

**LAW No. 04/L-051
ON PREVENTION OF CONFLICT OF INTEREST IN DISCHARGE
OF PUBLIC FUNCTIONS**

Assembly of Republic of Kosovo,

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

Approves:

**LAW ON PREVENTION OF CONFLICT OF INTEREST IN DISCHARGE OF PUBLIC
FUNCTIONS**

**Article 1
Purpose**

The purpose of this law is to prevent the conflict between public interest and private interest of senior officials in discharge of public functions.

**Article 2
Object**

The object of this law is to define rules, subjects, responsibilities and competencies required for identification, treatment and solution of cases of the conflict of public and private interests of senior officials in discharge of public functions.

**Article 3
Definitions**

1. For the purposes and needs of this law the below listed terms shall have the following meaning:

1.1. **Public interest** - confidence and expectation of public towards senior officials' impartiality and fair decision making in discharge of public functions.

1.2. **Private interest** - private economic interest or non-economic personal interest of any senior official influencing his/her decision making volition during the discharge of his/her public functions.

1.3. **Conflict of interest** - the conflict of public interest and private interest as provided for in Article 6 of this Law.

1.4. **Related person** - spouse, partner living in cohabitation, relatives in the direct blood line without limitations, whereas in the indirect blood line relatives up to the fourth grade, adoptive parents, adopted children, persons in affinity up to the second grade.

1.5. **Trusted person** - a person who has or used to have property or business relations with the senior official or any other relation that will bring in question impartial decision making of the public official.

1.6. **Active ownership of shares or parts of capital** - full exercise of all rights deriving from the ownership of shares or of the parts of capital.

1.7. **Passive ownership of shares or of parts of capital** - a situation when owner maintains the right to benefit civil fruits of the ownership but shall not exercise any other action over this property. All other actions such as administration, possession, and so on are to be carried out by a person trusted to the owner.

1.8. **Case by Case official's conflict of private interest** – a situation with a conflict of interest that is related to a particular decision making showing up case by case.

1.9. **Agency** - Anti Corruption Agency.

Article 4 Senior Public Official

1. Senior official according to the present law, are exercisers of the following public functions:

1.1. President of the Republic of Kosova, members of Presidential Cabinet, Secretary as well as Directors of the Departments within the Office of the President of the Republic of Kosova.

1.2. Members of Parliament as well as all persons selected or appointed by the Assembly or by the Chairperson of the Assembly of the Republic of Kosova.

1.3. Prime Minister, Deputy Prime Minister, Ministers, Deputy Ministers, Political Advisors and Heads of Cabinets as well as all persons nominated by them.

1.4. Permanent Secretaries of the Ministries as well as of the Prime Minister's Office, Managers of Agencies, which are established by law or any other act,

1.5. Director, Deputy Director as well as Regional Directors of Kosovo Tax Administration, General Director and Directors of Customs Departments.

1.6. Auditors of General Auditing Office as well as all internal institutional auditors.

1.7. President and Members of central Election Commission.

1.8. Board Members of Public Enterprises, members of Regulatory Boards as well as of Commissions or other Agencies established by Law or any other act.

1.9. Members of the Board, Director and Deputy Director of Central Banking Authority.

1.10. Municipal Mayors and Deputy Mayors, Presidents, Deputy Presidents and Advisers of Municipal Assemblies as well as all Directors of Municipal Directorates.

1.11. Members of Judicial Council and of Prosecutorial Council, Director of Judicial Council Secretariat, Director of Prosecutorial Council Secretariat, Judicial Auditor, Disciplinary Prosecutor.

1.12. Judges and Prosecutors, Judges of Constitutional Court and Secretary of the Constitutional Court.

1.13. Directors of all departments, Heads of Public Finances and Procurement throughout all public institutions.

- 1.14. Ambassadors, Consuls, Deputy Consuls, Secretaries of Embassies or Consulates of the Republic of Kosovo.
 - 1.15. Rector, Vice-Rectors of Public University, Deans and Vice-Deans as well as Secretaries of Public University and of Academic Units.
 - 1.16. General Director, Deputy Directors and Regional Directors of Kosovo Police, Chief Inspector of Kosovo Police Inspectorate.
 - 1.17. Commander, Deputy Commander of Kosovo Security Force.
 - 1.18. Director, Deputy Director as well as General Inspector of Kosovo Intelligence Agency.
 - 1.19. Ombudsperson as well as his/her Deputies.
 - 1.20. Chief Inspectors and inspectors of central and local institutions.
2. All other exercisers of public functions appointed by President, Prime Minister and Ministers of the Republic of Kosova that have not been expressly mentioned in the present Law.

Article 5 Scope of Law

Provisions of this Law define mandatory rules that are to be implemented by senior public officials in discharge of public functions, in order to prevent the conflict between public and private interest and defines sufficient restrictions for senior public official exercising public functions and other functions that are not of public nature.

