

# **LAW ON CONFLICT OF INTEREST IN GOVERNMENTAL INSTITUTIONS OF BOSNIA AND HERZEGOVINA**

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## **LAW ON CONFLICT OF INTEREST IN GOVERNMENTAL INSTITUTIONS OF BOSNIA AND HERZEGOVINA**

### **Chapter 1 - Conflict of Interest**

#### **Article 1 - General Provision**

1. This Law shall govern special obligations of elected officials, executive officeholders, and advisors in the institutions of government of BiH in exercising their duties.
2. Any elected official, executive officeholder and advisors exercising public duties must conduct in a responsible and conscientious manner, they must not compromise the confidence and trust by citizens, and must respect legal and other rules governing the rights, duties and responsibilities in the exercise of public duties.
3. In exercising public duties, elected officials, executive officeholders and advisors must apply the ethics of the profession and duties they are performing.
4. In exercising public duties, elected officials, executive officeholders and advisors must not prefer their private interest at the expense of the public interest.
5. A conflict of interest is created in the event that an elected official, executive officeholder and advisor has a private interest that affects or may affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty.

## Article 2 - Code of Conduct

1. In the exercise of public duties, elected officials, executive officeholders and advisors must act legally, effectively, impartially, honestly and they must apply the principles of responsibility, integrity, due-diligence, transparency and credibility.
2. Elected officials, executive officeholders and advisors shall be held personally responsible for their conduct in the exercise of their appointed or elected public office and they shall be politically accountable to the authority or citizens who have appointed or elected them.
3. Elected officials, executive officeholders and advisors must not use the public duty for a personal gain of a person related to them. They must not be in any relationship of dependence in respect of persons who might influence their impartiality.
4. In their position as public persons, all elected officials, executive officeholders and advisors must act in the interest of citizens.
5. In the exercise of their duty elected officials, executive officeholders and advisors shall be bound to use the property, instruments of labor and financial resources entrusted to them for specified purposes only for the intended purpose and in an efficient manner.
6. In the exercise of public duty elected officials, executive officeholders and advisors shall receive salary and allowances for the duty they exercise. Unless explicitly provided in this Law, elected officials, executive officeholders and advisors shall be prohibited to receive any other remuneration.

## Article 3 –Definitions

1. For purpose of this law on conflict of interest:
  - a) *An authorized person* means a person that is authorized to represent an enterprise by the Founding Charter or Statute of the enterprise. The authorized person shall also include an entrepreneur;
  - b) *Close relative* means a marital or extramarital partner of the official concerned, his/her relatives by blood in a direct line, adoptive parent and adopted child, relatives in the indirect line up to the third degree and in-laws up to second degree.
  - c) *Elected officials* include:
    - Members of the Presidency of Bosnia and Herzegovina;
    - Delegates and Members of the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: BiH);
    - Secretaries of both Houses of the Parliamentary Assembly of BiH;
    - Directors, Deputy Directors and Assistant Directors of State Administration authorities, agencies and directorates, institutes, appointed by the Council of Ministers of BiH or the Parliamentary Assembly of BiH or the Presidency of BiH;
  - d) *Executive officeholders* include Ministers and Deputy Ministers in the Council of Ministers of BIH;
  - e) *Advisors* include the advisors to the elected officials and to executive officeholders as defined under the Law on Civil Service in Governmental Institutions of BiH;
  - f) *The Election Commission* means the Election Commission of Bosnia and Herzegovina.

g) *Financial Interest* means:

1. Any interest that entitles an elected official, executive officeholder or advisor to receive money in the amount of more than one thousand Convertible Marks (1,000 KM) per year, and;
2. Any ownership interest held by an elected official, executive officeholder or advisor which represents a value of at least ten thousand Convertible Marks (10,000 KM) of an enterprise, partnership, limited partnership, Joint Stock company or company with limited liability;

h) *Gift* means any payment, entertainment, service, or item of value given directly to the recipient without compensation or the expectation of compensation. Gifts received from family members and gifts valued at less than a hundred Convertible Marks (100 KM) shall not be covered by this legislation;

i) *Private enterprise* means any legal enterprise that is not a public enterprise as defined below;

j) *Public enterprise* means an enterprise which has more than 25% of its capital owned by the government authorities and/or has more than 25% of its annual business activities financed from the budgets of the governments of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Brcko District, any canton, municipality or city.

