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**КЫРГЫЗ РЕСПУБЛИКАСЫНДА БИЗНЕС-АКЫЙКАТЧЫ ИНСТИТУТУН  
КИРГИЗУУНУН ЗАРЫЛДЫГЫ ТУУРАЛУУ**

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**О НЕОБХОДИМОСТИ ВВЕДЕНИЯ ИНСТИТУТА БИЗНЕС-ОМБУДСМЕНА  
В КЫРГЫЗСКОЙ РЕСПУБЛИКЕ**

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**ABOUT NECESSITY OF INTRODUCTION OF BUSINESS OMBUDSMAN'S  
INSTITUTE IN KYRGYZ REPUBLIC**

УДК: 342.7 (575.2) (04)

*Макалада Кыргызстанда бизнес-Акыйкатчы институтунун зарылдыгы, аны киргизүү маселеси, ишкерлердин укугун коргоо көйгөйлөрү, улуттук укук системасына өзгөртүү киргизүү сунуштары камтылат.*

**Негизги сөздөр:** Акыйкатчы, ишкердүүлүк, адам укугу.

*В данной статье описывается институт бизнес-Омбудсмена в правовой системе отдельных стран и обосновывает необходимость его внедрения в национальную правовую систему Кыргызстана с целью усиления защиты прав предпринимателей.*

**Ключевые слова:** Омбудсмен, предпринимательство, права человека.

*In this article the author describes institute of the business Ombudsman in legal system of the certain countries and proves need of his introduction in national legal system of Kyrgyzstan for the purpose of strengthening of protection of the rights of businessmen.*

**Key words:** Ombudsman, entrepreneurship, human rights.

Today the time dictates the necessity to support business with all means, especially small and medium enterprises which is of high importance to the state due to reason that SMEs substitute the state in addressing complicated socio-economic tasks, particularly in creation of jobs, forming the middle class which is deemed to be one of the key factors for long term economic stability of any country. In addition, for a state department small and medium enterprises are crucial source of replenishing state budget. Besides they do not require large financial investments at start, have high asset turnover, are able to quickly and economically efficiently resolve the problem of creating and saturating the market with consumer products, restructuring of the economy during destabilization and shortage of financial resources.

Perception and anticipation of the entrepreneurs are subject to change with the course of time. The members of the business community (new entrepreneurs and those who started their businesses earlier) welcome private sector which replaces the old style, central planned bureaucracy and which allows them to make decisions on their own and create new opportunities for growth. However abusive taxation, state bureaucracy, intrusion

to the operation of the businesses forces them to seek for an asylum in an informal sector. More frequently entrepreneurs encounter abuse of their rights, bureaucratic pressure, corruption and other administrative barriers. Suffice it to say, in 2015 Kyrgyz Republic is ranked #123 out of 167 countries in The Corruption Perception Index according to Transparency International, and #102 (#99 in 2014) out of 189 countries in the Doing Business Rating according to the World Bank.

The role of Small and Medium Enterprises is substantial for Kyrgyz Republic's national economy – they contribute at least 40% of GDP. Numerous non-governmental organizations and associations operate in the country since the country became independent in 1991, however their efforts cannot be believed as truly effective.

Therefore today the necessity of establishing of Business Ombudsman - new specialized institute for commissioning the rights of the entrepreneurs – matured, and its main objective should be the facilitation of the development of public institutes oriented to the protection of the rights and the legal interests of small and medium enterprises.

Let us scrutiny the nature of the commissioner on protection of the rights of entrepreneurs and compare it with the institute of the commissioner on human rights (ombudsman).

The term “ombudsman” originates from the word “umbud” which during Middle Ages Swedish meant the power or authority. In modern Swedish this word is understood as a translator or representative of other individuals. Ombudsman Institute was established in Sweden in 1809. The position of the Royal Ombudsman, introduced in 1713 by the Karl the XIIth - aimed at fighting the unrest and disturbances occurred after he abandoned the country in 1709 - served as a predecessor of a modern ombudsman. The scope of responsibilities of the aforementioned person included the control of the compliance with the laws and statutes in the state, ensuring the public officers duly and conscientiously perform their obligations. Later on in 1719 this post was named as Chancellor of Justice. In the beginning of the XIX century Sweden experienced major liberalization of public relations which reflected in adoption by the

Parliament of the Governance Document (Constitutional Act) which was created by the influence of the Montesquieu theory on separation of powers. In order to bring to balance the extensive authority of the king and the authority of the parliament the Act entitled the latter to elect a special commissioner of the parliament (ombudsman) who carried out functions on performing constitutional control on the activities of the executive power and other bodies and facilitated the improvement of protection of citizens' rights from the administrative abuse of the power. The focus of the ombudsman's activities on protecting citizens' rights from the executive power was conditioned by the peculiarities of the Swedish administrative law, and related to the fact that the common courts never exercised control over the administration; besides the public officers were appointed lifelong.

