

**ST. PETERSBURG INTERNATIONAL ECONOMIC FORUM  
JUNE 20–22, 2013**

**Russia's New Horizons  
COMMISSIONER FOR ENTREPRENEURS' RIGHTS PROTECTION – RESULTS  
OF THE FIRST YEAR  
Roundtable**

**JUNE 22, 2013  
12:00–13:15, Pavilion 8, Conference Hall 8.2**

**St. Petersburg, Russia  
2013**

**Moderator:**

**Dimitry Afanasiev**, Co-Founder, Chairman, Egorov Puginsky Afanasiev & Partners

**Panellists:**

**Boris Titov**, Presidential Commissioner for Entrepreneurs' Rights

**Choong Yong Ahn**, Foreign Investment Ombudsman, South Korea

**Mikhail Barshevsky**, Plenipotentiary Representative of the Government in the Constitutional Court, the Supreme Court and the Higher Arbitration Court of the Russian Federation

**Alexander Brechalov**, President, OPORA RUSSIA, The All-Russian Non-Governmental Organization of Small and Medium Business

**Victor Ermakov**, Representative of the Russian Presidential Commission for Entrepreneur's Rights

**Michael Harms**, Chairman, Russian–German Chamber of Commerce

**Sergei Katyrin**, President, Chamber of Commerce and Industry of the Russian Federation

**Andrei Nazarov**, Co-Chair, Business Against Corruption Centre for Public Procedures

**Andrew Somers**, President, Chief Executive Officer, American Chamber of Commerce in Russia

**Yana Yakovleva**, Chairwoman, the Business Solidarity movement

**Igor Zubov**, Deputy Minister of Internal Affairs of the Russian Federation

**Front row participant:**

**Artem Avetisyan**, Director of the New Business Stream, Agency for Strategic Initiatives

**D. Afanasiev:**

Good morning, ladies and gentlemen. I am delighted that you found the strength to come here today, despite the economic amnesty announced yesterday and the subsequent celebration.

The topic of our panel today is certainly broader than the issue of economic amnesty, which we heard about yesterday in the speech by the President of the Russian Federation, Vladimir Putin. I think it would be appropriate to begin with a discussion of this important event – one of the most important achievements of the Russian Presidential Commissioner for Entrepreneurs' Rights Protection, Boris Titov's first year, as well as of the All-Russian Public Organization Business Russia, and the entire business community.

This is a great step forward. I think it would not be excessive to offer great thanks to everyone who was involved in this important work. Boris Titov should get credit for this and he deserves our gratitude.

**B. Titov:**

Maybe, after my presentation, there will be nothing to thank me for.

**D. Afanasiev:**

We will thank you again after the presentation.

I will not go into detail now: one of the panellists will talk about this in more depth. I would like to point out that yesterday the President of the Russian Federation announced another resolution, which is important for the business community in that it should limit the growth of natural monopolies' tariffs to no higher than inflation. This is also important for Russian businesses to restrain costs, and is the result of a constructive working dialogue between businesses and government over the last year.

As I said, the topic of our panel is broader: the results of the Russian ombudsman over its first year. A good tradition is shaping up, Boris. You were appointed at last year's Forum and one of your first public appearances was on the same panel at the

Forum. A year has passed and the president has announced the important impact of the work, primarily, yours. Perhaps now is your first, or one of your first public appearances since the announcement of these important events.

**B. Titov:**

The first.

**D. Afanasiev:**

Today we have ombudsmen from other countries as guests and they will share with us their experiences in comparison to how things are done here in Russia.

I would like to give the floor to the Presidential Commissioner for Entrepreneurs' Rights Protection, Boris Titov.

**B. Titov:**

Thank you very much.

I do not think you will mind if we make Afanasiev the official moderator of all our events. His work as a moderator brings good news. He is our good luck charm. We should book today's panel for the future, for next year.

Thank you very much. While there is more good news in terms of the development of the institution, it would be immodest for me to talk about it. Everyone sees that there have been results. For now they are still moderate, but we hope that they will be great.

I wanted to say, one year after the appointment, before the session with Afanasiev, I was probably happy for one day. Then came the routine of work and the work was far from simple. Creating something new is always much more difficult than developing something old. First, we needed to understand what the institution of the commissioner means, how it will act, what tools it will have and whom it could rely on for expertise and organizational work. We had to re-invent this institution. We reviewed international experience, including the experience of South Korea, Australia, and Eastern Europe. Before starting out, we tried to convince everyone

that this institution exists in the world and that we are not innovators creating something new. But it did not exist in any country in the world in the form in which we created it. The unique feature for our country is the need to protect entrepreneurs from law enforcement agencies. We were pioneers and we had to develop our institution, based on our own ideas, not on prior experience.

The presentation provided statistical reports on the activities of the institution and I will not dwell on the statistics. I would like to focus on the main issues and conclusions that can already be drawn from our year of work.

We have built up our organizational unit over the year. Tatyana Marchenko worked on this and she did a great job. Starting from initial ideas about how the Office of the Commissioner must act, we arrived at a completely different version. Today, the office works and this is the most important thing. I have about thirty employees who work in the Civic Chamber of the Russian Federation. We have no reason to complain. We have an operational headquarters and a task force that can coordinate the commissioner's activities.

The first conclusion that must be made is this: we cannot work alone. The scale of the problems is much greater. Other public institutions were also created to work alongside us. It is very important that a network of regional commissioners is being developed and many of them are present here in the hall. To date, there are more than 50 confirmed ombudsmen in the regions. Some of them are now officially working. Laws have been passed in the regions and so the foundations for such works also exist.

Another conclusion can be drawn from this year. In the first few days, it seemed to us that we would drown in the number of petitions that immediately began to arrive through different sources: by mail, and by phone. We did not know how to work with them, but now we have systematized our approach. We already have an operating, modern database with which we can easily and efficiently work on these petitions.

The main conclusion that I wanted to make is that there are not as many petitions as we feared there would be. At first, there were many, then the flow began to decline. We now see that we were not flooded with the hundreds of thousands of

petitions that we initially expected. You see the figure: we have more than a thousand petitions, but less than two thousand. Such an amount has given us a chance to work more effectively with each petition. On the other hand, it may be that we have not yet earned the trust of entrepreneurs – they do not really believe in us, so they do not submit petitions.

Violation of entrepreneurs' rights is a large-scale problem for the country's development. However, it is not an overwhelming problem that makes doing business in Russia impossible. This is not the case: one can do business in the country and implement a number of successful projects, but there are certain issues.

Another conclusion that can be drawn from the first year of our work is the need for an expert assessment. Why? We receive very complicated petitions and they are not always well-founded. There are a lot of petitions where there is a conflict, where the petitioners are trying to use us to fight for their interests: their rights have not been violated, but they are violating the rights of others. Creating a database of experts has been a huge help for us. Experts work on each petition and this work is carried out for the public benefit.

At Business Russia, we have created an institute, the Business Against Corruption Centre for Public Procedures. That is where we analyse the cases involving the victimization of businesses. Lawyers who work pro bono, or free of charge, provide opinions. They simply sacrifice hours of their time providing expert analyses for each of these cases. I would like to thank all the companies who give us their time, including the Law Offices of Egorov, Puginsky, Afanasiev and Partners, for volunteering their time and expertise for the public good.

We have created another very important institution. Experts in criminal cases are needed. We receive petitions about administrative problems in many areas: customs, taxes, regulating fire safety. Public representatives of the commissioner work in these areas and they also work for free. They are some of Russia's best specialists in their respective fields and they give us their time, working with specific complaints. Viktor Ermakov, who works with small businesses, holds the record for

the number of petitions under his review. I should thank the Chamber of Commerce. Many associations of entrepreneurs who are members of the public chamber are also helping us: chambers of commerce, OPORA RUSSIA, and the Russian Union of Industrialists and Entrepreneurs (RUIE). The Chamber of Commerce helps us not only with advice, but also financially and organizationally. It supports the Office of the Ombudsman for small cases and specialists work in this office at the expense of the Chamber of Commerce. Public support has helped us manage the very important function of the expert. We are probably the most public of all state structures that now exist in Russia.

