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Guide on issues related to receiving information from competent bodies and officials during the work of the National Assembly's Inquiry Committee

“Strengthening the capacity of the National Assembly in
strategic political debate and communication” project

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On issues related to receiving information from competent bodies and officials during the work of the National Assembly's Inquiry Committee

According to the amendments introduced in the Constitution in 2015, the Inquiry Committee of the National Assembly (hereinafter referred to as the Inquiry Committee) is one of the new and efficient tools offered to the National Assembly and, in particular, the parliamentary opposition for performing oversight with regard to the executive power.

This analysis aims to present the legislative regulations on receiving written information from competent bodies and officials during the work of the Inquiry Committee; upon Committee's request, attendance and provision of explanations by the competent officials to the Committee as well as applicable liabilities in case these persons fail to comply with the requirements of the law.

Taking into consideration that these issues are closely interrelated to the order of creation of the Inquiry Committee, its composition and work, below the analysis of the relevant legislative regulations is presented.

1 Establishment of the Inquiry Committee

According to the Part 1 of the Article 108 of the Constitution, upon the request of at least one fourth of the total number of deputies, an inquiry committee of the National Assembly shall be established **by virtue of law** for the purpose of clarifying facts about issues within the jurisdiction of the National Assembly and those of public interest, as well as for submitting them to the National Assembly. According to the Part 2 of the same article, the number of members of the inquiry committee shall be determined by the National Assembly. This circumstance may put the establishment of the inquiry committee at the mercy of will of the political majority. Part 4 of the same article states that the powers of an inquiry committee on defense and security issues may be exercised only by the competent standing committee of the National Assembly, upon the request of at least one third of the total number of deputies.

It should be noted that the 2005 constitutional amendments also envisaged a body similar to the inquiry committee, namely the interim committee of the National Assembly which, if necessary, might be established by the decision of the National Assembly for submitting conclusions, statements on certain issues, events and facts to the National Assembly. However, the order of establishment of these two bodies varies considerably in that the interim committee of the National Assembly could actually be created by consent of the parliamentary majority since it required the resolution of the National Assembly, while the Inquiry Committee shall be established by virtue of law, without the decision of the NA; in fact, the request of the parliamentary opposition is quite enough to do so. This is also proved by the composition of the National Assembly of the 7th convocation formed by the snap elections held on December 9, 2018 (the total number of deputies is 132; the ruling My Step Alliance faction is represented by 88 members, while the opposition Prosperous Armenia and Bright Armenia factions have 26 and 18 members, respectively). An inquiry committee in the sphere of defense and security within the NA of this convocation may be established by the request of at least 44 MPs, and an inquiry committee on other issues has to be requested by at least 33 MPs. Therefore, the total

number of members of the opposition factions of the NA will suffice to establish an inquiry committee on any issue.

Here one should take into consideration that though the Constitution guarantees creation of an inquiry committee by virtue of law upon request of a certain number of deputies, the constitutional law on the Rules of Procedure of the National Assembly (hereinafter referred to as the Rules of Procedure) prescribes the order of submitting deputies' request to establish an inquiry committee; if the request does not comply with this order, it shall be subject to return by the NA chairperson. So, in accordance with the item 2 of the Part 5 of the Article 20 of the Rules of Procedure, the Inquiry Committee shall be deemed to be established since the moment the request on its establishment is submitted to the Chairperson of the National Assembly, in case it complies with the requirements of the Parts 3 and 4 of the Article 20 of the Rules of Procedure, namely:

- 1) The request to establish an Inquiry Committee is submitted to the NA chairperson by a written application signed by the required number of deputies;
- 2) The written application comprises the Inquiry Committee's subject of consideration and the area of jurisdiction, the name and surname of the Chairperson, with the exception of an inquiry committee in the area of defense and security, as well as the term of powers of the Inquiry Committee;
- 3) A draft resolution of the National Assembly on defining the number of the members of the Inquiry Committee, with the exception of an inquiry committee in the areas of defense and security, is enclosed with the application.

2 Subject of consideration and the area of jurisdiction of the Inquiry Committee

The subject of consideration of the Inquiry Committee may be to clarify facts about a specific issue of public interest within the jurisdiction of the National Assembly.