Starting from 1919 such bodies had been gradually established in other countries and been introduced into the system of juridical control that in foreign law is characterized as parliamentary control as well as control of the administrative bodies.

Widespread proliferation of the institute of ombudsman in various countries was determined by the willingness to oppose the constant expansion of executive function of the state and the strengthening of the grounds of the administrative machinery. In spite of the national peculiarities of this institute, resolution of the conflicts between the citizens is not included in the ombudsman's field of competence of any of the country. The scope of its activities is the relationships between the citizen and state authority, public organization or agency. Many countries experienced the creation of so called branch-wise specialized institutes of ombudsmen. Likewise in Sweden, Finland, Great Britain, Germany specialized ombudsmen were established particularly ombudsman on private data, information, equal rights of men and women.

The institute of commissioner on human rights established in 1993 by the Constitution of the Russian Federation generally corresponds to the classical model of Ombudsman as independent public officer authorized to protect the rights of the citizens in the form of controlling of the activities of the governmental bodies. Following the world practice, Russia went on the path of specialization of ombudsman institute.

Initially, specialized institute of commissioner on protection of the rights of entrepreneurs had been introduced on regional level. Further it accepted assignment on federal level.

In 2002, the Ombudsman Institute (Akiykatchi) in Kyrgyz Republic was founded.

The main objective of the created institute of ombudsman was protection of human rights and freedom, prevention of human rights and freedom violation, facilitation for rehabilitation of violated rights.

However today the need for establishing a specialized institute of Business Ombudsman is obvious for whom the following tasks should be identified:

- Facilitation for rehabilitation of violated rights and legal interests of small and medium enterprises;
- Ensuring the state guarantees on protection of rights and legal interests of small and medium enterprises;
- Improving the mechanism of ensuring and protection of rights and legal interests of entrepreneurs;
- Popularization and advocacy of entrepreneurial occupation;
- Legal enlightenment on issues as rights and legal interests of small and medium enterprises, the forms and methods of their protection.

In order to implement aforementioned goals, Business Ombudsman shall serve as an independent public officer who reviews the complaints of business circle representatives on actions or absence of any actions from the governmental bodies. For these purposes he must be authorized to visit bodies of state powers and organizations without any hindrance; to request necessary information and materials; to collect explanations from public officers; to conduct investigations necessary for the review of received complaints; to assign state authorities and agencies to conduct researches and preparation of conclusions on issues contained in complaints. Sending of the well-reasoned conclusion on presence or absence of actions, solution of matters related to business entities' rights and legal interests violation, as well as recommendations in regards of possible and necessary measures to their rehabilitation to a state authority, local self-government or a public officer can be a major type of response of Business Ombudsman. Business Ombudsman should have a right to publicize the information on the results of complaint reviews in the mass media, making known to the public the cases of dishonest performance of responsibilities by concrete public officer. Methods of his activities bring down to convincing of public officers in the necessity of exact and honest execution of the responsibilities they were entrusted and observance of rights and legal interests of entrepreneurs. This complies with classical model of ombudsman who is a public officer with an objective to influence the violators by his authority and a sound argumentation of his stand.

In order to increase efficiency of Business-Ombudsman's activities the conclusion of cooperation agreements with various state authorities may be initiated.

As a rule, the following forms of cooperation are covered in such agreements:

- exchange information on violation of rights and legal interests of defended individuals;
- review of work results on joint meetings;
- on-site examination of causes for mass violation of rights and legal interests of defended individuals;
- cooperation on issues of improvement of legislation, adjustment of the legislation to the generally recognized norms and principles of international law;
- appealing to the mass media with joint statements on outrageous violations of rights and legal interests of the defended individuals;

- participation in the theoretical and practical conferences and seminars and other events on ensuring rights and legal interests of the defended individuals.

Besides of the mentioned vector of cooperation it may be beneficial to arrange the work of telephone hot lines on protection of entrepreneurs' rights, public reception room that would decrease the red-tape in applications review and provide entrepreneurs with prompt access to the necessary information on protection of their rights and legal interests.

It would be quite a new experience for the representatives of business circle and a society in general to observe arrangement of joint inspections of state

authorities and Business Ombudsman where the efforts of various bodies are combined in order to ensure versatile analysis of the legal case, and as a result such activities would secure more accurate and prompt detection of violation of the entrepreneurs' rights and the causes and conditions contributing to their occurrence.

In addition the Business Ombudsman can focus on increasing the level of protection of the rights and legal interests of entrepreneurs through the arrangement of and participation in the conferences and workshops, participation in the legal enlightening and improving the legal culture of entrepreneurs.

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