Let me tell you another conclusion. As we were practicing business, we were ready for an open fight with the government, for the government to 'attack' businesses and for law enforcement agencies to put up administrative barriers, making corrupt decisions in exchange for bribes. We ran into a big problem that concerns us. I cannot give exact figures, but at least 70–80% of all conflicts with the government are conflicts between businessmen. At the heart of almost all cases there was a conflict between shareholders: failure to comply with contractual obligations or an inability to divide property. The size of the businesses varies from small companies to large companies, and even individual entrepreneurs. We ourselves are a huge source of conflict in the relationship with the government. People say that the government should not 'terrorize' businesses. Now you can proclaim another slogan: 'Businesses, do not terrorize each other.'

We need to raise the level of governance and corporate ethics significantly because there are a lot of problems between us and we do not know how to solve them in a sound way. Entrepreneurs immediately run to the police: "Open criminal cases against Pupkin!" Pupkin then shouts, "Close the cases against me, open one against Ivanov!" This is a huge problem that we, to be honest, have not yet learned how to overcome. I have probably taken up too much time. I will try to be quick. We are working with the RUIE in the ethics commission. Sergei Generalov, who is sitting in the room, and I just had a public arbitration between two major companies in the ethics commission of the RUIE. The commission was created by the RUIE for

large companies and it cannot engage in trivial matters. Reputations are not very important for small companies or for Pupkin. We need some institutions. We will create a small mediation centre under the commissioner for small and medium-sized businesses and perhaps public arbitration. We would like to appeal to OPORA RUSSIA to work on this with us. This is a very important topic for which there are not yet any solutions.

My next point is another conclusion: some officials in law enforcement agencies have a certain ideology in relation to business that developed in the 1990–2000s. We are trying to solve entrepreneurs' problems, interacting with the government, even at the highest level. Agreements have been signed with a number of law enforcement agencies, and two working groups, one under the Prosecutor's office and a second under the Investigation Department of the Ministry of Internal Affairs, have been set up, where we consider specific cases. It is very difficult to convince these structures that the entrepreneur is correct, especially when there is an inter-corporate conflict. Sometimes the authorities have a desire to capitalize on such a case, with obvious signs of corruption, but, most often, there is either a protection of honour or the belief that they know best what is really going on. Ideology also plays a role here. The people who work there have a serious ideological conviction. They do not believe that entrepreneurship is necessary, or that the country needs the entrepreneurial class, who allegedly only steal, try to take something for themselves, or do not pay wages. We come across such ideological problems and they are the most difficult to address.

The amnesty, which was announced yesterday, is a very serious ideological move. The authorities are usually oriented toward popular solutions that are supported by the majority of the country. I must pay tribute to President Putin. Yesterday's decision was not a popular move and he is at odds with the majority opinion in our society. It shows that the country needs entrepreneurship, no matter what. He is showing ordinary people, who do not believe in the development of entrepreneurship in our country, and law enforcement officers that we will protect businesses, as without business the country cannot develop, despite the existing



relationship. This is a very bold move and we as entrepreneurs need to appreciate it. This is a real step in our direction and against the majority opinion in society.

I would like to warn you that a lot of work needs to be done for the amnesty, as it's announcement is only the first step – a very important and decisive step – but the next steps to come will be difficult. Today, amnesty, as it exists on paper, leaves a lot of questions for entrepreneurs. Not everyone falls under this amnesty, but, in order to receive it, it is necessary to be re-classified under Article 159 Section 4. There will be strong resistance from the courts and from law enforcement and investigative agencies. We will have to convince them to release entrepreneurs.

Everyone is under the impression that the amnesty mainly concerns release from prison, but in fact it is much broader than that. There are about 110,000 people with outstanding convictions currently under probation. Open criminal cases that have not yet reached trial will also be terminated. Investigators who conduct these criminal cases should grant amnesty to people and close criminal cases based on the legal articles that fall under the amnesty. There will be resistance, of course: they have the ability to just open a second criminal case two days after the announcement of an amnesty. Alongside the authorities, we need to do a lot of work in order to convince people of the need for amnesty. Even if a government official assumes that a person is guilty, it does not matter. They were granted an amnesty, which means the case should be terminated.

We are making systemic conclusions about the situation that has developed in Russia and we are trying to implement them. Our first legislative initiative passed in December: we worked together with the Ministry of Economic Development, with the Ministry of Internal Affairs, and with other law enforcement agencies. I have to say thank you for the fourth package on the humanization of criminal legislation in the economic sphere. Work needs to be done in terms of criminal legislation. We will continue, for example, to have multiple penalties for entrepreneurs that we will propose at the next stage. Other systemic solutions are also needed.

The meeting with the president that took place on the 23rd is very important for all of us in terms of the economic foundations of doing business in the country.

Yesterday, attention was drawn to amnesty and the unification of courts, but a much more important statement was announced. We heard about the new economic programme, which is effectively a paradigm shift. We talked a lot about how we are not happy with the raw materials model, but we never heard about what needs to be done to move away from that model. Yesterday, the position that we discussed with the president on the 23rd was laid out. In his speech, we heard what we discussed, point by point: the solutions that will be put into effect by the adoption of specific legislation or the solutions that have already been adopted. For example, we heard about tariffs, which should not grow faster than the previous year's inflation rate, and about fiscal and monetary policy. The need to reduce costs so that business in this country becomes profitable has been demonstrated and it is important. If business is not profitable throughout the country, then nothing else matters: neither the security of businesses nor the administrative convenience for conducting business. No one will start a business if it is not profitable.

We are working on this and will continue to do so. We are certain that Russia is currently undergoing an era of upheaval: we are moving from one model of national economic development to another. Stepping away from these issues would be wrong for business. We need to interact more with business associations. At some point, everyone has held a dialogue with the government in their own way, but today, at such a complex and important period of time, we have shown that we can do it together, for example, at that meeting with Putin on the 23rd. We have already started to discuss topics on which we could approach the authorities with a single opinion.

Another important point that I can make after a year of work is this: we should all be together in this. The business community and all business unions must unite: we have to express a single point of view in the Public Council under the Commissioner or in other venues. We must not act like we did before, when we were dragged apart from each other and this was exploited.

Perhaps the most important point is that changing the economic paradigm demands unity from our businesses.

Thank you very much.

**D. Afanasiev:**

Thank you, Boris.

I think most would agree with you. Unfortunately, in our society, people believe that the entrepreneur is man's enemy. Yesterday was the first step towards showing that the entrepreneur is, in fact, man's friend. One day, the day will come when everyone will understand that the entrepreneur is a human being.

Yesterday, I was talking to a very wise and experienced senior officer and he gave me some interesting advice. Upon congratulating me on the fact that we managed to achieve economic amnesty for entrepreneurs, he said, "You know, the devil is in the details. When you write in the regulations: 'Release the entrepreneurs'," and then he joked, so that it would be difficult to translate it into English, "when you write: 'Release entrepreneurs', make sure not to forget to write a letter T. Make the first letter T." There is no way that can be translated into English.

I would like to give the floor to Andrei Nazarov. He is the Co-chair of the Business Against Corruption Centre for Public Procedures and also Vice-President of the All-Russian Public Organization Business Russia. Boris said that entrepreneurs should stop 'terrorizing' each other through law enforcement. One of the civilized methods of dispute resolution between entrepreneurs is the Business Against Corruption Centre for Public Procedures. I will ask Andrei briefly to describe what this is and what the results of the first year of operation have been.

Andrei, I have a request for you and to the rest of the speakers: so that we have time for questions, answers, and discussions, try to limit your statements to five to seven minutes.

**A. Nazarov:**

Thank you, Dmitry.