#### **Article 4 – Incompatibilities**

1. Serving on the management board, steering board, supervisory board, executive board, or acting in the capacity of an authorised person of a public enterprise is incompatible with serving the public as an elected official, an executive officeholder or an advisor.
2. Serving on the management board or directorate, or as director, of a privatisation agency is incompatible with serving the public as an elected official or an executive officeholder.
3. Involvement in a private enterprise under circumstances that create a conflict of interest is incompatible with serving the public as an elected official, an executive officeholder or an advisor.
4. The involvement of close relatives of elected officials, executive officeholders and advisors in circumstances set out in paragraphs 1, 2 and 3 also creates situations of conflict of interest for the official, officeholder or advisor.

#### **Article 5 - Public Enterprises and Privatisation Agencies**

1. Elected officials, executive officeholders and advisors shall not serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person for a public enterprise. This provision shall apply one year after the elected officials, the executive officeholders and advisors leave office.
2. Elected officials, executive officeholders and advisors shall not serve on the directorate or management board, or as director, of a privatisation agency. This provision shall apply one year after the elected officials, the executive officeholders and advisors leave office.
3. Elected officials, executive officeholders and advisors shall resign from any such incompatible positions before assuming the duties of their office.

## **Article 6 - Government Investment in Private Enterprise**

1. Elected officials, executive officeholders and advisors shall not serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person for any private enterprise in which the governmental body where the official, officeholder or advisor serves has invested capital in the four (4) years prior to the official, executive officeholder or advisor taking office.
2. Elected officials, executive officeholders and advisors shall not serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person for any private enterprise that contracts, or otherwise does business, with government authorities at any level. This provision shall only apply to private enterprises that are under contract or doing business with government authorities while the elected official, executive officeholder or advisor holds office and only when the value of the contract or the business with government exceeds five thousand Convertible Marks (5,000 KM) per year.

## **Article 7 - Prohibition on Acting in Conflict of Interest**

1. Elected officials shall not vote on any matter that directly affects a private enterprise in which the official, or his or her close relatives, has a financial interest. Officials in such situations shall abstain from voting and shall announce, in an open session, the reasons for their abstention.
2. Executive officeholders and advisors shall not take any official action that would directly affect a private enterprise in which the executive officeholder or the advisor, or his or her close family member has a financial interest. Executive officeholders and advisors in such situations shall refer the decision to another competent authority for action and shall state the reason for the referral in writing.
3. If an elected official, executive officeholder or advisor violates this article, the vote or decision of the official or officeholder shall be deemed null and void.

## **Article 8 - Personal Service Contracts**

1. Elected officials, executive officeholders and advisors shall not enter into a contract with any public enterprise to provide personal services.
2. Elected officials, executive officeholders and advisors shall not enter into a contract to provide personal services with any private enterprise that contracts, or otherwise does business, with government at any level. This provision shall only apply to private enterprises that are under contract or doing business with government authorities while the elected official, executive officeholder or advisor holds office and only when the value of the contract or the business with government exceeds five thousand (5,000) Convertible Marks per year.
3. If an elected official, executive officeholder or advisor violates this article, the contract of the official or officeholder shall be deemed null and void.

## **Article 9 - Prohibition on Acting**

Unless explicitly provided in the Law, the officials shall be prohibited from:

- a) receiving or demanding gifts or any other gain or promise of a gift or of any other benefit for the purpose of the exercise of public duties;
- b) receiving an additional compensation for the tasks performed in the exercise of public duties;

- c) demanding, accepting or receiving a value or service in order to vote on any matter, or to influence a decision of a body or a person;
- d) promising an employment or another right in exchange for a gift or a promise of a gift;
- e) preferring persons on the ground of party or another affiliation or origin, personal or family relations;
- f) declining an inspection of their financial operations;
- g) influencing the award of business or procurements by the State, in order to obtain a property or non-property related benefit for himself or another person;
- h) using privileged information on the activities of governmental bodies for personal gain or the gain of a closely related person;
- i) using in any manner their position in order to influence a decision of the legislative, executive or judicial power thereby - obtaining a personal gain or a gain of a closely related person, a privilege or a right, - closing a legal transaction or,- otherwise favoring his/her personal interests or interests of another closely related person.

