

Comments for:

**Draft Law on Amending and Supplementing the LawNo. 04/L-051 on Prevention of Conflicts of Interest in the Exercise of Public Office**

**Proposal 1- Persons Subject to the Law**

**Draft Law Article:**

**Article 3**

The draft law includes the following proposal: In Article 3 after subparagraph 1.9 is added the following new subparagraph:

1.10. "The selected or appointed person - a person who is appointed or elected by the Senior Public Official and that exercises the official duty with decision-making power, based on the authorization granted by the Senior Public Official. In this category are not included the persons/officials that are appointed / selected by the senior officials and who are employed in the cabinets of senior public officials."

We propose that the above proposal is rejected and instead, the following subparagraphs 1.10 and 1.11 should be added:

1.10 "advisers" means any person, other than a public servant, who is appointed to a position in the office/cabinet of a mayor, president, or minister and who provides policy, legal, program or financial advice to that person on issues relating to his or her official powers, duties and functions, whether or not the advice is provided on a full-time or part-time basis and whether or not the person is entitled to any remuneration or other compensation for the advice.'

**Reasoning:** The scope of the definition on senior public officials should include political advisors, as unelected advisors similarly exercise discretionary powers and it is increasingly being recognised that they also influence if not determine government policy. In addition, any provisions of the draft law regarding proposed changes related to senior official with "decision-making" powers or position should be rejected to be compatible with our proposal, above. For example, Article 4 of the draft law, current law Art. 4 subparagraph 1.3 should NOT be amended (defining senior public officials as "Prime Minister, Deputy Prime Ministers, Ministers, Deputy Ministers, Chiefs of staff and Chiefs of cabinets, and all the appointed or selected persons, who have decision-making powers"). To further ensure that all senior officials will be subject to this law, we propose that current law Article 4 subparagraph 1.2 be amended. This subparagraph currently states "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 Kosovo." After "appointed by the" the following should be included, "the municipal or national assemblies"

In addition, draft law Article 10 proposes:

"In Article 15 of the basic Law, paragraph 1, add the words "if such an enterprise has a contract or receives assistance from the Institution in which the senior official is in decision-making position" after the word "private enterprise"



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We propose that Article 15 paragraph 1 NOT be changed.

REASONING: Officials may not be members of boards of directors or supervisory boards of companies in order to avoid any appearance or actual situation that is a conflict of interest. The definition of “senior officials” should not be limited to those with “decision-making” powers.

### Proposal 2: Restricting Additional Activities

Draft Law Article:

#### Article 11

Article 11 in the draft law proposes the following changes to Article 16 paragraph 1:

“1. Official persons cannot be managers, controllers or members of management bodies in profit or non-profit organizations, excluding political subjects, and functions set out in Article 15, paragraph 2 of this Law and the cases when such a function is dedicated due to the function, if the profit or non-profit organization has a contract or receives assistance from the institution in which the senior official is in decision-making position

2. Article 16 of the Law, paragraph 2, shall be amended as follows: Senior public official cannot exercise private functions such as: advocacy, notary, private enforcement agents, licensed expert, consultant or agent of the institution in which the senior official is in decision-making power.

3. In Article 16 of the basic Law, paragraph 3, add the words ‘if such an action constitutes a conflict of interest with his/her public function’ after the word ‘his/her activity’.”

We propose that:

1. Art. 16, paragraph 1 of the current law not be amended. The draft law proposed changes would dramatically hinder the effectiveness of the law on prevention of conflict of interest by allowing senior officials to participate in a private enterprise as a manager or member of a steering body that has a contract or receives assistance from the government.
2. Art. 16 paragraph 2 be amended to read:  
“No senior public official shall, except as required in the exercise of his or her official powers, duties and functions, engage in employment or the practice of a profession; manage or operate a business or commercial activity; continue as, or become, a director or officer in a corporation or an organization; hold office in a union or professional association; serve as a paid consultant, attorney, notary, licensed expert, consultant, agent or representative; or be an active partner in a partnership.”
3. Art. 16 paragraph 3 should not be amended

Reasoning: In order to be consistent with other provisions of this law, senior officials should be forbidden from exercising ownership rights over shares or parts of capital of a commercial company. These additional restrictions should be added to the current law.