Article 6 Conflict of interest

The conflict of interest is a situation of incompatibility between official duty and private interest of a senior official, when he/she has direct or indirect private personal or property interests that may influence or seems to influence his/her legitimacy, transparency, objectivity and impartiality during the discharge of public functions.

Article 7 Principles of senior official's actions and inactions

1. During the discharge of public functions, a senior official shall protect the public interest and has no right to put his/her private interest above public interest since he/she has been selected or appointed to protect it.
2. A senior official shall exercise his/her functions in compliance with Law and with the Code of Conduct.
3. A senior official shall perform his function with honesty, consciousness and impartiality, shall maintain senior official's and institutional' authority and through his/her work shall increase public trust to the institutions.
4. A senior official shall be held responsible for his/her actions during the discharge of functions entrusted to him/her by an institution or by citizens.
5. Senior official has no right to use public functions for illegal benefits for himself / herself or for the others.

6. During the discharge of public functions senior official has no right to establish dependency relations with other persons that may have an impact on the impartiality and on the expression of his/her free volition in decision making.

7. Apart from the reimbursement permitted on the bases of applicable legal provisions, senior official has no right to accept or solicit any other reward for tasks performed during the discharge of public functions.

8. A senior official shall not allow his/her interest fall into a conflict with his/her functions. He/she should avoid the conflict of interest regardless if the conflict is factual or potential.

9. During the discharge of public functions a senior official should act with transparency and should respect representing bodies' rights as well as citizens' rights to be informed about his/her performance as a public person.

Article 8

Official's obligation to prevent the conflict of interest

1. Senior official is obliged to personally prevent and solve within legal terms and in a most possible effective way any situation of his/her conflict of interest.

2. In cases when a senior official has doubts about the existence of a conflict of interest related to his/her function, he/she should consult as soon as possible with his/her immediate manager or with his/her managing body.

3. Each manager and managing institution should take the necessary measures to prevent and solve conflict of interest cases.

4. In cases of decisions pertaining to the composition of commissions for tendering procedures, manager of the institution or his/her designated person shall notify Agency in written form about members of the commission in question. Agency is entitled to participate and monitor commission's works.

5. In cases when manager or managing body is not convinced about the existence of the conflict of interest or if they consider that they have or may have a conflict of interest as well, they will address this to the agency, which shall make a decision upon the case.

6. When facing situations provided for under paragraph 2. of this Article, institutional managing officials who do not have direct line managers, shall address them to the agency.

Article 9

Senior official's forbidden actions

1. During the discharge of their functions, senior officials are forbidden to take the following actions:

1.1. to solicit or receive rewards or promises for rewards pertaining to the discharge of their functions;

1.2. to gain any right or accept promises to gain any right in cases when legal principal of equality is violated;

1.3. to solicit, appropriate, accept valuables or rewards for himself or other persons as a compensation for his/her vote during decision making process;

1.4. to influence the decision of any official or any public entity for personal gains or for the benefit of a person related to him/her;

1.5. to promise employment or any other right in exchange of a gift or of a promised gift;

1.6. to influence on contracting – awarding public works or public supplies for personal gains;

1.7. to use confidential information on his/her possession or information obtained in good faith during the discharge of public functions for personal gains or for the gains of his/her close or trusted persons;

1.8. to influence the decision making of legislative, judicial or executive entities, while using public function, with the intention to gain a personal profit or a profit for his/her close or trusted persons;

1.9. to take actions which in a way shall suit to his personal interest or to the interest of close or trusted persons;

1.10. to take actions which in a way shall suit or shall be in favour of private interest of another person but are damaging to the public interest.

Article 10

Exercise of other activities by Senior Officials

1. A senior official selected as a representative of a political party preserves the right to exercise his/her functions within the political party unless otherwise provided by a special law.

2. During the discharge of public functions, a senior official may exercise his/her activities in the area of science, sport, education, culture and humanitarian activities, unless otherwise provided for by other laws.

3. During the discharge of public functions, a senior official may gain profit on bases of copyright, patent and other similar rights.

Article 11

Senior official's membership into non-governmental organizations

1. A senior official may be a member of the steering body of a non-governmental organization dealing with humanitarian, cultural, sport and similar activities, without having right for remuneration, except for compensations for travel and similar expenditures.

2. Non-governmental organization, with members of steering body provided for under paragraph 1. of this Article, shall not obtain funds from Kosovo budget if a member of steering body of the non-governmental organization, as a public official, has a direct or indirect influence in decision making process in cases when there are selected non-governmental organizations which will profit from the funds of Kosovo budget.

