

CABINET OF MINISTERS OF UKRAINE

RESOLUTION

dated November 26, 2014, No. 691

Kyiv

{As amended by Resolution of the Cabinet of Ministers of Ukraine No.306 dated 20.05.2015}

On Establishment of the Business Ombudsman Council

For the purpose of contributing to the transparency of the activities of state authorities, contributing to the reduction of corruption and preventing of unfair treatment of businesses in Ukraine, and taking into account the provisions of the Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative dated 12 May 2014, concluded among the Cabinet of Ministers of Ukraine, the European Bank for Reconstruction and Development, the Organisation for Economic Co-Operation and Development, the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry and the Ukrainian League of Industrialists and Entrepreneurs, and according to Article 48 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine”, the Cabinet of Ministers of Ukraine hereby resolves:

1. to establish the Business Ombudsman Council
2. to approve the enclosed Regulation on the Business Ombudsman Council.
3. to amend the Resolution of the Cabinet of Ministers of Ukraine dated 17 June 2009, No. 599 “Matters of Advisory, Consultative and Other Subsidiary Bodies Established by the Cabinet of Ministers of Ukraine” (Official Gazette of Ukraine, 2009, No. 45, p. 1511; 2010, No. 82, p. 2882; 2014, No. 37, p. 991) in accordance with the annex.
4. The Ministry of Economic Development and Trade is hereby instructed to submit by 20 March 2015 for review to the Cabinet of Ministers of Ukraine a draft law on formation of the business ombudsman institution.

Prime Minister of Ukraine

A. Yatseniuk

APPROVED

by Resolution of the Cabinet of Ministers of Ukraine

dated November 26, 2014, No. 691

REGULATION

on the Business Ombudsman Council

1. The Business Ombudsman Council (the “**Council**”) shall be a standing consulting and advisory body of the Cabinet of Ministers of Ukraine.
2. The Council shall be governed by the Constitution and the laws of Ukraine, acts of the President of Ukraine, acts of the Verkhovna Rada of Ukraine, consistent with the Constitution and the laws of Ukraine and the acts of the Cabinet of Ministers of Ukraine, other legislative acts, and the Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative dated 12 May 2014 (the “**MoU**”) concluded among the Cabinet of Ministers of Ukraine, the European Bank for Reconstruction and Development, the Organisation for Economic Co-Operation and Development, the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry and the Ukrainian League of Industrialists and Entrepreneurs (the “**group of parties**”).
3. The Council shall be established for the purpose of contributing to the transparency of the activities of state authorities, businesses within the scope of their administration, preventing corruption and/or other violations of legitimate interests of businesses.
4. The Council’s primary goals shall be as follows:
 - 1) preparing, under the supervision of the parties to the MoU, of proposals to a draft Law of Ukraine on the establishment of the business ombudsman institution, and submission thereof to the Cabinet of Ministers of Ukraine for review;
 - 2) receiving and investigating, as provided in this Regulation, of complaints from businesses concerning acts or omissions, including decisions of state and municipal authorities, businesses within the scope of their administration, and their officials;
 - 3) giving recommendations to the state and municipal authorities as regards the formation and implementation of the state policy in the field of entrepreneurial activities for the purpose of its improvement and facilitation of the practices of doing business, prevention of corruption and/or other violations of legitimate interests of businesses;
 - 4) giving recommendations to state and municipal authorities, businesses within the scope of their administration, concerning improvements of the procedures and/or the manner in which they carry out their functions, conduct business or other activities.

