



**THE COMMISSION ON ETHICS OF HIGH-  
RANKING OFFICIALS**



**THE RESULTS OF THE STUDY ON “A HIGH-RANKING OFFICIALS’  
OTHER ACTIVITY RESTRICTIONS”**

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## **The study purpose**

Within the current legislative regulations, the scope of the management board powers in the commercial organizations with state participation is large, as a result of which their influence on the organization's performance results is substantial.

The high-ranking officials (constrained with the limitation risks set by Article 23 of the Law on Public Service besides having limitation of entrepreneurial activity engagement and other paid work) who are chairpersons and members of the boards or authorized representatives, have the greatest influence in the mentioned process.

In the process of implementation of the provisions of Article 24, complications arise related particularly to the delimitation of administrative and commercial activities in the field of management.

According to paragraph 1 of Article 43, the Ethics Commission's functions include detection of the conflicts of interest of high-ranking officials (except the conflict of interests of the deputies, members of Constitutional Court, judges and prosecutors) and the violations of the ethics rules (except by the Constitutional Court members, judges and prosecutors related to their ethical rules connected to their official duties, as well as ethics rules violations by the deputies) as well as submission of recommendations to the President, National Assembly, Government related to elimination and prevention of those.

In order to summarize the implementation practice of the requirement set by Article 24 of the Law, the Commission carried out "A high-ranking official's other activity restrictions" study, which focused on following by high-ranking officials the restrictions related to holding a position by the high-ranking official in a commercial organization with state participation, being a concession manager of the organization's property or being engaged in any other form in the organization's representative, administrative or managerial functions.

In this regard, the Commission has applied to a number of executive agency heads and marzpets to receive necessary information.

The subject of the study is the provisions of the RA Government Decree N474-N of April 29 of 2010 on "The management coordination of state property", RA Government Decree N1694-N November 6, 2003 on " The Republic of Armenia's energy sector state companies' financial recovery program of 2003-2007 and financial flow forecasts of 2003-2007 and repealing several decrees" and RA Government Decree N 175-N of February 2, 2012 on "Holding a competition for the selection of the state authorized representatives for the state share management in the commercial organizations with state participation, exemplary work contracts to sign with state authorized representatives in commercial organizations with state participation as well as verification of the performance evaluation exemplary forms of the state authorized representatives of the commercial organizations with state participation".

It is worth noting, that the regulations provided in Article 24 of the Law are applicable to the public servants as well.

### **High-ranking official's other activity restrictions**

Article 24 of the Law defines the restrictions on other activities of a high-ranking official.

According to paragraph 1 of Article 24, a high-ranking official shall not personally be engaged in entrepreneurial activities or conduct other paid work, except scientific, pedagogical or creative work or status of electoral commission members and the cases stipulated by the law.

According to paragraph 2 of Article 24, within the meaning of this law, entrepreneurial activity means,

- 1) being an entrepreneur,
- 2) having shares in a commercial organization, except in the cases when the shares of the shareholder of the commercial organization is handed over to a concessional management,

3) holding a position in a commercial organization, being a trust manager of the property of a commercial organization or in any other way being involved in the performance of representative, administrative or managerial other functions of a commercial organization.

Point 8 of paragraph 3 of Article 24 stipulates that engagement (without remuneration or any other form of compensation or social guarantee or the right of access to other services and privileges foreseen for non-public servants or high-ranking officials) in the board of directors (monitoring council) in the commercial organization with 75 percent or more percent participation of the Republic of Armenia is not considered as an entrepreneurial activity, if it is directly related to the field of authority of a public servant or a high-ranking official.

### **Application practice of a high-ranking official's other activity restrictions**

In response to the Commission's request, the RA Ministry of Finance provided data, according to which, as of January 1, 2012, in the Republic of Armenia there have been 397 companies with 50 percent and more state share that have been managed by 16 ministries (including RA Government Staff), 6 agencies adjunct to the Government of Armenia and 10 marzpetarans.

Summary of information received from the above-mentioned 32 agencies (see attached Table 2) shows that, in 17 agencies none of the high-ranking officials holds an office in commercial organizations operating within the system of respective agency or is involved in implementation of representative or other managerial functions in the commercial organization of the system.

Information received from the remaining 15 agencies shows, that companies with 50 and more percent of state ownership are managed in 2 main ways, through: a/ public share management by state authorized representatives and b/ company boards.

Public share management through the authorized representatives was conducted in the healthcare CJSCs under the Kotayk and Vayots dzor marzes of RA as well as those acting in

the systems of the Ministry of Agriculture of RA, Ministry of Labor and Social Affairs of RA, Ministry of Nature Protection of RA, Ministry of Justice of RA, Ministry of Sports and Youth Affairs of RA, the Police adjunct to RA Government.

The CJSCs operating within the systems of the Ministry of Energy and Natural Resources of RA, Ministry of Urban Development of RA, Ministry of Economy of RA, Ministry of Education and Science of RA, and General Department of Civil Aviation adjunct to RA Government are managed through the management boards.

Moreover, the positions of both the authorized representatives as well as the chairs and members of the boards are mostly occupied by ministers and deputy ministers, marzpets and deputy marzpets, heads of the agencies adjunct to the Government and their deputies.