Article 12

Attempts and influence on senior official's volition

1. In the event of attempts to influence senior official's volition, senior officials must submit a written notification to his/her manager or to the managing body, which has selected or appointed him/her, in order to avoid any influence on his/her volition.

2. If a senior official during the discharge of his/her public functions becomes openly or anonymously subject of a direct or indirect influence to vote or take a particular decision, he/she shall submit a written notification to his/her manager or managing body, which has selected or appointed him/her in order to evade influence on his/her volition.

3. In cases of attempts or in case of exercise of influence over senior official's volition, senior official must:

3.1. refuse such an offer;

3.2. try to identify the person who made such an offer in cases when offer is anonymous;

3.3. if in question is a gift, which as a result of circumstances, cannot be returned, senior official must immediately make a report in written form and hand the gift over to his/her manager as soon as practicable, at last within five (5) days; and

3.4. if possible eye witnesses of the case should be indicated.

4. If it is concluded that the voting and decision making process is in contradiction with senior official's volition, decision should be considered annulled by institution which has rendered it.

Article 13

Case by case declaration of official's private interests

1. Each senior official during the discharge of his/her public functions is obliged to make a preliminary case by case self-declaration, on basis of his/her knowledge and in good faith, of the existence of his private interests that might be a cause for a conflict of interest.

2. Case by case declaration of private interests is to be done by senior officials whenever this is required by the manager or by managing body. As a rule, 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. Self-declaration, as a rule, is to be done in written form when an official is included in a decision-making process for particular issues.

Article 14

Transfer of enterprise managing rights

1. During the discharge of public functions, a senior official, who owns shares or parts of a capital of an enterprise, should transfer his/her enterprise running or managing rights to another trusted person.

2. Thirty (30) days after his/her selection, appointment or engagement to a public function, senior official is obliged to transfer enterprise managing rights to a trusted person, whereas Agency is to be informed in written about that within five (5) days upon the transfer of managing rights.

3. Trusted person provided for under paragraph 1. of this Article shall act towards implementation of senior official's rights and of capital rights on his/her behalf but on the account of senior official.

4. If trusted person establishes business relations with central and local governing institutions, public enterprises or with private enterprises where the capital of public ownership is over five (5) % of the total capital or of the total shares, he/she is obliged to inform the senior official about such business relations.

5. During the time when managing rights over the enterprise are transferred to another person, senior official has no right to give information, instructions, orders or in any other form to stay in

connection with the trusted person and influence the accomplishment of rights and tasks arising from the rights of members of such enterprises.

6. Senior official has the right to be informed about the developments and situation in the enterprise where he/she has his/her shares or parts of property.

7. At any given time, senior official has right to regain running or managing rights from the trusted person, when conditions, which according to the law dictate such an action, cease existing anymore.

Article 15 **Incompatibility with the discharge of public functions**

1. Senior official cannot be a manager or a member of a managing or of a steering body of a private enterprise.

2. Senior official may be a member of a steering body of a publicly owned company or of a shareholding company with public property, without having right to be remunerated with a regular salary apart from the right to be compensated for travel expenses and other necessary expenditures.

3. Senior official has right to be a member of steering and monitoring bodies of other non-profit juridical persons and of juridical persons dealing with scientific, sport, educational, cultural and humanitarian activities, without having the right to be compensated for travel expenses and other necessary expenditures, unless otherwise provided for by other laws.

4. Senior official who exercises independent activities in an enterprise or any other profiting activity is obliged to act in accordance with provisions of this Article.

5. Enterprises, where senior official person owns a share or parts of property, which are being managed by his/her trusted person, has no right to establish contracts with or gain assistance from central or local institutions where he/she holds a decision making posts.

6. If a senior official acts in contradiction with paragraph 5. of this Article, Agency should request from the competent body to cancel the contract with the enterprise and return any kind of material assistance gained from the institution where the official person has a decision making post.

Article 16 **Restrictions to the exercise of other activities in addition to the discharge of public functions**

1. Senior official cannot be a manager or a member of managing bodies of profit-making and non-profit-making organizations, with the exception of political subjects and cases when such a position is dictated because of the function.

2. Senior official cannot exercise private functions such as: advocacy, notary, licensed expert, or consultant, agent or representative of the organizations defined under paragraph 1. of this Article.

3. Senior officials cannot actively exercise his/her ownership rights over shares or parts of capital of a commercial company, regardless of the field of activity.

Article 17 **Restrictions for senior officials after termination of public functions**

Senior official, whose public function is terminated, has no right within one (1) year to be employed or appointed to managing positions or to be involved in control of public or private

enterprises, if his/her duties during the last two (2) years before the termination of public functions, have been directly connected to monitoring or controlling business activities of those enterprises.