First, a few words about the Centre of Public Procedures, which was set up just over two years ago. Over the time it has been operating, it has shown itself to be a

platform where problems can be solved. Boris provided an example, naming a figure of around a thousand petitions. I would like to say that entrepreneurs are very persistent people and they are used to solving problems by themselves. People petition to the Centre of Public Procedures only when faced with overwhelming obstacles. Now there is an even more solid institution, namely the Commissioner for Entrepreneurs' Rights. The number of petitions is only the tip of the iceberg, as entrepreneurs have a lot more problems – this can be multiplied by about 100. On the other hand, every fate and each entrepreneur is very important in order to engage in an analysis of each specific problem.

We are progressing along two different paths: the first is to consider each specific case. We have good examples of when we were able to free dozens of people from criminal prosecution: releasing them from pre-trial detention, terminating criminal prosecution, and releasing some people from prison. It is very significant for everyone: for law enforcement officers and entrepreneurs, and it affects the investment climate.

The second area we are working on is a systematic change in the criminal law of the country. Maybe this is the most important thing. Here, too, there is some progress. You have already heard a few words about this. The amended Criminal Procedure Code has been in effect from the beginning of the year. This does not allow the initiation of criminal proceedings under Article 159 for fraud without a statement from the victim and this article is most commonly used against entrepreneurs. The work to change this article into private-public indictment was very difficult, but now the rule is working. Previously, 95% of such cases were initiated without victims' statements, when law enforcement officers saw fraud in someone's actions, even when it was possible that the entrepreneurs did not commit fraud at all. This was, in our view, the first interim success in the first year of the commissioner's work.

The second success is probably the most striking – what the president said yesterday. The amnesty has not been announced yet, but it will be adopted by the State Duma, hopefully in two weeks. As a man who has spent a few years dealing

with these problems, I can say that I am grateful to God and to Boris Titov for the fact that I have been involved in the development of this document. Yesterday, we thought: it has come about in such a way that there was nothing like it sixty years ago. There have been several amnesties: in respect to militants in the Caucasus, timed to celebrate the 60th Anniversary of Victory Day, when 300 veterans were freed. An amnesty of this magnitude happened only in 1953, about which the movie *The Cold Summer of Fifty-three* was filmed, and unfortunately, much of it was negative.

**B. Titov:**

Only it did not turn out exactly the same.

**A. Nazarov:**

Sixty years have passed. This is a historic moment, maybe nothing like this will happen for another sixty years.

The amnesty will first be conducted for entrepreneurs. This has never taken place, in any country, moreover, in our country. Here we have to pray that we do not have to have it again, that we change the law and the amnesty is no longer needed. This document has been prepared and I think it will be interesting if I present a few points.

There are only two plenary sessions left in the State Duma. Yesterday, the president announced his position. Announcing an amnesty is not easy: it can be declared and prepared, then completed and implemented sometime later. But a very tight deadline was stipulated – prior to the end of the spring session. This is an indicator of the priority given to all matters now faced by the economy and entrepreneurs.

So, in Voronezh, the president gave us the order to complete the project. From fifty articles of the Criminal Code that were considered for amnesty at that time, we have removed twenty. Now, thirty articles of the Criminal Code remain. Why was this done? First, because some of the articles are ambiguous and the president drew

attention to this. Counterfeiters and others could have qualified for amnesty. Secondly, we did not want to have a 'Cold Summer of 2013', so that later there would be unnecessary suspicions and consequences, when we and entrepreneurs in general would be accused of the fact that criminals were released and things had become worse.

About nine and a half thousand people are in prison under these thirty articles of the Criminal Code. We counted thirteen and a half thousand people under fifty articles, now a little less. More than a hundred thousand people who are not in prison have outstanding convictions or other forms of non-custodial sentences.

So, let me explain this point by point: firstly, release those who were imprisoned, release those given probation, release those whose sentences were deferred, release those who were on parole for the remaining term of their punishment and release those punished with sentences not involving deprivation of freedom. Release prisoners from other forms of punishment, expunge the criminal record of those who were released, terminate criminal cases in proceedings of investigative agencies and preliminary investigation, as well as cases in the courts, and release those who were imprisoned and received convictions that have not yet come into legal force.

We estimate that, of the nine and a half thousand people, five or six thousand can be released from prison. This figure is minuscule in relation to the total number of entrepreneurs in the country, but the situation has great resonance, primarily aimed at signalling to the public and law enforcement agencies that the priority of the state is support for entrepreneurs.

So that, in the future, we do not have to have another amnesty, we will need to amend the criminal law, so that it is not the club that it is unfortunately used as today. The idea of 'economic punishment for economic crimes' can be put to us as an action plan for the next year, then we can review the results here. On the one hand, multiple penalties that would be imposed for all economic crimes instead of imprisonment would allow the government to punish and implement preventive measures, but on the other hand, it is more advantageous to exploit the situation. At

a meeting at the General Prosecutor's Office, we gave an interesting example: if today all of the people convicted for economic crimes were to be subjected to multiple penalties instead, we would eliminate the deficit in the Pension Fund. We always ask, "Where is the money for the Pension Fund?" Let us replace imprisonment with multiple penalties and deal with this problem.

It is easy enough to do this. Today, we have multiple penalties for corruption, that is, for civil servants. They are up to 100 times the amount received. For example, if you receive a bribe for a million, you must pay a penalty of 100 million. Why are entrepreneurs worse than officials, why can we not make the same rule for entrepreneurs? If you committed a crime and it is proven – pay the multiple fine. This will allow entrepreneurs to feel more confident and to protect themselves. Knowing that they will not go to pre-trial detention or prison, the entrepreneur will not negotiate a bribe with the investigators. Today, the statistics are ridiculous. In three years, 900,000 criminal cases were initiated and less than a third of those cases made it to trial. Let me ask you a question: what is the difference? The difference is where the 'client was ripe' and the cases were closed. Multiple penalties are necessary so that this does not happen.

In general, we can say that yesterday saw the dawn of a new much-needed approach.

Thank you.

**B. Titov:**

Andrei, I want everyone to hear this clearly: criminal cases being investigated under those articles that qualify for amnesty should be terminated.

**A. Nazarov:**

Definitely. I read this from the draft resolution on amnesty.

**D. Afanasiev:**

Thank you, Andrei.

I would like to give the floor to Foreign Investment Ombudsman of the Republic of Korea Mr. Choong Yong Ahn.

C.Y. Ahn:

Chair, thank you very much for inviting me to this very prestigious Forum. I would like to congratulate Mr. Boris Titov on his one-year anniversary as Commissioner for Entrepreneurs' Rights Protection. After hearing about your activities, I feel like you and I are in the same boat. I am so delighted to share with you the Korean experience of its foreign investment ombudsman system, which has been in operation now since 1999; it has been in existence for 14 years. I am now serving as Korea's Foreign Investment Ombudsman. It is my eighth year in the post. At this point in Korea, we have roughly 14,000 multinational companies, and 274 multinational companies on the Fortune 500 list are in business in Korea. My job, basically, is to provide advocate services to resolve business difficulties and grievances raised by foreign investors, not domestic ones. Mr. Titov is responsible for that. In retrospect, many foreign investors regard me and my colleagues as doctors who can make house calls, who are specialists in taxation, intellectual property rights, labour issues, and construction. All the foreign investment community investors regard me and these 'doctors' as reliable and trustworthy dialogue partners to consult with regarding their grievances and problems. In my experience, I think the number-one concern of our activities is transparency, rules, and the law. I tend to think about them all the time, whenever I hear grievances raised by foreign investors. On behalf of foreign investors, not the Korean Government, I think this is a fundamental quality for a Foreign Investor Ombudsman when serving foreign business communities. I want to move on to revise regulations and enforcement decrees according to a lot of these global best practices. These efforts involve a very time-consuming uphill battle to revise the old administrative decisions which have already been made by Korean government agencies such as the national tax office, the customs service office, and the food and drug administration. They will take certain actions, but my job is to reverse the decisions made by a different government department. That means I have a very uphill battle



