

“Detection, Management and Resolution Experiences of Conflicts of Interest ”



- ❖ **HIDAA conducts administrative investigation of all cases of continuing conflict of interest - incompatibility between public duty and private interests of the official.**
 - Arithmetical and logical Control
 - Full Control
- ❖ **Administrative investigation of conflicts of interest on a specific, case by case decision, mainly in:**
 - Administrative acts of central and local institutions
 - Contracts having a public institution as party (Public Procurement, Auction, Concessions, etc.)

High Inspectorate starts the administrative investigation procedures for conflict of interest, at the request of a superior institution or even by its own initiative, when the awareness comes from legitimate sources.

Identification by third persons

❖ **An obligation for:**

- ⇒ Any other official who has knowledge, in particular senior officials
- ⇒ Any public institution that has knowledge.

❖ **A right for:**

- ⇒ Interested parties who are affected by the actions of the official;
- ⇒ Any person who has knowledge and interest in general.

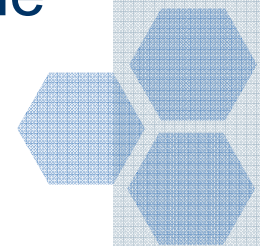
❖ **Other sources of information**

- public or private registers;
- information from the media;
- information or complaints by the media;
- any other legal source;
- denounce at the free number **0800 9999** of HIDAA
- official documents and electronic mail unedenoncoj@hidaa.gov.al

“A case by case conflict of interest ” is

- Conflict of interest situation,
- actual, apparent or potential,
- which appears case by case and is related to a particular decision-making;

Conflict of interest is defined in the Law 9367, dated.7.4.2005, in line with the same definition in the standard document provided by OECD



The conflict of Interest Law has defined the restrictions of private interests to prevent case by case conflict of interest on specific issues relating to:

- Prohibition of entering into contracts with a public party.
- Incomes because of the function.
- Gifts, favors, promises and preferential treatments.

The law provides also restrictions for the persons related to the official: spouse, adult children and parents of the official and his/her spouse.

HIDAA, based on information provided from an article in a daily newspaper, which raise some doubts about the decision taken in a conflict of interest from the Minister A.B. of the Ministry of Economy, began a full audit and administrative investigation of the declarations of private interests of the subject A.B, with the function of Minister in this ministry.

- The object of investigation was the decision of the Minister A.B., to appoint the Supervisory Board of a joint stock company with 100% of state shares, decision which by law is his competence.

From the administrative investigation conducted by HIDAA resulted that:

1. On verification by the NRC, was found out that the wife of the Minister A.B, owned 39% of the part of capital in society "Alb 2" Ltd with object of activity in the construction field.
2. With the act agreement dated 10.09.2009, the wife of the subject, has transferred the rights of active ownership of 39% of her parts in capital in the company "Alb 2" Ltd, to the citizen M.L., appointed as her trusted person, according to the meaning of this term used in law 9367, dated 7.4.2005.
3. The passive transfer of ownership in parts of capital to the trusted person, M.L., was made to resolve the situation of continuous conflict of interest of subject A.B., with function minister, who was banned because of public function under article 27 and 35 of the Law 9367, dated 7.4.2005 (to him and his related persons) to have active ownership of shares or parts of capotal in a company.

4. The trusted person M.L., under the law and notarial agreement entered to the wife of the Minister A.B., was charged to conduct all civil actions (administration, disposal, etc.) of 39% of the parts of the capital. The owner of stock (wife of the Minister A.B.), is entitled to receive only the civil fruits from the activity of the society.
5. 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;
6. By order dated 23.09.2009, the subject A.B., with the quality of the Minister of the Ministry of Economy, appointed the new Supervisory Board of the society, part of which is appointment, is also the citizen M. L.
7. HIDAA verifications showed that, in the appointment of M.L. was not applied the criteria set out in laws and regulations, because this citizen did not have the right qualifications and was not a specialist of the field.

In Law 9367, dated 7.4.2005 (Article 37), are being determined the principal ways to address and resolve the conflict of interest case by case, where the basic principle is:

- Previous self-exclusion from the concrete process of decision making ,
- Avoiding the appointment or election of a public official in the positions which may arise or already imply a conflict of interest situation.

-In the Code of Administrative Procedure is expressly contemplated that the employee of the public administration may not participate in an administrative decision-making process when he:

- a) has a direct or indirect personal interest in the issue in question;*
- b) spouse or partner or his relatives up to second level have a direct or indirect interest in the issue in question;*

1. At the end of the administrative investigation, HIDAA found out that the decision to appoint M.L. as a member of the Supervisory Board of the stock company was taken in a conflict of interest situation. The failure of the criteria for the appointment, bondage was heavy situation of conflict of interest.
2. HIDAA applied the administrative measure “fine”, for an amount of about 2500 euro, to the minister A.B, for violation of the Law on conflict of interest.
3. Sent notice to the Council of Ministers, in order to be taken appropriate legal steps, related to the consequences of the decision taken in terms of conflict of interest.
 - Regulation of the consequences of the decision taken in terms of Conflicts of Interest (invalidity of the act)
 - Passing the burden of indemnification to the official that caused the invalidity of the act



THANK YOU!



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