Article 18

Agency Administrative Procedures for cases of the conflict of interest

1. Agency procedure is formally commenced upon the request of the senior official and with the approval of his/her manager.
2. Agency may initiate the procedure on bases of a notification of another person or on bases of anonymous information.
3. Agency shall inform the senior official about the initiation of administrative procedure and upon his/her request shall notify him/her about the facts possessed by Agency.
4. Agency procedure is confidential. Agency shall make known the final results of the conducted procedure only.
5. In case of reasonable doubts about the existence of a conflict of interest, Agency shall inform the senior official about violation of the provisions of this law committed by him/her.
6. Agency shall independently verify facts; whereas, upon the request of Agency, other institutions, among other competencies, are obliged to promptly supply the agency with all required facts and data.
7. If upon selection, appointment, or after the confirmation of the mandate, senior official keeps exercising an activity or a function which according to this law is not compatible with the new function, Agency shall inform the senior official and shall set a time frame whereby he/she must either quit this activity or give up from the public function.
8. In case when senior official, regardless warnings by Agency, keeps exercising activities and functions, which according to the present law are incompatible, Agency shall forward a request to the institution, where the senior official exercises his/her functions, demanding the initiation of the procedure for his/her dismissal.
9. Competent body, where senior official keeps exercising a function or an activity, which according to the present Law is incompatible, shall initiate the procedure for dismissal upon the request of the Agency.
10. When a Member of Parliament exercises activities that are incompatible to the present Law, Agency shall notify the Chairman of the Assembly and shall request initiation of the procedure against him/her.
11. Within a determined time frame Agency shall be notified by competent bodies about the measures.
12. All Agency decisions pertaining to the conflict of interest shall be published in the official web page of the Agency.

Article 19

Competencies of Agency pertaining to the Conflict of Interest

1. Agency, as a central responsible authority for implementation of this law deals with below listed tasks and responsibilities:

1.1. administers and improves policies and mechanisms for preventing and avoiding conflicts of interest;

1.2. provides professional and technical assistance, counsels and supports legal and sub legal initiatives taken by public institutions in order to prevent the conflict of interest;

1.3. provides recommendations to the Assembly of the Republic of Kosovo about the assessment of the draft laws that are related to the conflict of interest issues, upon requests of this institution;

1.4. strengthens capacities pertaining to the management of conflicts of interest in public institutions;

1.5. advises particular senior advisors, superiors and superior institutions upon their request about particular cases of the conflict of interest and other ethical issues related to them as well as for recording purposes of interests case by case;

1.6. provides opinions and takes other legal measures in order to prevent the conflict of interest and corruption in general.

Article 20

Sanctions for violations of the provisions of this Law

1. Any violation of obligations provided for by this Law, if it does not constitute a criminal offence, is considered a minor offence which is to be fined as follows:

1.1. for violations of Article 8 Paragraph 1, 2 and 6; Article 9; Article 11; Article 12 Paragraph 1, 2 and 3 Subparagraph 3.1 and 3.3; Article 13, Article 14 Paragraph 1, 2 and 5; Article 15 Paragraph 1, 2 and 3; Article 16 and Article 17 of this Law, senior officials shall be punished for minor offence with a fine in value of from five hundred (500) € up to two thousand five hundred (2500) €;

1.2. for violations of Article 14 Paragraph 3 and 4 and of Article 15 Paragraph 5 of this Law, trusted person shall be punished for minor offence with a fine in value of from seven hundred (700) € up to two thousand five hundred (2500) €.

1.3. for violations of Article 8 paragraph 3, 4 and 5 of this Law, manager or manager of institution shall be punished for minor offence with a fine in value of from one thousand (1000) € up to two thousand five hundred (2500) €.

2. For violation of obligations defined by this Law, senior public officials, managers or leaders of managing institutions apart from the fine may be punished by Court with other protective measures: prohibition of exercise of public functions in duration from three (3) months up to one year.

Article 21

Non- exclusion of other legal liabilities

1. Provisions of this law do not exclude disciplinary liability as well as material and criminal liability of senior officials according to applicable legislation.

2. Any time, when there are reasonable grounds to believe that violations of the provisions of this law contain elements of a criminal offence, Agency is obliged to file criminal reports to competent prosecutor's office.

Article 22

Responsibility to monitor the implementation of this Law

Agency is central responsible authority to monitor the implementation of this Law.

Article 23

Final and Transitional Provisions

Upon entry into force of this Law, Law No. 02/L-133 on Prevention of Conflict of Interest in Discharge of Public Functions and Law No. 03/L-155 on Amending and Supplementing the Law No. 02/L-133 on Prevention of Conflict of Interest in Discharge of Public Functions shall be repealed.

Article 24

Entry into force

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

Law No. 04/L-051

31 August 2011

Promulgated by Decree No.DL-029-2011, dated 31.08.2011, President of the Republic of Kosovo Atifete Jahjaga.