to convince the Korean Government, the authorities, to say, "The decision you made is wrong. It is not consistent with the global best practice, and not consistent with even the legal structure we have." Like Mr. Titov, I am empowered by the President. I have the power to request internal data from Korean government agencies, and anyone can make a recommendation. The government agencies or ministries concerned are obliged to reply within 15 days. I am empowered to that extent, but I am not as powerful as you are. I would like to recognize that this supply chain and production fragmentation is a new business model across nations. I think it is really critical to have constant dialogue with the foreign business community, and to ask what problems they face, and to also have formal contact with the specific business community so that they can express their problems without any fear. Otherwise, some foreign investors in Korea tend to avoid explicitly registering their problems with the Korean national tax service. They want to maintain a friendly relationship with the national tax service office, because they have to stay in Korea in many years to come. In that sense, my job is to look for and to provide a certain open atmosphere so that the foreign investors can make a complaint. This is really a crucial part of my job. The credibility and the facility are very important elements. The Foreign Investment Ombudsman is a civilian, not a government official. This is so foreign investors can freely talk to me. My 'travelling doctors' also have civilian status. I maintain strict confidentiality of sensitive information and grievances that foreign investors face. I try to bridge the gap between the government body's response regarding granting business permissions and licenses and foreign investors, who often have a tendency to avoid direct contact with the government. My colleagues, who I called the 'travelling doctors', carry on one-on-one or face-to-face contact to provide a one-stop service. Each 'travelling doctor' under me is responsible for dealing with about 400 multinational companies. At the moment, we have a total of 90 'travelling doctors', so we can cover roughly 20,000 major multinational companies. My colleagues are specialists. They know the legal system, intellectual property rights, labour issues, construction, and so forth. I would like to call your attention to the fact that UNCTAD has been really emphasizing the

importance of the growth of FDI flows as a means to expedite economic recovery. These days, we are seeing a lot of investor–state disputes throughout the world. We have roughly 4,000 bilateral or multilateral investment treaties. Foreign direct investment involves three or four years for a long-term infrastructure project, and about 50,000 investor–state cases erupt. Everyone is worrying about how we can minimize ISDs. When I attended the UNCTAD meeting, I emphasized that before escalating into big legal issues, we should pre-emptively provide advocate services in advance. We could minimize these ISD cases. So in that sense, I think the ombudsman system should be seen as an important and effective means of resolving global ISD issues. This is my conclusion. The question that arises despite our proactive advocate service is: why do grievances continue to rise? Maybe you are running into the same problem that I experienced. The first thing is that for any country, the legal system is not able to embrace real world-problems because of the rapid change in the business environment due to the internet revolution and so on. Post-institution building and the legal enactment require a very time-consuming consensus-building process between ministries and agencies. We need in-depth research on international best practices; we require very comprehensive comparative analytics for this. You may run into the same problem. Within the legal system, there are acts and government enforcement decrees and rules. Sometimes those acts are inconsistent across the ministries. There are a lot of grey areas which government officials can interpret in a very arbitrary manner, which may produce issues of potential conflict. This is background information on the Korean ombudsman system. I shall continue to serve and help the international business community to expedite the growth of foreign direct investment flows. Thank you very much.

**B. Titov:**

Sorry to interrupt again. With your permission, I would like to thank Mr. Ahn for his interesting presentation. Korea has achieved great results in attracting foreign investment. Thousands of multinational companies have come to Korea with their

manufacturing and businesses. This has been greatly facilitated by the Foreign Investment Ombudsman, which was created in 1999.

And why am I saying this? There is still very little investment in Russia and few multinational companies have come here. There should be more. We will take this issue and try to create work and take on the function of attracting foreign investment in Russia with the experience that we are obtaining by communicating, perhaps in conjunction with the Agency for Strategic Initiatives. We need to develop a plan for creating a special ombudsman's office for foreign investments, which would not only be involved with conflicts, petitions, and complaints from foreign investors, but also with attracting new foreign investment in Russia. I think this would be the correct decision for next year.

**D. Afanasiev:**

Thank you so much for your presentation.

The differences between the Korean and Russian systems are informative. Our Korean colleague gave an interesting presentation. The concept in the presentation about the family doctor for business was interesting. When the government sends a doctor in our country, it means something quite different.

Let me stay on this topic. Today, we talked a lot about the complaints of businesses against the government and law enforcement agencies. Law enforcement agencies also have complaints against businesses. It is necessary to admit this and talk about it openly.

I would like to give Igor Zubov, Deputy Minister of Internal Affairs of the Russian Federation, the opportunity to speak.

**I. Zubov:**

Dear colleagues, I am speaking specifically to you because I have been a member of the business community for eleven years. This can be confirmed by those who know me. The purpose of my speech is not to make complaints against businesses. I will talk about the issue in general.

I would like to confirm that Boris Titov and I have a very good relationship and constructive cooperation. At the Ministry of Internal Affairs, I am responsible for the unified state policy and external relations, including for communications with the business community.

I must emphasize that, in today's speech, the Russian Presidential Commissioner for Entrepreneurs' Rights voiced an idea for the first time in the year we have been in communication: the business community also has problems that cause the situation that we are discussing. I strongly disagree with the view that there is a struggle between government and business, that the government misunderstands the importance of business and its role in the development of the government and that no steps have been taken to find compromise with entrepreneurs. In my mind, the government has only taken positive steps in recent years with the business community and is effectively saying: "Dear Sirs, work, we are ready to establish the right conditions for you. We are ready to remove the barriers. Together, let us move towards a more civilized business culture."

Today, someone offered the opinion that business cannot be done in Russia. It definitely can be done. People are earning billions of dollars here, there are a large number of wealthy people here of different levels. The issue is one of civilized business. Let me remind you that we have only recently taken these steps. First, the decriminalization of many legal statutes, which we have already discussed. Second, improving legislation as a whole, including under Article 159 of the Criminal Code. Third is increasing pressure on corruption and providing the institution that combats it an internationally recognized framework. Maybe qualitative changes have not yet occurred and no one can deny this. Finally, there is the creation of an institution authorized to exercise such rights, which are not found anywhere else in the world – with an extensive regional network and so on and so forth.

The conditions for the convergence of government and business are being created. Look, how many representatives of the business community are in government?

Finally, the very amnesty we are talking about in such positive terms should be recognized. Announcing an amnesty does not mean that the government gives

people the right to commit economic crimes, nor that the government terminates all criminal cases and amnesties the perpetrators of economic crimes who have not repented of their behaviour, have not compensated victims for losses, and want to continue such behaviour in the future. I drew attention to the announcements about the amnesty and to the words of Vladimir Putin that the main objective of the amnesty is to revive society's trust in entrepreneurs. Today, it was no accident that we have spoken about the fact that, unfortunately, there is no such trust. The representative from Korea said that this trust is the most important thing.

Today, we do not deny that there is corruption within the system of law enforcement. There are incidents of undue pressure on entrepreneurs and the perpetration of crime by our staff, but we are combatting this. We are making multiple improvements at once, creating new conditions for the inflow of personnel and opening our agencies up for communication, including with the business community. This takes time and joint efforts are needed.

What we are seeing from the other side? Entrepreneurship is an engine and the country cannot develop without entrepreneurs. Today, entirely new trends are emerging in organized crime. Criminal organizations and the criminal world penetrate into corporations and into different business structures, assume the mantle of these structures, and commit economic crimes. This is the first trend.

The second is as follows. Many forms of unlawful behaviour have become commonplace in the economy. You nod and understand what this relates to: taxes, corporate disputes, and much more. Many structures have departments of mergers and acquisitions, some of which are just units for perpetrating corporate raids. I know that corruption and abuse of power is often provoked and caused by the business community. There is corruption in the government apparatus: any government efforts to increase wages and create new conditions are swept away by corrupt offers and benefits. This is a very important aspect.