Bearing in mind that there is no exhaustive list of issues within the jurisdiction of the National Assembly specified by the Constitution or the Rules of Procedure, below some of the NA's powers and functions are presented, which may serve as a basis for determining the subject of consideration of the Inquiry Committee:

- 1) According to the Part 2 of the Article 88 of the Constitution, the National Assembly shall implement the legislative power. In this case the subject of consideration may, for instance, be the clarification of facts related to certain violations, misdemeanors and other negative phenomena identified during implementation of a law (in particular, the failure to pass a by-law ensuring the implementation of the norm defined by the legislation within the term specified by the law).
- 2) According to the Part 1 of the Article 111 of the Constitution, the National Assembly shall exercise supervision over the State Budget performance, as well as the use of loans and credits received from foreign states and international organizations. In this case, for instance, the subject of consideration may be the clarification of facts in the negative conclusion of the Audit Chamber's statement (according to the subitem "c" of the item 2 of the Part 2 of the Article 27 of the RA Law on Audit Chamber, such conclusion is included in the Audit Chamber's statement if significant misinterpretations are found, the consequences

thereof are ubiquitous, and the statements are significantly distorted), as well as facts related to the state budget and municipal budget funds, received loans and credits, lawfulness, efficiency of public and municipal property use, performance of financial and non-financial indicators.

- 3) According to the Parts 6 of the Articles 195, 197, 199 and Part 5 of the Article 201 of the Constitution, respectively, the powers of a member of the Central Electoral Commission, member of the Television and Radio Commission, member of the Audit Chamber, the Chairperson of the Central Bank and other members shall be terminated by the National Assembly in case of violation by the given official of any of the conditions specified by the Constitution. In this case, for instance, the subject of consideration may be the clarification of the facts related to the engagement in entrepreneurial activities, or taking an office in a commercial organization by a member of any of the bodies above.
- 4) According to the Part 3 of the Article 177 of the Constitution, the National Assembly may, in the cases prescribed by law, remove the Prosecutor General from office. According to the item 3 of the Part 3 of the Article 63 of the RA Law on Prosecutor General's Office, powers of the Prosecutor General may be terminated early if the latter violates the restrictions and requirements of incompatibility specified by the Article 49 of the law. In this case, for instance, the subject of consideration may be the clarification of the facts related to the violation of the requirement specified by the item 5 of the Part 4 of the Article 49 of the law (the Prosecutor General shall not have the right to use, for non-official purposes, logistical, financial and information resources, public property and service information) by the Prosecutor General.

The sphere of jurisdiction of the Inquiry Committee is directly linked to its subject of consideration and is mostly stipulated by the scope of public and local government bodies, public and municipal organizations, institutions, as well as their officials who manage the information required for clarification of the relevant facts, as well as those who adopted legal acts related to the subject of consideration of the Committee, performed other activities, by action or by omission, and, in some cases, other people who submitted information to the committee; by powers or functions of competent bodies and officials.

3 Composition of the Inquiry Committee, its chairperson and deputy chairperson

According to the Part 2 of the Article 108 of the Constitution, seats within the Inquiry Committee shall be allocated in proportion to the number of deputies included in factions. The number of members of the Inquiry Committee shall be determined by the National Assembly. The Inquiry Committee shall be chaired by one of the deputies submitting the request.

According to the Part 6 of the Article 20 of the Rules of Procedure, the **composition of the Inquiry Committee** and the changes thereof shall be approved by the Chairperson of the National Assembly, in compliance with the principles specified in Parts 2-6 of the Article 11 of the Rules of Procedure, i.e. the NA factions shall be represented in the Inquiry Committee almost in the same proportion as in the National Assembly. For instance, the 9-member Inquiry Committee of the National Assembly of the 7th convocation shall comprise 6 members of the My Step faction, 2 members of the Prosperous Armenia and one member of the Bright Armenia factions.

Upon approval of the number of members of the Inquiry Committee by the National Assembly, the NA Chairperson, in compliance with the above-mentioned principles and upon suggestion of the factions, shall approve the nominal composition of the Inquiry Committee. The number of members, as well as the nominal composition of the Inquiry Committee on defense and security shall not be defined by the order above, since the powers of this committee shall be exercised by the competent Standing Committee of the National Assembly (in the NA of the 7th convocation this is the Standing Committee on Defense and Security).