### **Legal regulations**

Point 7 of the RA Government Decree N 474-N of April 29, 2010 on "The management coordination of state property" establishes that in those commercial organizations with more than 50 percent state participation, where the power of disposing the shares is assigned with the relevant bodies, the representatives of that state government body, the Ministry of Finance and the State Property Management Department adjunct to the Government are involved in the established board of directors and the chair of the board shall be the head of the body or his deputy, except in "Armenian Nuclear Power Plant" closed joint stock company where the chair of the board, according to the law, is elected by the board members.

According to parts "b" and "d" of paragraph 4 of RA Government Decree N1694-N November 6, 2003 on "The Republic of Armenia's energy sector state companies' financial recovery program of 2003-2007 and financial flow forecasts of 2003-2007 and repealing several decrees", the remuneration of the representatives of energy sector companies shall be covered by the expenses of the respective companies and the remuneration of the members of the board of directors and other expenses associated with their activities (for the positions of civil service - the costs associated with the activities of the members of the

board of directors are compensated according to the procedures set by the law) are foreseen in the maintenance expenses of administrative staff.

In accordance with point 6 of the Appendix N 1 of the above-mentioned decision, the work in the board of directors shall be paid and the remuneration of board members shall be equivalent to the remuneration of the senior management of the large private companies of Armenia.

The RA Government Decree N 175-N of February 2, 2012 on “Holding a competition for the selection of the state authorized representatives for the state share management in the commercial organizations with state participation, exemplary work contracts to sign with state authorized representatives in commercial organizations with state participation as well as verification of the performance evaluation exemplary forms of the state authorized representatives of the commercial organizations with state participation” stipulates that in the commercial organizations with state participation, the state authorized representative to manage state share is the person selected through the competition (except in the organizations with up to 50 percent state participation) who signed the respective working contract, fulfills the powers reserved to the state (shareholder) and acts for the benefit of the state (shareholder) (point 1, part 1).

According to point 3 of the Appendix N 1 of the above-mentioned decision, if necessary, based on the specificities and the activity nature of the commercial companies, by the recommendation of the respective state government body, the authorized representatives can be appointed by the Government decree and, in accordance with point 3.1., the authorized representatives of commercial organizations with up to 50 percent state participation are appointed in accordance with the set procedure by the order of the Head of the State Property Management Department adjunct to the Government with prior agreement of the Prime Minister.

In accordance with point 4 of the Appendix N 1 of the same decision, the authorized representative's remuneration is fixed by the State Property Management Department adjunct to the Government.

## Recommendations

Taking into consideration the above-mentioned - the Commission proposes to the Government of Armenia to consider:

1) reviewing the provisions of point 7 of the RA Government Decree N474-N of April 29 of 2010 on "The management coordination of state property" (the chairperson of the board of directors shall be the head of that agency or his deputy...), bringing them in line with the requirements of paragraph 1 (a public servant and a high-ranking official shall not directly conduct entrepreneurial activity) of Article 24 of RA Law on Public Service as well as the provisions of point 3 of paragraph 2 (entrepreneurial activity is considered engagement in ... any other form of representative, administrative or managerial functions in a commercial organization) of the same Article while taking into account the provisions of point 8 (involvement in ... the board of directors (monitoring council) of the commercial organization with 75 percent or more participation of the Republic of Armenia is not considered an entrepreneurial activity, if it is directly related to the policy implementation area of the public servant's or senior official's authority) of paragraph 3 of Article 24 of the above-stated law.

2) reviewing the provisions of part "b" (the remuneration of the company representatives shall be provided by the companies) and part "d" (the remuneration and other expenses related to the activities of the members of the board of directors are foreseen...) of point 4 of the RA Government Decree N1694-N November 6, 2003 on "The Republic of Armenia's energy sector state companies' financial recovery program of 2003-2007 and financial flow forecasts of 2003-2007 and repealing several decrees", as well as point 6 (the work at the board of directors shall be paid and the remuneration of the board members shall be equivalent to the amount of the senior management remuneration of the large private companies of Armenia) of Annex N 1 of the same Decree bringing them in line with the requirements of paragraph 1 (a public servants and a high-ranking official shall not conduct any other paid job) and point 8 (entrepreneurial activity is not considered



involvement in ... the board of directors (monitoring council) of the commercial organization with 75 percent or more participation of the Republic of Armenia that is not paid or compensated in any other way...) of paragraph 3 of Article 24 of the RA Law on Public Service.

3) anticipating the provisions in the RA Government Decree N 175-N of February 2, 2012 on “Holding a competition for the selection of the state authorized representatives for the state share management in the commercial organizations with state participation, exemplary work contracts to sign with state authorized representatives in commercial organizations with state participation as well as verification of the performance evaluation exemplary forms of the state authorized representatives of the commercial organizations with state participation” prohibiting public servants’ and high-ranking officials’ participation in the competitions as well as appointments through non-competition procedures in the positions of the state authorized representatives to manage state shares in the commercial companies with state participation, taking into account from one side the registered practice and from the other side the requirements of paragraph 1 and 2 as well as point 8 of paragraph 3 of Article 24 of the RA Law on Public Service.