#### **Article 10 – Accepting Gifts**

1. A gift, in terms of this Law, shall be considered to be the gift related to the performance of a duty which includes: money, objects, rights, service without remuneration and any other benefit given or promised to the official, such as catering service, overnight stay, release of debt or obligation, travel expenses or similar service, ticket, piece of art, souvenir, insurance or similar service, medical or similar service for which the official personally did not pay a market price.
2. Elected officials, executive officeholders and advisors may keep a gift in the amount not exceeding KM 50 and they do not have to report it.
3. Paragraph 2 of this Article shall also apply to several gifts given by the same donor in the course of one year.
4. Elected officials, executive officeholders and advisors shall not be allowed to keep the gift exceeding the value referred to in Paragraph 2 of this Article, they shall be bound to report it to the Election Commission and it shall become the property of BiH.
5. Elected officials, executive officeholders and advisors shall not be allowed to accept money, check, or any other securities regardless of the amount and if they get the above mentioned they shall be bound to report them and they shall become the property of BiH.
6. If there is a doubt in respect to the value of the gift the elected official, executive officeholder and advisor shall be bound to require the bill from the donor.
7. The value of the gift shall be its market value.
8. Acceptance of gifts in terms of paragraphs 1 through 8 of this Article shall also refer to the persons who would accept the gift on behalf of the official, provided that such person is aware of the acceptance of the gift.

## **Article 11 - Officials Exercising Other Tasks**

1. In the exercise of public duty, except for a duty in the political party, elected officials, executive officeholders and advisors shall not perform duties in other executive authorities. It is also incompatible to perform more than one duty in the executive authorities at the same time.
2. Elected officials, executive officeholders and advisors may perform tasks in educational or scientific, cultural and sport institutions, professional associations and similar but only if remuneration for such post does not exceed one third of a regular salary in these institutions or associations.
3. Elected officials and executive officeholders may not perform tasks of advisors or be in a contractual relation based on work with public companies or legal and physical persons who do business with authorities at any level.

## **Chapter 2 – Disclosure**

### **Article 12 - Personal Financial Disclosure**

1. Elected officials, executive officeholders and advisors shall file regular financial reports as required by law and by the Rules and Regulations of the Election Commission.

### **Article 13 - Disclosure in Contracting**

1. Any public or private enterprise that submits a bid to provide goods or services for government shall also submit a written statement together with the bid with a listing of any contributions to political parties that the enterprise has made within the preceding two years. The statement shall also list all elected officials, executive officeholders and advisors who have been employed by, or served on the management board, steering board, supervisory board, executive board, or acted in the capacity of an authorised person of the enterprise within the preceding two years.
2. This article shall only apply to public or private enterprises when the value of the contract or the business with government exceeds five thousand (5,000) Convertible Marks per year.
3. All statements required by this article shall be public documents that are made readily available to the public and the media by both the enterprise and the governmental authority that receives the bid.

### **Article 14 - Disclosure of Enterprise Information**

1. Any enterprise that receives one or more investments from a government authority totaling more than five thousand (5,000) Convertible Marks per year shall file a report listing the full names, addresses, and contact telephone numbers of the members of the managing board or steering board of the enterprise and of all authorized persons in the enterprise.
2. Such reports shall be filed with the ministry or agency responsible for financial matters within the government authority that made the investment, the court where the enterprise is registered, and with the Election Commission within 10 days following the vote of the official decision of the enterprise to make investment.
3. Updated reports shall be filed within fourteen (14) days of any change in the membership of the management board, steering board, supervisory board, executive board, or authorized persons for two years following the last investment made by the government authority.

4. All reports required by this article shall be public documents and shall be made readily available for inspection and copying by the appropriate ministry or agency responsible for financial matters, the court, and by the Election Commission during normal business hours.

#### **Article 15 - Disclosure of Government Authorities Investment**

1. A government authority that makes one or more investments in an enterprise totalling more than five thousand Convertible Marks (5,000 KM) per year shall file a statement of such investment with the Election Commission.
2. The government authority shall also publish a copy of the statement of investment in a newspaper with a general circulation within the territory falling under the jurisdiction of the government authority. Such publication shall be made within fourteen (14) days of the investment.
3. All statements required by this article shall be public documents and shall be made readily available for inspection and copying by the government authority and by the Election Commission during normal business hours.

#### **Article 16 - Disclosure of Annual Enterprise Reports**

1. Annual Financial Reports of enterprises filed with the competent tax administration shall also be filed with the ministry or agency responsible for financial matters within the government authority that made an investment in the enterprise within the preceding twelve (12) months.
2. All reports required by this article shall be public documents and shall be made readily available for inspection and copying by the appropriate ministry or agency responsible for financial matters during normal business hours.