5. In order to accomplish the tasks conferred, the Council:
 - (1) investigates the complaints of businesses regarding commitment of corruption acts and/or other violations of their legitimate interests;
 - (2) requests updates from state and municipal authorities and/or businesses within the scope of their administration as regards taking action in respect of implementation of the Council's recommendations;
 - (3) collects, processes and systematizes information related to the cases subject to its review in connection with investigations of complaints;
 - (4) publishes periodic reports in the mass media and/or on the Council's official website covering its activities, including, without limitation, the outcome of various investigations of commitment of corruption offences and/or other violations of legitimate interests of businesses;
 - (5) if necessary, provides proposals to the Cabinet of Ministers of Ukraine concerning amendments to legislation acts for the purpose of protecting legitimate interests of businesses from corruption acts and/or other violations by the state or municipal authorities, as well as by businesses within the scope of their administration;
 - (6) submits quarterly reports to the supervisory board established by the group of parties hereunder;
 - (7) conducts other tasks as determined by the group of parties.
6. The Council shall have the right to:
 - (1) request and receive, in the prescribed manner without undue delay, from state authorities, municipal authorities and businesses, including through personal interviews of the relevant officials, information, documents and other data necessary or useful for the processing of complaints and addressing the issues relevant to matters that are being considered by the Council;
 - (2) bring information on cases of alleged violation of legitimate interests of businesses to the attention of the relevant state or municipal authorities and, where the Council has grounds to conclude that such violations may have occurred, seek that such cases are investigated further, and that steps are taken to remedy such violations and bring to liability the guilty persons according to the law;
 - (3) receive prompt written notifications from the relevant state or municipal authorities, with a detailed explanation of the status of investigation and the steps taken in order to resolve the issues raised in the request from the Council.

- (4) involve officials of state and municipal authorities, non-governmental organizations, associations of enterprises, institutions and organizations irrespective of their ownership structure (subject to their consent) for the purposes of investigating matters within its authority;
- (5) submit to the Cabinet of Ministers of Ukraine proposals regarding candidates to serve as experts for the formation of working groups for the purposes of drafting legislative acts designed to improve the business environment and fight corruption;
- (6) submit to the Cabinet of Ministers of Ukraine proposals and recommendations on how to address systemic causes of violation of legitimate interests of businesses;
- (7) make public the information regarding instances of commitment of corruption acts and/or other violations by the state or municipal authorities, as well as by businesses within the scope of their administration through annual reports, to include complaints investigated by the Council, including the conclusions reached by the Council in respect of such complaints, where relevant, the manner in which requests for investigations have been addressed by the relevant state or municipal authorities, as well as on the implementation of the recommendations provided to state and municipal authorities and businesses within the scope of their administration;
- (8) make public the information on the cooperation with the Cabinet of Ministers of Ukraine and other state and municipal authorities; and, where relevant, the Council's involvement with the preparation of legislative acts and other initiatives designed to improve the business environment and fight corruption;
- (9) contract experts, academics, specialists, including foreign experts, academics and specialists for the purpose of performing the tasks assigned to the Council.

7. The Council shall be headed by the business ombudsman.

The business ombudsman submits the council's rules of procedure of the Council for the approval by the supervisory board. The rules of procedure shall provide for the procedure to be followed in filing complaints, the procedure for accepting the complaints for investigation and for conducting investigation and the procedure for communication between the businesses and the Council. The Council's rules of procedure shall be published on its official web-site.

8. The Council shall consist of:

- the business ombudsman,
- two deputy business ombudsmen, and

- such employees as the Council may, according to its needs, retain from time to time pursuant to the rules of procedure (the “**Secretariat**”).

9. The Business Ombudsman shall:

- (1) be the head of the Council and determine the strategy of its activities consistent with the Constitution and the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, other legislative acts, the MoU, this regulation, and the rules of procedure of the Council;
- (2) according to the rules of procedure of the Council, decide whether to investigate a certain complaint;
- (3) make decisions with respect to the tasks assigned to the Council under this regulation and the rules of procedure of the Council;
- (4) represent the Council in relations with the supervisory board and any other third parties;
- (5) report to the supervisory board on the Council’s performance;
- (6) make decisions regarding the involvement of experts, academics, specialists, including foreign experts, academics, specialists on a contract basis for the performance of the tasks assigned to the Council;
- (7) exercise control over the work of the deputy business ombudsmen and the Secretariat;
- (8) delegate its authority to the deputy ombudsmen and other staff of the Secretariat according to the rules of procedure of the Council;
- (9) have such other authority as specified in the rules of procedure of the Council or as the Supervisory Board may decide.

10. The deputy ombudsmen shall report to the business ombudsman. They shall have such authority as conferred upon or delegated to them by the business ombudsman under the rules of procedure.

11. The governing body of the Council shall be the supervisory board. The supervisory board shall be comprised of the authorised representatives of the group of parties:

block 1: the Cabinet of Ministers of Ukraine;

block 2: the international financial institutions (the European Bank for Reconstruction and Development and the Organisation for Economic Co-Operation and Development);

block 3: business associations (the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry and the Ukrainian League of Industrialists and Entrepreneurs).