I would also like to mention the tolerance of many entrepreneurs of unlawful behaviour from civil servants, law enforcement agencies, and the law enforcement system. Why? We heard today that a large number of fraud cases were previously

initiated without victims' statements. We compromised and I participated in the preparation of the regulations. Why were there no statements? Because these very victims had their finger in the pie. They did not give statements because they were the real offenders. We are talking about degrees of participation. All corporate raids are based on the fact that a competitor scrutinizes the unlawful conduct of the company that it is taking over and, based on these facts, carries out the raid. And the company that was taken over cannot submit a statement.

In conclusion, I would say this: we, on our part, will do everything necessary to create a normal climate. We are completely open: the creation of the Commission for Investigation of Specific Situations within the Investigative Unit is an unprecedented opportunity for entrepreneurs to participate. But what about the confidentiality of the investigation and the procedural independence of the investigator? There are other forms: the public defender, the petition and so on. We are now seeking a framework for discussion. If we are open, we expect similar behaviour on your part. We would very much like to see the business community more involved with their security service capabilities, economic consultants and information in the identification, detection, and investigation of economic crimes. You have all faced situations involving an expert analysis: criminal cases last for years because it is impossible to perform an economic analysis, as there are no specialists. Let us cooperate in this matter. I will reveal the rest in the answers to the questions that you ask me.

Thank you for your attention.

**D. Afanasiev:**

Thank you, Igor.

OPORA RUSSIA, the All-Russian Non-Governmental Organization of Small and Medium-sized Business, has been working hard to protect the rights of entrepreneurs and, probably, the most weakly-protected entrepreneurs and small and medium-sized businesses. I would like to ask Alexander Brechalov, President of OPORA RUSSIA to comment on the topic.

## **A. Brechalov:**

Thank you.

Given the time remaining and the number of speakers, the greatest value of any presentation will be its brevity, so I will try to be brief.

Evaluating the year of the ombudsman, we can see real results. I see a few reports from civil servants where numbers and names are identified, and where there is a clear structure of work. I congratulate you, the commissioner, and all of us on this. If every civil servant had such a report, I think there would be more work and less talk of the fact that the government is not willing to compromise. It is not clear why we cannot compromise. Perhaps our approach is incorrect?

I liked the presentation given by Andrei Nazarov. Andrei, I would just not get carried away with the celebrations. This is an absolute success. You know, I am a keen sportsman. I am a long-distance runner. At one of the marathons in Tallinn, I was running very well. I was full of energy, there was little time left and I rejoiced that I would get through it in three hours and 30 minutes. Then someone accidentally stepped on my foot. I crawled to the finish line and my result was more than four hours. Do you understand what I am getting at? People will oppose us, I am sure of this. We are taking away a great deal of business from many people in the regions and the opportunity to apply pressure, especially from organized crime groups, in which businesses, criminal elements and people in uniform participate. This is the second thing.

Another point made by Andrei should be taken into account: if nine thousand convicted people are subjected to multiple penalties, the hole in the Pension Fund will disappear. If you take the last five high-profile cases involving civil servants, we could have filled the state budget a few times over. This should be stated because I respect the Ministry of Internal Affairs, but I do not really agree with the report. The Ministry of Internal Affairs once again seems to have the view that business is always up to no good.

I will conclude with this phrase. I just participated in the round table, 'Territory of Business - Territory of Life', in which we discussed the prospects for business development. Nikita Belykh said something interesting that I will try to quote from memory. President of Promsvyazbank Artem Konstandyan said, "You know, in recent years we have significantly less Nogotkovs, Korkunovs, Dymovs", and he explained why. Then Nikita Belykh said: "Yes, but we have more Chichvarkins." Do you understand what I mean? Yesterday my old friend told me that he invested USD 15 million in one of the Moscow institutes, creating a unique project and incorporating it under law. Now, obviously, people in uniform are putting the squeeze on him. We know who went there. He told me: "I realized that I probably would not be able to handle this. I am going to London." This is the reality of today. Boris, honestly, thank you for the all of your work, but we are only at the beginning, unfortunately. We have a lot of work to do in order to make the relationship between business and government truly civilized.

Thank you.

**D. Afanasiev:**

Thank you, Alexander.

We have already heard the opinion from the East from our colleague from Korea, now we would like to hear the views from the West. I give the floor to Andrew Somers. I have known Andrew for many years: since 2000, he has headed the American Chamber of Commerce in Russia and he is well aware of the problems foreign investors face in Russia. Andrew, it appears, there is another interesting fact in your biography. For four years, you were involved in the fight against economic crimes as an assistant prosecutor in New York.

**A. Somers:**

Thank you, Mr. Afanasiev. I would like to join in the comments about the great, courageous, and effective leadership of Mr. Boris Titov in driving this very important decision. The President chose such an auspicious occasion to make this



announcement, not only about the amnesty, but, as you pointed out, the economic paradigm that is beginning to shift under some of the other recommendations of Mr. Titov. I have been asked to speak about the American Ombudsman, of which I know not a lot, but something. Essentially, we have a National Ombudsman to protect small businessmen against abuses by regulatory agencies. The most abusive stuff – to refer to Mr. Nazarov's comments about fines, and to Mr. Brechalov's response – is excessive fines, where regulatory agencies impose a lot of stiff monetary penalties on small business for a violation of a health standard, perhaps, in a restaurant, or of a construction permit. We have a multiplicity of federal agencies that, if they are not monitored in some effective way, can be quite abusive to small businessmen who do not have the resources to go to court. The Ombudsman was set up to encourage small businessmen to make complaints when they feel that they are improperly dealt with. The procedure is that the small businessman writes a complaint letter to the National Ombudsman, who then refers the small businessman's complaint to the federal agency which is accused of being abusive. The federal agency must respond to the Ombudsman within a short period of time. But the response does not come from the person who levied the fine, for example, but from a much higher authority, who then must take responsibility for defending the action of his people, or make recommendations to accede to the complaint: maybe reduce the fine, eliminate the fine. And there are other penalties that attach to these things as well. Most of the legislation came in the 1990s after complaints from small businesses that they did not have time to go to court and hire a lawyer. The National Ombudsman can appoint Regional Regulatory Fairness Boards in 10 cities. These boards are composed of businessmen, business owners who volunteer to sit on this five-man board. We have 10 Regional Regulatory Boards, and five business owners on those boards. For example, there is one in Boston that covers the six New England states. There is one in New York City that covers the so-called mid-Atlantic states. These advisory boards support the work of the National Ombudsman and help him discipline the flow of complaints that come in. It is important to note that the Ombudsman has no authority to eliminate fines,

reduce fines, or tell a federal agency that it must stop a proceeding. The whole concept here is that of persuasion and reinforcing the attitude of the government that businessmen have the right to complain when they are criticized, attacked, or penalized by a federal agency. It is effective, but I do not have statistics. In many cases, the fines are reduced or eliminated. There is also a provision that protects small business against reprisals – which has been referred to by my colleague from Korea – where an agency may be offended that it has been attacked. They come back two months later and go after this guy for another reason: unnecessary, repetitive audits, inspections, license withdrawals, and constant review of licenses. All of these things are listed as potential abuses which the small businessman can allude to if he feels he is a victim. All of the federal agencies are required to publicly appoint a contact person within that federal agency for small business to approach. If a small businessman has a question, or if he is under threat of a fine, he has the right to go that contact point in the federal agency to get more information. His ultimate resort is to write to the National Ombudsman, who refers the comment on to the regulatory agency, which must respond at a higher level. In summary, that is the substance of it. I cannot give you statistics to show the effectiveness, but that is basically the way the system works to protect small business. Thanks.

**D. Afanasiev:**

Thank you, Andrew.

I think that Andrew is the only person in the world that combines two qualities. Firstly, he is a former employee of the U.S. Attorney's Office. Secondly, he is decorated by the Russian Federation, as the president awarded him with honour for the enormous contribution that Andrew and the American Chamber of Commerce have made in the development and improvement of the investment climate in Russia.

Thank you, Andrew.

**A. Somers:**

Thank you very much.

**D. Afanasiev:**

I would like to give the floor to Vice President of the Chamber of Commerce of the Russian Federation Vladimir Straško, who represents one of the oldest and most-respected organizations that has direct relevance to business and entrepreneurship. I believe he is also a former deputy of several ministers.

