obliged to declare **before they take office** all accumulated assets, financial obligations and the sources and origin.

## **Article 16**

## **High Inspectorate of the Declaration and Audit of Assets, Structure and Budget**

1. The High Inspectorate of the Declaration and Audit of Assets, called the “High Inspectorate” below, is a public juridical person that, under the responsibility of the Inspector General, administers the declaration of assets, financial obligations and the audit of this declaration, according to the specifications made in this law.
  - ~~2. The organizational structure of the High Inspectorate is set by the Inspector General.~~
  3. The inspectors of the High Inspectorate enjoy the status of a civil servant.
  4. The High Inspectorate has its own independent budget, set by the Assembly, which decides on the number of employees of this Inspectorate and their salary.
- (Point 2 is abrogated in pursuance to article 14, law no. .9584 dated 17 July 2006)**

### **Article 17**

#### **Competencies of the High Inspectorate**

The High Inspectorate has these competencies.

- a) it directly audits the making of declarations by those in the list of persons covered by it;
- b) it collects data, carries out administrative research and investigations about the declarations of persons who have the obligation to make a declaration according to this law, in conformity with the Code of Administrative Procedures;
- ç) it cooperates with the auditing organs and other structures responsible for the fight against corruption and economic crime.

### **Article 21**

#### **Making a Declaration**

The declaration of assets, their sources and financial obligations is made according to the requirements specified in this law **and in the form specified by the Inspector General.** The declaration includes **the assets of the subject as well as his family (spouse and grown children),** the sources of creation and the financial obligations of the subject.

**The declaration is also to indicate whether the declarant has related persons or not.**

Before making the declaration, the declarant is to be given all necessary advice for filling out the declaration and to be made aware of the consequences that making a false declaration brings.

### **Article 22**

#### **Declaration of Members of the Family**

**When property of members of the family is divided and registered as such in the organs of the state or judicial administration, the declaration is submitted separately by each member of the family, with the property registered in his name, and joined to the declaration of the person who has the obligation to make the declaration.**

## **Article 24**

### **Preliminary Processing**

The High Inspectorate performs preliminary processing of the declarations, which includes the jurisdiction, the regularity of completion of the declaration and the annexes, the justifying documents and their legality.

When material mistakes or mistaken responses are found in the preliminary processing, the Inspectorate notifies the subject who has submitted the declarations, who within 15 days from receiving notification is obligated to correct them.

## **Article 25**

### **Types of Audit**

1. The audit of the declarations includes **arithmetical and logical audits and the verification and approval of the data of the declaration (a full audit).**

The arithmetical and logical audits are done for every declaration in order to determine the accuracy of the valuation of the assets declared, the accuracy of the financial sources declared and the sufficiency of coverage of the assets with the declared sources.

2. **(Ref. Article 17 and 18 law 9367, date 07. 04.2005)**

3. The methodologies and manuals for conducting the audit are approved by the

Inspector General.

## **Article 26**

### **Obligation for Data**

For performing the audit and the verification of the data in a declaration, the High Inspectorate has the right to use necessary data in the entire state and public apparatus and in public and private juridical persons.

On the request of the Inspector General, banks of the second level and other subjects who exercise banking and financial activity in the Republic of Albania are obligated to give data about the deposits, accounts and transactions performed by the persons who have the obligation to make a declaration according to this law.

The above subjects are obligated to put all data requested at the disposition of the Inspector General within 15 days of the submission of his written request.

## **Article 27**

### **Correction of Mistakes in the Declaration**

When during the audit it is discovered that the declarations are not exact or the sources declared are not identified and do not cover the assets declared, the High Inspectorate calls the subject to give detailed explanations and the respective arguments, which are always submitted in writing.

## **Article 30**



## **Documenting the Audit**

For every declaration subject to audit by the High Inspectorate, an audit sheet is filled out, in the manner specified by the Inspector General, which is signed by the inspector who has performed the audit.

### **Article 31 Content of the Data**

On the basis of the audit sheets, data are drawn up, respectively, for the Inspector General or for the minister or director of the central institution.

The data are to contain, in summary form, an identification of the declarations that were subjected to audit, the facts and irregularities found, and proposals for disciplinary measures and fines for infractions and, when such is the case, proposals for making complaints for criminal prosecution.