The **chairperson of the inquiry committee** on defense and security issues shall be the chairperson of the competent Standing Committee of the National Assembly, and the chairperson of the inquiry committee on other issues within the jurisdiction of the National Assembly and of public interest shall be the deputy specified in the request of the deputies on establishing such committee.

The **deputy chairperson of the inquiry committee** on defense and security issues shall be the deputy chairperson of the competent Standing Committee of the National Assembly, while the deputy chairperson of the inquiry committee on other issues within the jurisdiction of the National Assembly and of public interest shall be elected by the resolution of this committee.

According to the Part 1 of the Article 24 of the Rules of Procedure, if the chairperson of the inquiry committee is the representative of the ruling faction of the National Assembly, the deputy chairperson of the committee shall be the representative of the opposition faction of the National Assembly; if the chairperson of the inquiry committee is the representative of the opposition faction of the National Assembly, the deputy chairperson of the committee shall be the representative of the ruling faction of the National Assembly.

4 Activities of the Inquiry Committee, receiving information from competent bodies and officials

The main purpose of the activities of the Inquiry Committee is to collect data and other evidence required for clarification of facts, in conformity with its subject of consideration, as well as to present to the National Assembly the clarified facts and conclusions reached through their examination and assessment.

According to the item 1 of the Part 1 of the Article 21 of the Rules of Procedure, the Inquiry Committee may get the necessary information at the initiative of at least one fourth of its members, without resolution, by applying in writing to state and local government bodies and officials requesting the necessary information related to the areas under its jurisdiction. According to the Part 3 of the Article 108 of the Constitution, the body or official that receives the written application of the Inquiry Committee, along with the required number of members' signatures, shall be obliged to provide the Committee with the necessary information unless law prohibits the provision thereof. The mentioned provision of the Constitution clearly indicates that the provision of information may be denied only in case it is prohibited by a certain, specific norm of law. Therefore, in order to meet the requirement of this provision, the body or official that receives the written application of the Inquiry Committee, in case of refusing to provide the requested information should clearly and directly state in its written response the reference to the corresponding part of the law (article, item, subitem). When refusing to provide information on this basis one should also bear in mind that the law gives the NA deputies the right to get information protected by the law, e.g. state or official secret, information of certain degree

of confidentiality.

According to the item 2 of the Part 1 of the Article 21 of the Rules of Procedure, the Inquiry Committee may, by its resolution, address the state and local government bodies and officials **to study of the factual circumstances of the issue under consideration in the Committee, requesting expert examinations** and receive the conclusions resulting thereof. The estimated value of the expertise service (in particular, those most likely during the activities of the Inquiry Committee – document, phototechnical, audio and video recording, economic expertise, etc) implementation is defined by the Government resolution of February 2, 2006, and the expertise request shall be filed in the order defined by the RA legislation.

According to the item 3 of the Part 1 of the Article 21 of the Rules of Procedure, **the Inquiry Committee may, by its decision, invite competent officials to the committee**, as well as persons who have submitted information related to the sphere of jurisdiction of the committee.

According to the Part 1 of the Article 22 of the Rules of Procedure, officials invited to the Inquiry Committee are obliged, and other persons who have submitted information related to the jurisdiction of the Committee shall have the right to be present and give explanations at the sitting of the Committee, as well as answer the questions of the Committee members. Here an important circumstance should be mentioned: **unlike written information which is provided to the Inquiry Committee by the state and local government bodies and officials upon request of at least one fourth of the Committee members, a competent official can be invited to the Committee and provide explanations only by resolution of the Committee**. As mentioned above, the composition of the Inquiry Committee shall maintain the same proportion as the National Assembly. Therefore, the representatives of the parliamentary opposition representing least one quarter of the Inquiry Committee members have sufficient votes to request written information from competent bodies and officials. As to inviting competent officials to the Committee, taking into consideration that according to the Part 3 of the Article 21 of the Rules of Procedure, **resolutions of the Inquiry Committee shall be adopted by the majority of the total number of the Committee members**, one can state that in this case the consent of the representatives of the ruling faction of NA included in the Committee, or some of them is required, because the Committee's decision to invite a competent official to provide explanations to the Inquiry Committee will not be adopted unless there is such consent in place.