**V. Straško:**

Thank you very much.

It is a pity that my colleague Alexander Brechalov has left. First, we need to show respect to each other when discussing any problems because, today, it is most important to consolidate the efforts of all structures: of the commissioner, law enforcement, businesses, the public, the People's Front, and so on to resolve the problems that we face today. Yesterday, President Putin spoke well, but very uneasily, about the fact that we have a poor growth rate. God forbid that we end up in another crisis, when we will not talk about success, but about how to handle difficult problems that may emerge. This is the first point.

Now the second, and incidentally, in terms of importance, it is equal to the first. Today, we are not evaluating the work of the commissioner. We are simply saying that, by supporting Boris Titov and putting him in this position, we did not make a mistake: objectively, a lot has been done. The second part of this perspective is that we, an association of entrepreneurs, should support you from all sides. The Chamber of Commerce does not do favours – one of the issues is the development of systematic approaches to problem solving, the second is the protection of entrepreneurship. Thank you for your kind words, I think that these words must be passed along to Viktor Ermakov, who volunteered to represent and manage the structure created by the Chamber of Commerce.

The main successful results are the following: firstly, one of the main issues is the speed of the review of petitions and complaints made by entrepreneurs. Secondly,

there is the formulation of systemic, problematic issues that need to be submitted to the legislative bodies, government agencies, law enforcement agencies, and so on. Such attempts have been made, but it is not an easy task.

Many people were at the round table today on small business. I do not want to hide the fact that I am very unhappy with this round table, which has been held many times at the St. Petersburg International Economic Forum. Sergey Borisov summed up some results, but, in general, the result was just a patchwork quilt. What are we going to say at the next Forum? The round table was a mess of political issues and specific points, but we did not work anything out. If Viktor Ermakov will speak from the perspective of small businesses, he will say that there are a lot of great, problematic issues that need to be discussed and submitted for general examination.

Next question. You cannot make a mistake. We have enshrined in law all of the responsible agencies, whether they be monitoring or supervisory, and they are obliged to implement this. Subject to the provisions of the laws on the commissioner and the Chamber of Commerce, Boris Titov's role in the coming period is to observe, enforce, and control, so that all who are obliged to examine these complaints – the Prosecutor's Office, the Ministry of the Internal Affairs, the Ministry of Justice, and other regulatory authorities – do not disregard this and that these issues are reviewed intensively. If someone has not reviewed something or dismissed it, all of the power of Boris Titov and the public must be employed so that it does get ignored. There are a lot of complicated petitions and the Department of Economic Security for Entrepreneurship has been in operation under the Chamber of Commerce for eight years already. I know what this is all about. One of the challenges is for everyone who has a duty to monitor and inspect to do this intensively. Then, with the help of the public, we will achieve our result. Otherwise we may drown.

Now, the last thing. Maybe I misheard yesterday, but, in my opinion, President Putin said that the question of giving the commissioner the right to sue will be considered, when the issue of lawsuits was discussed.

**B. Titov:**

No, there will be the right to participate in the courts on behalf of specific businesses and unlimited groups of entrepreneurs.

**V. Straško:**

OK. I will skip that part and say the following: Boris Titov spoke about the need to create an institution for mediation. Let us end the differences amongst business associations and find a common approach. The International Commercial Arbitration Court under the Chamber of Commerce exists in accordance with the law. This branch will remain, even if there is a merger of courts of general jurisdiction and arbitration courts. On the basis of the Chamber of Commerce, there are arbitration courts under regional chambers of commerce. It is not necessary to create or look for a new form for the establishment of this institute. I have a suggestion: let us get back to this soon. There is a lot of talk about this subject and we need to find a common language.

Once again, summing up, I would say to Boris Titov: "Thank you for your work and thank you for your cooperation." When Boris Yeltsin was president, we had the following phrase: "Boris, fight!"

**D. Afanasiev:**

Thank you, Vladimir.

There is someone amongst us who has put a great deal of personal effort into supporting entrepreneurs and she has something to say. Yana Yakovleva, the Chair of the 'Business Solidarity' movement.

**Y. Yakovleva:**

Dmitry, thank you for the opportunity to speak. I am about to catch a plane, so I do not have much time.

I would not get carried away with the idea that the entrepreneurs themselves ruin each other's reputation, as entrepreneurs are no saints. They are not holier-than-thou anywhere, not in America, and not in Germany. There are issues with the judicial system and corporate law. If the judicial system is not developed and it does not allow for the resolution of disputes with officials and disputes regarding mergers and acquisitions in the court, then entrepreneurs will go where it is simpler and more direct. If the direct path is via money and bribes given to law enforcement agencies and others, then the entrepreneur will use this path. The entrepreneur is always seeking the shortest route to profit and that is not a crime. The government should understand this and not try to make the business community do things that it should be doing itself. The government must ensure the protection of businesses. Not only of business, but of all citizens, although we are talking about entrepreneurs in this case.

Here is another point on the amnesty. I saw the audience applaud when President Putin announced it. It was a surprise to all of us because he was totally against it in Voronezh. I even wrote a post about the fact that entrepreneurs did not put up a fight in Voronezh, failing to state their support for amnesty loudly enough. Someone had to stand up and continue the discussion. Yesterday, I was pleasantly surprised, as the hall applauded. They were not criminals sitting in prison and applauding. These were attendees of the St. Petersburg International Economic Forum.

We have made a breakthrough. This decision is not against society, but rather is a decision for society. I think that this is in the past and we have to move forward.

Now the final point. Andrei, I often hear a point of view that is perhaps correct: there should be economic penalties for economic crimes. Do not get carried away counting money. First, you need to determine how the law enforcement bodies calculate the damages incurred by an entrepreneur and what it is composed of? It is clear from experience that damages are an abstract concept. They are not determined as an amount stolen, but as the cost of the transaction. Andrei, you yourself remember well how, during the working group at the Prosecutor General's Office, we tried to persuade the prosecutors and explain to them that profit is not a

crime. They sincerely believe that the profit margin is based on selfish interest, that it is theft. Moreover, the entire amount of the transaction is considered theft. An entrepreneur has signed a contract for 100 million, everything, all of this 100 million is considered damages. How is he going to repay it? Multiply 100 million by 100 times, and what do you get? You must first deal with the definition of damages, which is very subtle legal work. In the U.S. Code (in civil, not criminal, proceedings), when determining damages, there are 11 positions according to which a law enforcement agency has to prove the damage. We have to focus on this, because if we now declare the damages to be 100 million on 100 million, the pension fund will still not be replenished: no one will be able to repay such a sum and no one will do so.

There is a lot of work to do. Positive developments have taken place at the Forum, and we will continue to make progress.

Thank you.

**D. Afanasiev:**

Thank you very much, Yana.

Germany probably has the closest trade and economic relations with Russia. I think it will be interesting to learn the German experience. I would like to ask Michael Harms to speak. Michael is the chairman of the Russian-German Chamber of Commerce and Chairman of the board of the global network of German Chambers of Commerce.

**M. Harms:**

Thank you.

You are well-informed, Dmitry.

Today you have already referred to the difficulty of translation and I too would like to give a small example. A few years ago, a large German energy group merged with a Russian firm and the external consultants handling the process made a presentation to the management. There were parallel slides in English and Russian.

A slide in English appeared: 'We need to pay close attention to the process of change management', and in Russian the phrase appeared: 'Change the management'.

I mention this in order to thank Boris Titov and draw attention to the fact that Boris Titov said this today (we have always defended this position): Foreign investors need a specific structure. Will it be inside the institution of the ombudsman or within the ministry? This is debatable.

**B. Titov:**

We already have this. Alexey Repik, Ombudsman for the Protection of the Rights of Foreign Investors, is sitting there.

**M. Harms:**

I think that Mr. Putin said yesterday that you have to treat foreign and Russian investors equally. It is necessary to overcome the 'lost in translation' issue and explain processes and informal structures. Boris, thank you for this proposal.