Blocks 2 and 3 may be further expanded to include new parties should the group of parties agree to allow new parties to the MoU.

Resolutions of the supervisory board shall be adopted by voting. Each block within the supervisory board shall have one vote.

Resolutions of the supervisory board on the election of the business ombudsman and each deputy business ombudsman to be further submitted to the Cabinet of Ministers of Ukraine for approval shall be adopted unanimously by all three blocks.

Where the supervisory board cannot reach a consensus on any matter, except for the election of the business ombudsman and the two deputy business ombudsmen, it will decide such matter on the basis of a majority vote (two out of three blocks).

Each block shall adopt its resolutions by a simple majority vote of its members except for the block 1. The appointment and dismissal of the Representative of the Cabinet of Ministers of Ukraine on the supervisory board shall be approved with a resolution issued by the Cabinet of Ministers of Ukraine.

Other matters of procedure with respect to voting shall be decided upon by the group of the parties.

12. The resolution of the supervisory board concerning dismissal of the business ombudsman and the two deputy business ombudsmen shall be adopted by a majority vote to be further submitted to the Cabinet of Ministers of Ukraine for approval.
13. The supervisory board shall have the right to:
 - 1) make submissions to the Cabinet of Ministers of Ukraine for the purposes of appointing and dismissing the business ombudsman and the deputy business ombudsmen;
 - 2) adopt the rules of procedure of the Council and make amendments thereto;
 - 3) exercise supervision of the activities of the Council;
 - 4) make decisions concerning any other matters relating to the activities of the Council as may be specified in the rules of procedure of the Council.
14. The business ombudsman and each deputy business ombudsman may be a citizen of Ukraine, a foreign national or a stateless person that has an impeccable business reputation, high moral qualities, who has completed higher economic or legal education, and has profound knowledge of economic, social and government issues in Ukraine, in accordance with the criteria determined by the supervisory board.
15. The business ombudsman may not hold any elected position or any other position in state authorities, perform any other paid or non-paid work in state and municipal authorities or non-government organisations. The business ombudsman may not have financial or other interest in businesses,

institutions, organisations irrespective of the form of ownership, which are established on the territory of Ukraine or which perform activities on its territory. No limitation or restriction provided in this paragraph shall apply to teaching, scientific activities. The business ombudsman may not be a member of any political party in Ukraine or engage in activities that conflict with the principle of unbiased performance of duties of the business ombudsman.

{cl.15 as amended by Resolution of the Cabinet of Ministers of Ukraine No.306 dated 20.05.2015}

16. Deputy business ombudsmen may not hold any elected position or any other position in state authorities, perform any other paid or non-paid work in state authorities and municipal authorities, non-government organisations, businesses, institutions, organisations irrespective of the form of ownership, except for teaching, scientific activities. They may not be members of any political party in Ukraine or engage in activities that conflict with the principle of unbiased performance of their duties.

{cl.16 as amended by Resolution of the Cabinet of Ministers of Ukraine No.306 dated 20.05.2015}

17. The authority of the business ombudsman shall be terminated in the following cases:
- 1) resignation of the business ombudsman;
 - 2) a decision, issued by the supervisory board and approved by the Cabinet of Ministers of Ukraine;
 - 3) death of a person holding the office of the business ombudsman.

18. The authority of the deputy business ombudsmen shall terminate on the same grounds as provided in Paragraph 17 of this regulation.

The termination of authority of the business ombudsman may not be the reason for termination of authority of either of the deputy business ombudsmen.

19. The Secretariat shall be established to provide support to the activity of the Council consistent with the rules of procedure. The determination and approval of the staff of the Secretariat and any changes thereto shall be made by the business ombudsman in compliance with the rules of procedure of the Council. The business ombudsman shall be responsible to the supervisory board for the activity of the Council.

20. Staff members of the Secretariat shall be compliant with and meet the requirements set out in Paragraph 16 of this regulation.

21. Financial accommodation for proper performance of the Council shall be provided by agreement of the group of parties.

22. The business ombudsman shall, annually, in a manner and under a timetable required under the rules of procedure of the Council, submit for approval by the supervisory board its annual budget and,

within a period of time and in a manner specified by the rules of procedure of the Council, submit to the supervisory board a detailed summary on the use of the approved budget during the immediately preceding financial year.