

Opinion on [Decree on the measures on reduction of number of unjustified inspections of the activities of business units](#)

On May 31 the International Business Council conducted an Open Meeting to discuss the registration of inspections at the prosecutor's offices.

Presidential Decree No. 237 "On Introduction of Registration of Inspections of Business Entities" was adopted May 14, 2009. This decree introduced the mandatory registration in the prosecutors' offices of all inspections by all state inspectorates, tax authorities and law enforcement agencies. More than a year has passed since the decree was issued. Is that measure advisable in the current economic situation? Has it reduced the business problems associated with conducting inspections? These and many other issues were discussed at the meeting attended by representatives of the Provisional Government of the Kyrgyz Republic, the Ministry of Economic Regulation, the USAID Business Environment Improvement (BEI) Project and the IFC Investment Climate Advisory Services in the Kyrgyz Republic Project, the State Tax Service and the Financial Police of Kyrgyzstan.

First Deputy Prosecutor General of the Kyrgyz Republic, Kybanuchbek Asangeldiev, spoke on the implementation of Presidential Decree "On Introduction of Registration of Inspections of Business Entities". An Interdepartmental Committee was created to carry out development legislation on inspections. In particular, amendments to some legislative acts have been developed including changes to the Tax Code, the Law "On Investigative Activities" and the Law "On Procedures for Inspecting Business Entities" (the "Inspections Law"). However, due to the recent April events the adoption of these amendments was suspended. In 2007 an Advisory Council under the General Prosecutor's Office was created, which conducts quarterly meetings to discuss the problems in doing business. From June to December 2009, prosecution authorities reported 19,667 acts of appointed inspections, and Prosecutor's Office denied conducting of 628 inspections by various government agencies because of their invalidity. Last year, 153 inspections were identified as illegal ones carried out without registration in the Prosecutor's Office. One hundred government officials were punished by disciplinary proceedings. Several officials were brought before a court.

Acting Minister of Economic Regulation Emil Umetaliyev said that on the MER initiative the Decree on moratorium on conducting inspections was issued by the Provisional Government. Now the Ministry is interested to hear feedback from entrepreneurs on the moratorium effect. Before 2005, there were disputes that the General Prosecutor's Office should not register all inspections. The opponents said that the registration system would become more complicated, while the number of inspections and costs for their conduction would not decrease. Currently MER is developing draft amendments to the Law on Inspections in order to introduce the system of risk-based inspection. The Minister identified the main issues to discuss at the meeting, such as the introduction of criteria of risks for conducting inspections; the situation involving the General Prosecutor's Office in conducting inspections; opinion on a moratorium on inspections; and issues related to the activities of General Prosecutor's Office in the current circumstances (after the April events).

Sanjar Mukanbetov, Deputy Minister of Economic Regulation, said that at the time the Decree of 14 May 2009 was issued, MER had already executed the functions of coordination and monitoring

inspections of businesses. In order to improve the system of inspections, the Ministry introduced a system of automated databases, Counter-Pro. Empowering the General Prosecutor's Office duties of a unified monitoring of the inspections of businesses is inexpedient, as identification of a new body led to duplication and bureaucratization of inspection system.

Currently, MER, together with international financial institutions is developing an action plan to implement the risk-based system of criteria in conducting inspections. With the adoption of these changes, there will be no need for harmonization of procedures, as each supervisory authority will establish criteria and frequency of inspections and publish them on their web-sites. "We believe it appropriate that MER should continue coordinate all inspections of businesses carried out by the state inspectorates, while the Prosecutor General's Office should be responsible for coordinating and monitoring inspections carried out by law enforcement authorities and the State Tax Service," said Mukanbetov.

To further improve the law, the USAID BEI Project, with the participation of other donors, developed a series of recommendations - the introduction of risk criteria on the basis of the presumption of entrepreneur's good faith, and a reduction in the timing of inspections. These recommendations were prepared prior to the April events, and now they have to be improved, informed **Sabyrbek Akimbaev, Project Deputy Director**. "We believe that the participation of two bodies as the General Prosecutor's Office and the Ministry of Economic Regulation complicates the work of controlling agencies in organizing inspections. We suppose that the General Prosecutor's Office would register inspections carried out by law enforcement and tax authorities, and MER would continue registration of state inspectorates. Our project is ready to work with both the General Prosecutor's Office, and with the Ministry of Economic Regulation," Akimbaev said.

Vsevolod Paevsky, Manager of the IFC Investment Climate Advisory Services in the Kyrgyz Republic Project, informed about the results of the IFC Survey of the small and medium businesses. The main objective of the SME survey was to measure regulatory and administrative barriers adversely affecting the activities, growth and development of small and medium enterprises in the Kyrgyz Republic. "We found significant differences in the number of inspections carried out by state inspectorates, according to entrepreneurs on one hand, and from the words of state inspectorate officials, on the other hand. After Presidential Decree of 14 May 2009 was adopted, we conducted a series of seminars for prosecutors and for some state inspectorates. The participants to the seminars said there is duplication of inspections, and red tape has increased within inspectorates, as well as the order of registration of inspections lacks clarity. "It was announced at the meeting that of 30,000 inspections conducted by the three main state inspectorates, 628 inspections (less than 2 percent) were rejected by prosecutor's offices. For example, the Russian Prosecutor's Office voiced the figures that are much higher. "During my many study tours to other countries, I became convinced that the registration of inspections at the prosecutor's offices is not the world best practice," said Paevsky.