Unfortunately, I cannot share the German experience of the ombudsman, because there is no such structure in Germany.

**B. Titov:**

I guess it is unnecessary.

**M. Harms:**

Not only that. Germany has a very corporatist structure. We have a developed system of business associations and chambers of commerce, dating back to the Middle Ages and the guilds. I also liked the idea that Russian business associations and chambers of commerce should work together more closely and develop an independent position. I think this is also a very important factor in the social protection of entrepreneurs.



I have two more comments on yesterday's proposals by the President of the Russian Federation. Today, we also talked about tariffs. I fully understand the producers who complain about tariffs. I am very familiar with the experience of several German companies that have invested in infrastructure and utilities. Rates should be cost-justified if we want to attract private business, especially in the area of utilities and housing services. There are always two sides to the coin.

I was a bit sceptical about the idea of unifying the Supreme Arbitration Court and the Supreme Court. We, the German businessmen, are very happy with the system of arbitration courts. For us, the Supreme Court of Arbitration has always been a fourth instance court, capable of solving systemic problems when German entrepreneurs had great difficulties. I do not know how it will work after the merger. This is my first assessment and maybe we can have a debate about this.

Thank you.

**D. Afanasiev:**

Thank you very much.

I want to ask you, Viktor, to comment on what you have heard today. Viktor Ermakov is a public representative of the Russian Presidential Commission for Entrepreneurs' Rights and the Chairman of Development, the Association of Agencies in Support of Small and Medium-sized Businesses.

**V. Ermakov:**

Thank you.

Boris talked about the main trends. After a year's work, we see an opposite trend in the statistics on the number of petitions from small and medium-sized businesses. This tool is in demand and most complaints come from this sector: Forty per cent of complaints come from small and medium-sized businesses. This is the first thing. Second, this trend runs completely contrary to the reduction in the total number of complaints that Boris talked about. We got as many complaints from small and medium-sized businesses in May as we got from October to April combined. This is

very alarming and the number is continuing to grow in June. In continuing the discussion about small businesses, statistics show that small businesses receive services, with 90% of all the services they receive coming from the municipal authorities. This is the first point.

Now, the second point. It is clear that the municipal authorities are not motivated to increase the quality of services and we should work very seriously on this. If these problems are not solved systematically, we will drown in a flood of complaints.

Here is an interesting statistic: nearly half of complaints from small businesses come from the Central Federal District, the fewest complaints come from the Northwest Federal District, but in connection with this, the question arises: either everything is good, or for now this tool has not begun to work. Most complaints are from the trade sector. I can give a few specific examples of systematic solutions: for mobile points of sale in Moscow, it was enough for Boris and I to meet the mayor, Sergei Sobyenin, for the right decisions to be made in a friendly and constructive manner. Another example: similar problems in Kirov required a visit to the prosecutor general in order for the local administration to return to operating lawfully and provide work to more than two hundred companies.

It is interesting how this tool works and what it provides. Here is a case from Saratov: the municipal authorities allegedly did not see that an entrepreneur unlawfully occupied unregistered land and opened a market where many entrepreneurs invested and began businesses. Power changed hands, they started putting things in order and a new investor kicked out more than two hundred small businesses. He acted lawfully. Our petition resulted in the local authorities understanding the importance of protecting small businesses, convincing the investor of the need to protect the economic activity of businesses, although the authorities did not violate any laws.

The bottom line is this: more than 30% of the petitions are systemic problems and complaints regarding the favourable business environment and about 70% of the cases are individual cases. There were only two examples where we ultimately did

not support the entrepreneurs. In all other cases, we stood up and supported the complaints of the entrepreneurs.

Boris and Vladimir noted that the Chamber of Commerce has offered its support, according to Alexander Brechalov. Of course, the ombudsman cannot solve the problem alone, without serious work from all business associations for creating a favourable environment. I strongly support this view: everyone must unite to focus on one task and create a normal, favourable environment.

**D. Afanasiev:**

Thank you, Viktor.

**B. Titov:**

Forgive me again for interrupting, but I want to provide one example. When giving examples of our work, Viktor mentioned that we did not support two petitions. One of them was the petition of a small businesses engaged in funeral services in one of the towns. It petitioned us to influence the local prosecutor so that he would open a criminal case against the chief doctor at the local hospital, who, according to the information he possessed, was giving information to a competitor. These are the kinds of petitions from small businesses that we do not support.

**D. Afanasiev:**

Dear colleagues, I think that today we have heard a lot of different points of view, some of which were in disagreement. I have one point that I must make, which, I think, sums up what all of the previous speakers have said.

Obviously, the dialogue between business and government has begun to work and the government is more open to such a dialogue than ever before. Most importantly, we already have the first important results. I will say from my heart: I am a member of the General Council of Business Russia. When my colleagues on the General Council and I started to work, we thought we were wasting our time and nothing would come from it. It turned out that, when Putin was Prime Minister, he gathered

us together and listened to each of us intently for four and a half hours. We left him and said, “Miracles happen, but once in life. This is some kind of coincidence, someone must have made a mistake.” Two days later someone from the Office of the Prime Minister called each of the participants of the meeting and said, “You talked about such and such a subject: we have been instructed to prepare a draft directive.” We think that sometimes a miracle happens twice in life, but this will never happen again. You know, yesterday, after the president's speech, members of Business Russia were getting together for dinner. We looked into each other's eyes and thought: “It appears that we are being listened to.”

I think the main and most important final result, including yours, Boris, of the first year of work, or more precisely – many previous years of your work – including as head of Business Russia, is the fact that we are being heard today. We are not always heard in the way we want, but we always speak at the right time and sufficiently loudly. In general, the process is heading in the right direction. My opinion is that, today, it is possible to sum up this first year of Boris as a federal ombudsman.

I would like to ask everyone to participate as I suggest that we begin a discussion with the audience. Do not hesitate to ask questions of the panellists. The only request I have is for you to please introduce yourself.

Raise your hand, introduce yourself, and let us know to whom you are directing your question, so that the appropriate panellist can respond.

There is not much time, so colleagues, please do not give long speeches and please pose your questions or comments briefly.

**O. Sitnikov:**

Entrepreneur Sitnikov, New Urengoi, the Yamal-Nenets Autonomous District.

Yes, I am the hero of the day. Thank you, Boris. I am delighted and I have no words to express myself.

My question is as follows: can we focus on something and do it and carry it through to the end? A year ago, we gathered, spoke about our goal and then met it. Is it

possible we are spreading ourselves too thinly? There are too many problems, but you can choose any single problem and resolve it without spreading yourself too thinly.

Thank you.

**B. Titov:**

We have achieved some results in criminal law, now we need to actually do what we have planned and fully implement the amnesty. It will still be a struggle to get people out.

The focus is on economic issues: if you want to do business safely, then you need to make sure that it is profitable. We will now fight with the government so that the tax system is reformed. This is much more difficult than the amnesty. It is, however, very important for us to have a new model of economic development. This will be the key theme of the next year.

**D. Afanasiev:**

Thank you.

Georgy, you were the second person to raise their hand.

**G. Sur:**

Thank you.

Georgy Sur, Law Offices of Egorov, Puginsky, Afanasiev and Partners. I have two questions, but they are both short. The first question is for Boris. Yesterday, President Putin announced a strategic project for reforming the structure of the country. This involves the construction of a central ring road, a high-speed rail link between Moscow and Kazan, as well as the Trans-Siberian Railway...

**D. Afanasiev:**

What is the question, Georgy?

**G. Sur:**

The question is, what role do you see small businesses having in the implementation of these projects?

And the second question is for Andrew Somers. I will ask him right away.

Andrew, what are the top three concerns expressed by American businessmen when you consider investing in Russia? Thank you!

**B. Titov:**

I did not talk about the projects, but the programme was very clearly elucidated in President Putin's speech. You have seen that costs should be reduced and the government should play an active role to promote business development and investment. Americans, specifically President Roosevelt, were the first to use this kind of tool on the basis of the Keynesian theory of economic development, involving large projects. Infrastructure projects stimulated investment. In recent years, Putin has been operating in this same paradigm, the paradigm of China, which escaped the crisis specifically on the basis of such projects. We need big projects that encourage investment.

