

Methodical recommendations for the transfer of the management of enterprises and/or corporate rights to another person to prevent conflict of interests

According to Article 36 of the Law of Ukraine “On prevention corruption” (hereinafter referred to as the Law), persons appointed as public authorities or officials within 30 days after their appointment (election) have to transfer the management of enterprises and corporate rights they owned to another person (excepting their family members).

An enterprise is an independent economic entity established by competent public authority or local government or by other agents to satisfy social and individual needs by systematical productive, research, trade and other economic activities undertaken under the procedure established under the Economic code of Ukraine and other laws (Article 62 of the Economic Code of Ukraine).

An entity who holds stakes in the authorized capital of the economic organization has corporate rights which include legal rights for taking part in the economic organization management, receiving declared fraction of revenue (dividends) of this organization and its assets in case of its closing down in accordance with the law, and some other of legal rights stipulated by law and statutory documents (Article 167 of the Economic Code of Ukraine).

General procedures of the transfer of the management of enterprises and/or corporate rights owned by the entity are described in Article 36 of the Law and stipulate the following requirements to be met:

the transfer is to be completed within 30 days after the entity’s appointment (election);

it is prohibited to transfer the management of enterprises and corporate rights *in favor of the entity’s family members*, and enter into such contracts with business entities, dealers of capital assets and asset management companies *where the entity’s family members work*;

unitary enterprises are transferred by concluding of a real estate administration contract with business entities.

We draw your attention to the following:

1. By determining the period of the transfer of the management of enterprises and/or corporate rights owned by the entity, it is necessary to take into account general rules of determining periods described in Articles 253, 254 of the Civil Code of Ukraine (hereinafter referred to as the CC).

Therefore, the period of the transfer starts since the calendar day following the entity’s appointment (election) day. If the closing day falls on a day off, a holiday or other legal holiday, the first working day following the day off should be considered the closing day.

2. Under family members of the entities authorized to function as state or local authority as well as public officials, should be understand persons who are married (a husband / a wife) in spite of their joint residence.

If a couple has a joint residence, a common life and mutual rights and duties, their children, including the children of the full age, their parents, persons who is in trusteeship, and other persons who has a joint residence but are not married (except for persons whose mutual rights and duties are not family-related) are considered family members.

3. The possible procedures relating to the transfer of the corporate rights owned by the entity are:

a conclusion of a real estate administration contract with a business entity (except a capital assets management contract and contracts relating to other financial instrument management);

a conclusion of a contract for managing securities, other financial instruments and funds intended for investing in securities with a dealer of securities who has the National Securities and Stock Market Commission license for performance of securities management activities;

a conclusion of a contract for creating a venture capital open-end investment fund for managing transferred corporate rights with a securities management company which has the National Securities and Stock Market Commission license for performance of assets management activities.

Corporate rights are transferred as payment of the value of the venture capital open-end investment fund securities after the National Securities and Stock Market Commission have registered the issue of securities of such co-investment institution.

By concluding a contract for the transfer of the management of enterprises and/or corporate rights to another person, it is necessary to meet general requirements to a real estate administration contract stipulated in the Civil Code of Ukraine (hereinafter referred to as the CC).

Within a day, after the transfer of the management of enterprise and/or corporate rights to another person have been completed, state or local public authorities as well as public officials *are obliged to send an appropriate report* to the National Agency for Prevention of Corruption.

This report (an appropriate form is attached) should include the following information:

the surname, name and patronymic of the entity who transferred the management of his/her owned enterprises and/or corporate rights to another person;

an appointment of the entity due to the transfer of the management of his/her owned enterprise and/or corporate rights to another person has been completed;

an appointment date;

date of the transfer of the management of enterprises and/or rights to another person;

the date of notification of the National Agency for Prevention of Corruption on the transfer of the management of enterprises and/or corporate rights to another person;

the name of the enterprise the management of which has been transferred to another person, its business form, its EDRPOU¹ code, the share in the enterprise legal capital, in money and percentage terms, if it is securities, including shares, bonds, cheques, bills, it is necessary to state security type, its issuer, the date of acquiring ownership of securities, amount and principal value of securities;

the procedure for the transfer of the management of enterprises and/or corporate rights to another person;

the surname, name and patronymic, taxpayer registration card No. (passport series and number of the citizen of Ukraine if the entity following his/her religious convictions has not accepted taxpayer registration card No.) of the entity the management of enterprises and/or corporate rights has been transferred to or the name of legal person and its EDRPOU code.

The date of the notification of the transfer of the management of enterprises and/or corporate rights to another person, as well as the period of the transfer of the enterprises and/or corporate rights owned by the entity should be stated in accordance to Articles 253, 254 of the CC.

Therefore, a day-long notice period is a day that follows the day of the transfer of the management of enterprises and/or corporate rights, owned by the entity, to another person has been completed. If this day falls on a day off, a holiday or other legal holiday, the first working day following the day off should be considered a day-long notice period.

Written applications and notifications which have been posted to the National Agency for Prevention of Corruption before the end of the closing day are deemed to be posted in a timely manner.

The notification are to be attached with a notarized copy of the signed contract.

The notification should be attached with the following documents:
a certified copy of the appointment order (a resolution on election);
a certified copy of founding documents or corporate right certificates.

Attachment: a recommended notification form on 1 page, in 1 copy.

Attachments:

A recommended notification form for the National Agency for Prevention of Corruption on the transfer of the management of enterprises and/or corporate rights to another person

1. Details of the entity who transferred the management of his/her owned enterprises and/or corporate rights to another person: _____

(the surname, name and patronymic, taxpayer registration card No (passport series and number of the citizen of Ukraine if the entity following his/her religious convictions has not accepted taxpayer registration card No.)

2. The entity's appointment due to the management of his/her owned enterprises and/or corporate rights has been transferred to another person: _____

3. The appointment date: _____

4. The date of the transfer of the management of enterprises and/or corporate rights to another person: _____

5. The details of the enterprises and/or corporate rights the management of which has been transferred to another person: _____

(a name of the enterprise transferred to management, its business form, its EDRPOU code, the share in the enterprise legal capital, in money and percentage terms, if it is securities including shares, bonds, cheques, bills, it should be stated security type, its issuer, the date of acquiring ownership of securities, amount and principal value of securities)

6. The procedure for the transfer of the management of enterprises and/or corporate rights to another person: _____

7. The details of the entity the management of enterprises and/or corporate rights has been transferred to: _____

(the surname, name and patronymic, taxpayer registration card No. (passport series and number of the citizen of Ukraine if the entity following his/her religious convictions has not accepted taxpayer registration card No.) of the entity the management of enterprises and/or corporate rights has been transferred to or the name of legal person and its EDRPOU code)

(a notarized copy of the signed contract, the copies of the appointment order (the resolution on election) and of founding documents or corporate right certificates)

Date _

Applicant's signature