### **Chapter 3 – Enforcement**

#### **Article 17 – Implementation**

1. The Election Commission shall carry out the following functions under this law:
  - a) act on the basis of this Law to ensure political accountability and credibility of elected officials, executive officeholders and advisors, taking account of the need to protect the integrity of the office held rather than the person holding such office.
  - b) issue instructions, prescribe forms and structure of the Register for the purpose of applying the provisions of this Law.
  - c) adopt Rules of Procedure regulating the Register, the rules on forms, the implementation rules of handling the procedure and furnishing of decisions and compiling of reports.
  - d) decide as to whether a certain action or an omission constitutes a violation of provisions of this Law.
  - e) submit a report on its work to the Presidency of Bosnia and Herzegovina each six months, whereas at least annually to the public.
  - f) report to the relevant prosecutor's office any violation of this law, which might also constitute a breach of criminal law.

2. The extra costs incurred by the Election Commission in the implementation of this Law will be provided from the state budget.

### **Article 18 - Procedure before the Election Commission**

1. A procedure before the Election Commission shall be initiated at the request of the Election Commission or at the request of the person concerned.
2. The Election Commission may initiate the procedure on grounds of reporting done by another person.
3. The Election Commission shall have the right to establish the facts by way of conducting its personal investigation or to obtain facts and evidence through an action of other executive authorities. All authorities, institutions and courts of Bosnia and Herzegovina on all levels are therefore obliged to provide the Election Commission with legal and other official assistance as requested.
4. Should there be any doubt concerning the existence of violation of obligation under this law, the Election Commission shall notify the concerned person with regard to whom there are reasonable grounds to suspect that he may have committed a breach of this Law, requesting a statement regarding the allegations contained in the report.
5. Should there be any uncertainty as to the possible existence of a breach under this law, the Election Commission shall provide its opinion at the request of any person requiring such an opinion.
6. Prior to pronouncing the sanction, the Election Commission must obtain the statement from the person affected by the sanction.

### **Article 19 -Appeals**

1. Appeals against decisions of the Election Commission may be made to the Administrative Division of the Court of Bosnia and Herzegovina.

### **Article 20 – Sanctions**

1. If an elected official, executive officeholder or advisor is found to have acted in violation of articles 5, 6, or 8 of this law, he or she shall be ineligible to stand for any directly or indirectly elected office for a period of four (4) years following the finding of the violation. In addition, the official, officeholder or advisor may be fined in the amount of no less than one thousand Convertible Marks (1.000 KM) and not more than ten thousand Convertible Marks (10.000 KM).
2. If an elected official, executive officeholder or advisor is found to have violated articles 9 and 10, the official or officeholder shall be fined in the amount of no less than one thousand Convertible Marks (1.000 KM) and not exceeding ten thousand Convertible Marks (10.000 KM). The official, officeholder or advisor shall also be bound to return the gift or the equivalent monetary value of the gift.
3. If an elected official, executive officeholder or advisor is found to have been in violation of Articles 1, 5, 6, 7, 8, 9, 10 of this law, he or she may be declared ineligible for a position in the public administration or for a position of an advisor for a maximum period of four (4) years following the violation. This provision shall also apply to the elected official, executive officeholder or advisor on leave from a position in the public administration. In such case, he or she shall sit a public competition in order to re-enter the public administration at the end of the period of ineligibility.

4. If a close relative of an elected official, executive officeholder or advisor is found to have been in violation of article 10, the family member shall be fined in an amount of no less than one thousand Convertible Marks (1.000 KM) and not exceeding ten thousand Convertible Marks (10.000 KM). The official, officeholder or advisor may also be fined in the equal amount if it is determined that he or she had prior knowledge of the existence of conflict of interest or gift.
5. Any enterprise found in violation of Articles 13, 14 or 16 shall be fined in the amount of no less than one thousand Convertible Marks (1.000 KM) and not exceeding twenty thousand Convertible Marks (20.000 KM) and shall be ineligible to close a contract with any government authority or agency for a period up to four (4) years following the violation.
6. Fines imposed pursuant to this chapter shall be paid to the Election Commission.

#### **Article 21 - Statute of Limitation**

1. The procedure for applying sanctions consequent on breaches of this law must be initiated within four years of the alleged violation

#### **Chapter 4 – Scope of the Law**

##### **Article 22 - Application to Entities and Brcko District**

1. The Entities and Brcko District shall enact their own laws within sixty (60) days following the entry into force of this Law.
2. Until such time as the laws are enacted in the area of conflict of interest at the level of the Entities and Brcko District, this Law shall apply.
3. Provisions of the laws referred to in paragraph 1 of this Article shall not be in contravention with this Law.

#### **Chapter 5 - Transitional and Final Provisions**

##### **Article 23 -Entry into force**

1. This Law shall enter into force on the day following the announcement of the election results in respect of the October 2002 elections.
2. The Law shall be published in the "Official Gazette of Bosnia and Herzegovina" and in the official gazettes of the Entities and Brcko District.