### **Article 32 Assets Obtained by Hiding Fiscal Obligations**

When assets obtained are considered to be the consequence of hiding fiscal obligations, the Inspector General notifies the tax organs.

### **Article 33 Document Retention**

All documentation that has to do with the declaration and audit of assets is archived according to the rules and kept for a 10-year period. This obligation also includes the documentation of the declaration of assets that pertains to prior periods and which is the condition on the date of the entry of this law into force.

### **Article 34 Publication**

The data obtained from the making of a declaration according to this law are available to the public, in conformity with law nr. 8503 dated 30 June 1999 “On the right to get information about official documents.”

### **Article 38 Making a False Declaration**

Declarations and all documents that accompany them are official documents. Submitting false data in them constitutes a criminal act and is punished according to the legislation in force.

## **3. Law on the Prevention of Conflicts of Interest in the Exercise of Public Functions**

## 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) **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 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 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 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.

## **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 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 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: - not applied to MPs -**

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” **this is on post-tenure agreements but it does not apply to the MPs**, “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 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 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.

## **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 – **applicability to the MPs** –, 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.

#### **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 policies 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 of 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.

#### **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 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.

#### **4. Criminal Code (Law No. 7895 of 27 January 1995 The Criminal Code of the Republic of Albania), consolidated version of December 1, 2004**

##### **Article 257/a**

##### **Refusal for the declaration, non declaration, hiding or false declaration of elected persons and public employees**

Refusal for declaration or non declaration of assets of the elected persons or of the public employees in accordance with the law, when previously administrative measures have been taken, constitutes a penal contravention and is punished with fine or imprisonment up to 6 months.

Hiding or false declaration of assets of the elected persons or the public employees is punished by fine or imprisonment up to two years.

#### **5. Law on the Right to Information Over Official Documents (Law No. 8503 of June 30, 1999)**

##### **Article 5**

##### **Right to information on subject exercising state functions**

Each person enjoy the right to information on the personal data of persons exercising state functions or public services, preserved in a official document, as far these data are related with the qualities requested by law or associated legal acts for the performing of their duties.

#### **6. High Inspectorate of the Declaration and Audit of Assets (HIDAA) Legal Commentary No. 3.**

2. The brother of an MP is an administrator of a commercial company that exercises its activity in the construction field with 100% of participation of the capital. The MP is employed part-time in this company as a managing technician/construction engineer, but at the same time having a license by MPATT. This commercial company participates in public procurement.

**Topic for discussion:** Is the public official in the conditions of a continuous conflict of interest, because of his position in this company?

**Answer:** Yes, in reliance on article 28, “a” letter, law on conflict of interest, an MP may not be a manager or member of the management organs of profit-making organizations, (the term manager of profit-making organizations includes every kind of activity that generates income).

But with referral to the additional circumstances provided in the case, two other questions may arise:

- a) A managing technician of a commercial company that deals with construction, may he be considered as “a licensed expert”?
- b) Is it allowed to the Members of Parliament to carry out any profit-making activity that stems from the property of the state or of local government or to acquire their property? (article 70/3 of the Constitution)

Related to the first question, “a managing technician” of a company that has as its main priority the construction field, in the meaning of article 28, “b” letter, is a licensed expert. For a company operating in the construction field, since its establishment and during its whole activity, it is necessary for it to enter into a work contract with “a managing technician”, who is a licensed one. Which means that it has the right to exercise a certain activity, known by the state body (in this case MPATT). Notwithstanding this reason, only a person who has the necessary qualifications and professional skill, may be provided with this license. In this meaning the managing technician of a construction company .

Whereas related to the second question, article 70/3 of the Constitution, stipulates that “Members of Parliament may not carry out any profit-making activity that stems from the property of the state or of local government, nor may they acquire their property.” This definition is related to the incompatibilities in reliance to point 3, article 70 of the Constitution. The fact that this activity belongs to the company, having as an administrator and owner a relative of the MP is sufficient in reliance to the restriction of the Code of Administrative Procedures (the brother is a relative of the second level), so that this activity generating from the public funds, is prohibited for the MP.

**7. The order no. 6 dated 10 Feb. 2006 on an amendment of the order 16 dated 25 Nov 2004 issued by the Inspector General “On the ratification of the types of the declaration form of the private interest and the relevant authorization”.**

See separate file.