Also, it should be noted that the obligation to attend, by the decision of the Inquiry Committee, and provide explanations to the Committee refers to all competent officials, without any exclusions.

According to the Article 4 of the RA Law on Public Service, an **official** shall mean a person holding any public (state (political, administrative, autonomous and discretionary) or municipal (political, administrative and discretionary)) position, as well as, according to the Article 3 of the mentioned law, a public service position (staff unit envisaged by the list of positions for separate types of public service or list of positions for municipal service).

A **competent official** shall mean the official who possesses the necessary information related to the sphere of jurisdiction of the Inquiry Committee and is competent to provide or report it to the Committee.

According to the item 1 of the part 1 of the Article 19 of the RA Law on Public Service, complying with the requirements of the Constitution, legislation and other legal acts shall be one of the main responsibilities of a public servant, also those holding public or public service position.

Therefore, in case of non-compliance with the requirements specified in the Part 2 of the Article 21 of the Rules of Procedure (non-provision of requested information to the Committee in accordance with the defined order), as well as non-compliance with the obligation specified in the Part 1 of the Article 21 of the Rules of Procedure (non-attendance and failure to provide explanations upon request of the Committee) administrative liabilities may be applied to the relevant official in accordance with the order defined by the law (except for persons holding political positions). As to persons holding political positions (according to the part 2 of the Article 5 of the RA Law on Public Service, state political positions shall mean the positions of the President of the Republic, deputies of the National Assembly, Prime Minister, Deputy Prime Ministers, Secretary of the National Security Council, ministers and deputy ministers), in case of their non-compliance with the mentioned obligations, the National Assembly and its bodies may exercise relevant powers defined by the Constitution (for instance, according to the Article 113 of the Constitution, factions of the National Assembly shall have the right to address the members of the Government with written interpellations, and as a result of an interpellation, the National Assembly may recommend the Prime Minister to discuss the issue of an individual member of the Government holding the office in the future).

In addition, one should take into consideration that according to the Article 189.10 of the *RA Code on Administrative Offences*, *non-provision or non-provision within the specified term, or non-provision in full, or provision in a distorted manner to the state body (official) of information (data) envisaged by the law which is necessary for lawful activities of the state body (official), as well as provision of false information (data) entails imposition of a fine in the amount of hundred-fold of the defined minimum salary. We believe that, given certain circumstances and relevant corpus delicti, non-provision of information, provision of false or incomplete information by a competent official to the Inquiry Committee, as well as non-attendance and failure to provide explanations upon the Committee's request may entail liability envisaged by the RA Criminal Code as well.*

Also, it is worth mentioning that the Article 22 of the Rules of Procedure has been supplemented with a new Part 1.1 on November 2, 2018, which states that the duty of officials to attend the Committee sitting and provide explanations, as well as to answer questions from members of the Committee, shall be maintained after they resign from the office if the request for information or an invitation to attend a meeting and give explanations was received before resignation.

5 Report of the Inquiry Committee

According to the Part 1 of the Article 25 of the Rules of Procedure, as a result of its activities, the Inquiry Committee shall submit a **report** to the Chairperson of the National Assembly **containing the clarified facts related to the issue which had been the ground for the establishment of the Inquiry Committee, as well as the conclusions of the Committee on the actions to be taken in this regard.** The report shall be published on the official website of the National Assembly when included in the regular session and meeting agendas of the National Assembly, along with other agenda issues of the National Assembly.

According to the Part 5 of the Article 25 of the Rules of Procedure, after the issue is discussed in the NA meeting, the report of the Inquiry Committee, along with the special opinion if there is a special opinion of at least one fourth of the Committee members on the Committee's report, shall be submitted to the state and local government bodies and officials mentioned in the report, who may,

within a month, submit to the Chairperson of the National Assembly their written responses related to the report. The responses shall be published on the official website of the National Assembly.

So, the above-mentioned provision of the Rules of Procedure does not obligate the state and local government bodies and officials mentioned in the report of the Inquiry Committee to respond to the report; rather, the assessment of the facts contained therein and the initiation of the proposed actions are left to the discretion of the given body or official. However, we believe that in case the report of the Inquiry Committee has some grounded facts and conclusions, the reasonable actions on the part of the competent body or official should be to submit a written response on these facts and conclusions to the National Assembly within the specified term.