A representative of the Osh Oblast **Abdimomun Joldoshev**, working with the GTZ Promotion of Sustainable Economic Development Program in Kyrgyzstan, addressed the problem of the shadow economy. Shadow businesses work next to those entrepreneurs who faithfully pay their taxes. Everyone knows that the shadow businesses are in the field of view of state inspectorates and regularly visited by them. Naturally, they are regularly charged informal fees. When the project participants asked the tax authorities about a number of employers engaged in garment manufacturing, they got a very small

number, although it is known that the garment industry is highly developed in the south. If shadow businesses are reduced then the same percentage of inspections of bona fide businessmen could be reduced too, Joldoshev believes.

Erkin Alymbekov, Advisor to Deputy Chairman of the Provisional Government said that as a result of changes that currently occur in the country, many of the issues being discussed now will be decided with time. The Provisional Government knows that businesses produce the nation's wealth. Accordingly, the protection of property rights and investment climate is a priority for the Provisional Government, as well as for the next government to be formed after the adoption of the new Constitution. The draft new Constitution provides good principles to ensure stability of power and competitive economy. In order to ensure the normal functioning of the economy and business in conditions of a severe crisis, Alymbekov advised to create a commission including representatives of business associations, who could hear complaints from business about unwarranted inspections, for example, for an affiliation to the business of former President.

IBC Executive Director Kuban Ashyrkulov said that as part of the development of the Roadmap (Proposal of the business community to rehabilitate the business and further improve the business environment) the IBC proposed the establishment of a government commission for restructuring the state assets and ensure the participation of the business community in its work. In this case, the business will be informed which companies are suspected in affiliation with the business of the previous President and which companies have already been inspected, etc. Currently it is very difficult to get this kind of information, while the IBC often receives messages from the business about unjustified inspections. Big business is ready to cooperate with law enforcement agencies and provide necessary information within the law. Now the IBC together with the Investment Council is developing proposals to establish the mentioned above Government Commission.

Erkin Alymbekov supported the IBC proposal and added that the Commission should make its information public through the media.

Deputy Executive Director of the Union of Entrepreneurs of Kyrgyzstan, Shavkat Mukhamedjanov, supported the point of view of Sanjar Mukanbetov and Abdimomun Joldoshev on the futility of registration of inspections at the prosecutor's office. The Union of Entrepreneurs also supported the proposal made by Vsevolod Paevsky on the optimization of inspection. These measures will increase the transparency of the system of inspection and establish partnerships between business and the inspection bodies.

Gulnara Uskenbaeva, President of the Association of Accountants and Auditors of Kyrgyzstan, believes that the moratorium on inspection does not work because it applies only to those businessmen who was directly affected during the April events. Meanwhile, the closure of borders and decrease of business activity affected any business, regardless of whether it was subjected to direct attack or not. The decree also says that only planned inspections will be reduced, whereas unscheduled inspections are carried out much more often.

Nurbek Sabirov, lawyer of Kalikova and Associates law company, proposed to develop a mechanism for holding officials responsible for their actions during inspections. If the court finds inspector's actions illegal, then he should compensate the losses incurred by the entrepreneur.

Executive Director of the Guild of Directors of Kyrgyzstan, Usen Kydyraliev, recalled that some time ago

the registration of inspections was assigned to the MER, and later in 2007 the Inspections Law was adopted. Business community approved the law. But later, the tax inspectorate and other bodies were excepted from the law. After the new Tax Code was adopted, tax office was withdrawn outside the scope of the law. To arrange a settlement with businesses, a mechanism of registration inspections in the General Prosecutor's Office was introduced. Now it is necessary to correct the shortcomings and make the tax authorities subject to the Law on Inspections. The Ministry of Economic Regulation should undertake registration of all kinds of inspections. The Prosecutor General's Office and prosecutors should exercise general supervision over the way the law is observed.

The meeting decided that broken order of registration of inspections should be restored, at least to a level that was before the adoption of Presidential Decree of May 14, 2009 "On Introduction of Registration of Inspections of Business Entities." MER intends to initiate a draft law on amendments to the Decree. The International Business Council together with its partners - the Guild of Directors, the Union of Entrepreneurs, the American Chamber of Commerce and other business associations supported the initiative of the Ministry of Economic Regulation.

The resolution adopted by the meeting participants has been addressed to the Ministry of Economic Regulation of the Kyrgyz Republic.

Prepared by Lidia Savina.