### Proposal 3: Scope of the Law

Current Article:

#### Article 1- Purpose



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

We propose the following amendment:

The purpose of this Act is to (a) establish clear conflict of interest and post-employment rules for senior public officials; (b) minimize the possibility of conflicts arising between the private interests and public duties of senior public officials holders and provide for the resolution of those conflicts in the public interest should they arise; (c) provide the Anti-Corruption Agency with the mandate to determine the measures necessary to avoid conflicts of interest and to determine whether a contravention of this Act has occurred; (d) encourage experienced and competent persons to seek and accept public office; and (e) facilitate interchange between the private and public sector.

**Reasoning:** The purpose of the law should be more clearly defined in order to more concretely outline the reasons that the law is significant.

### Proposal 4: Conflict of Interest Definition

**Current Article:**

#### 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.”

We propose in the current law Article 6 that after “public functions” the following is added: “or improperly furthering another’s interests.”

**Reasoning:** To ensure that not only the senior official’s private interests are addressed as part of the definition of “conflict of interest,” but also to clarify that this encompasses situations in which a senior official is improperly furthering the interests of others.

### Proposal 5- Restrictions on Post-Employment

**Current Article:**

#### 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.”

We propose the following addition to Article 17 Restrictions for senior officials after termination of public functions:



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NOTE: Current Article 17 should be changed to Article 17, paragraph 1

2. No former senior public official shall act in such a manner as to take improper advantage of his or her previous public office.
3. No former senior public official shall act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the ministry at which they were employed is a party and with respect to which the former senior public official had acted for or provided advice.
4. No former senior public official shall give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a senior public official and is not available to the public.
5. No former senior public official shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office
6. No former senior public official shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office

**Reasoning:** To ensure prevention of situations in which a conflict of interest could arise from an actual or potential misuse of information or advantage from a previous position.

### Proposal 6: Forbidden Acts

**Current Article:**

#### Article 9- Senior official's forbidden acts

We propose that the law should include be amended and include additional forbidden actions for senior officials in cases where a conflict of interest may arise:

Subparagraph 1.9 should be amended to state that a senior official is forbidden: "to take actions which benefit his or her private interests or give preferential treatment to any person or organization in the exercise of the senior official's powers, duty, or function.

The new subparagraphs should be added to Article 9, paragraph 1:

- 1.11 No senior public official shall use his or her official position to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.
- 1.12 No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.
- 1.13 No, senior public official, no member of his or her family, and no trusted person shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a senior public official or in exceptional circumstances or with the prior approval of the Agency.
- 1.14 No senior public official shall personally solicit funds from any person or organization if it would place the senior public official in a conflict of interest.



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1.15 Compliance with this Act is a condition of a person's appointment or employment as a senior public official.

**Reasoning:** Additional restrictions will ensure the avoidance of conflict of interest situations.

### Proposal 7: Abstention from Voting

**Current Article:**

#### Article 9- Senior official's forbidden actions

We propose that the following provision should be included in current law Article 9, paragraph 1, new subparagraph 1.16:

"No senior official shall debate or vote on a question in the Parliament, municipal assembly, or any other collective board or body with collective decision making authority, that would place him or her in a conflict of interest, impact his or her private interests and/or those of related or trusted persons."

**Note:** The definition regarding "private interest" under Article 3 should be amended to include the following after "public functions": "private interest" does not include an interest in a decision or matter that is of general application; that affects a senior official as one of a broad class of persons; or that concerns the remuneration or benefits received by virtue of being a senior public official.

**Reasoning:** This subparagraph is necessary to avoid conflict of interest whenever and wherever an official acts as the judge in his or her own cause.

### Other Proposed Changes

#### 1. Attempts to Influence Senior Official's Volition

Current law Article 12 paragraph 1 should be amended to state that senior officials must submit a written notification to his/her manager or to the managing body "within 15 days." Article 20 paragraph 1, 1.1 should be amended to include a violation of Article 12.

#### 2. Declaration of Official's Private Interests

Current law Article 13 should be clarified and should include a time limit regarding the declaration of private interests. "Made as quickly as possible" should be replaced with "and the declaration should be made the within ten (10) days from the date of the request."

**Reasoning:** Creating concrete timeframes for reporting along with corresponding penalties will help to ensure implementation of the law and create accountability.



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