Small businesses, of course, will be developed. Any large road has roadside infrastructure. OPORA RUSSIA is fighting so that new roads are built with the necessary small-scale infrastructure along them. Large projects will stimulate the arrival of large companies and, on the other hand, this will provide a stimulus for those who cook for them, feed them, clothe them, and put them up in hotels. This will stimulate the growth of all business.

**D. Afanasiev:**

Thank you. Andrew.

**A. Somers:**

I am not sure of the question. Is it about investing in Russia? Okay. The top three concerns are predictability, predictability, and predictability. It is getting better. It is getting much better, but the image of Russia is still poor in terms of predictability:

there are arbitrary administrative rulings without any notice. It has vastly improved in the 13 years that I have been here. I would say corruption is part of that, but they have issues in India and China like that as well. I would say that the predictability issue is the primary factor there.

**D. Afanasiev:**

Thank you.

**V. Korochkin:**

Vladislav Korochkin, First Vice President at OPORA RUSSIA for systemic issues. When we created OPORA RUSSIA, we were told that small businesses need to be protected in four or even five areas: the government, law enforcement agencies, crime, big business, and the consumer. We are now in a situation where, in government agencies, we have medium and large businesses substituting for the bureaucracy that was created in the first stage. Accordingly, there is a situation where the law provides opportunities for competitive advantage. We now see that entire areas of small businesses, for example in the field of outdoor advertising, are just removed from the field. My question is to Boris: how should we act in such situations and whom do we have to fight?

**B. Titov:**

I understand that this is a blow to the gut: the only piece of legislation that did not support small business, and which I supported, was specifically about outdoor advertising. We did not support the demands of small businesses for privileges because, according to the law, everyone has the same rights and there are simply no privileges for small businesses in this area. The question is, what is outdoor advertising and what place do small businesses have in this industry? A person close to the authorities who has come to an agreement with the head of a municipality for five or six locations just sits and pastes new posters and new labels. This is rent-seeking and has little to do with business, or rather, it is basically not a

business. Indeed, we have decided not to give preference to small businesses in outdoor advertising.

The notion that large companies a priori have an advantage over small businesses is not true. There is competition and it is not quite equal. Small businesses have plenty of other advantages that will allow them to compete with larger companies. For example, in the service industry, big companies will not open barbershops in the provincial regions. There are many niches where small businesses have an advantage. This is a regulatory issue and it is necessary to build up regulatory mechanisms that are dependent on industries and regions.

A very important systemic issue for small businesses that I have not heard about today at the OPORA RUSSIA round table is this: there is no approach to how a small business should be regulated in the new paradigm and in the new economic situation. It is a social function, not even a fiscal function, for the government. We need a maximum degree of simplicity and we will also work on this.

I think that Viktor already has enough conclusions. We must simplify the regulation and act without preferences. Small business provides a little more than two per cent of the total national budget, which is nothing compared to the social function that it performs. Today we need to speak to the president and present a real proposal: to simplify things as much as possible. One tax, including pension deductions, whether it is a patent or something else. There should be simplified reporting – a sales ledger, which is now provided for, should include all small businesses, not just individual entrepreneurs. This is the kind of system we need.

**D. Afanasiev:**

Thank you, Boris.

We have our next question. Please wait, that man who raised his hand.

**S. Kotwani:**

Good afternoon! My name is Sammy Kotwani; I am the President of the Indian Business Alliance. We all know that no business in the world is completely clean.



But how come for one Indian, the whole constitution went wrong? In this case, the whole system went wrong, against one person. I would like to ask Mr. Boris Titov whom should we talk to, or whom should his family talk to?

**B. Titov:**

You mean a concrete case?

**S. Kotwani:**

Yes, a concrete case.

**B. Titov:**

You can apply through the official system, to me, through my site. We can consider it; we would work on this claim. If he is right – because sometimes a concrete person and his family is not right, and has done business in a wrong way – we will not help. If he is right, and if he was doing clean, open business, we would help.

**S. Kotwani:**

No, sir. I told you, no business in this world is completely clean. But it does not mean that the whole system has to go wrong.

**D. Afanasiev:**

Go through the official channel and he will look at it.

**B. Titov:**

We will do a survey of more or less how clean he is.

**S. Kotwani:**

Thank you.

**D. Afanasiev:**

Gentlemen, you have had your hand up for a long time.

**M. Murray:**

Hello! My name is Matthew Murray, and I am here representing the US Department of Commerce and the American business community. Let me quickly add my voice to the congratulatory notes to Boris, who I have the privilege of knowing for over 10 years now. I should say to all of you that as a leader of this initiative, he feels it deeply in his soul, and I cannot imagine a better person to take us to the next step. As you do so Boris, I just want to encourage you to think very hard with your colleagues about ways in which you could do what they are now doing in Korea, which is to say, set up formal procedures and informal procedures alike that will help you liaise with the foreign business community in general. That is the next step. I realize you have a lot of work to do to address your own domestic concerns at this point, but over time, and perhaps next year, we could talk about what could be done institutionally to help foreign investors. Good luck with all of this, and thank you again for your work.

**D. Afanasiev:**

Thank you very much.

**D. Afanasiev:**

Boris said that there is someone in the audience who can comment. Yes, Boris?

**B. Titov:**

Yes. I meant Alexey Repik, who serves as the representative of the Commissioner for the Protection of the Rights of Foreign Investors. Our idea is to implement another function that our country needs – attracting investors, not only working with investors when there is a problem, but also to attract new investors to Russia. Alexey is now working on this issue.

**A. Repik:**

Creating the institution of an ombudsman is not only an opportunity to solve a specific problem – although many participants in the discussion are talking about this and asking a lot of questions – it also represents the creation of a certain culture of doing business in the country. The existence of a working ombudsman in the country is a significant contribution to the very predictability that Mr. Somers spoke about. This predictability is about what will happen to investments, what kind of environment business operates in, and how friendly and welcoming it will be for the new investor. We are working on a common cause and are trying to improve the investment climate. We will help Boris in his serious and, as we have learned from yesterday's plenary session, good-will mission.

**D. Afanasiev:**

Thank you.

**V. Kuriznyak:**

Vladislav Kuriznyak, Prague. I have a question for Boris Titov, but it is a technical question. If I understood correctly, your protection is already in place for foreign investors?

**B. Titov:**

Yes, we have a registered office, which deals with complaints and petitions from foreign investors if there are problems. Today we are going to start performing a new function to attract foreign investors and ensure that there are no such problems.

**D. Afanasiev:**

Thank you very much. Please.

**V. Boiko-Veliky:**

Vasily Boiko-Veliky, President of the 'Russian Milk' agricultural holding. A criminal case under Article 159 has been going on for eight years, but it has not come to an end because there is a lack of evidence. I would like to congratulate everyone on the amnesty, but I would also like to draw attention to the subject of improving our judicial system. If our arbitration courts and others worked well, it would take less work to protect the rights of entrepreneurs. Unfortunately, the courts are mainly composed of law enforcement officers. The question is whether Boris Titov's programme has different approaches towards improving the judicial system, including creating a judicial system based on parity, with lawyers, ordinary legal practitioners, and law enforcement officers.

**B. Titov:**

There are no such ideas. Views differ on the composition of the judicial panels. Let us discuss this issue. As for the judicial system, we are continuously working with the courts – arbitration courts and the Supreme Court – however, we will soon be working with them all at once. Many people, especially liberal political parties, talk about what is necessary in order to maximize the courts' independence – the independence of the courts is a slogan. The courts are independent according to the law, but they are not really independent – their decisions can still be influenced by a phone call from a government official. There is independence given under the law, maybe even too much. The courts are so independent that they are accountable to no one. Today the accountability of judges is practically nonexistent, and it is insufficient. We see how judges make unlawful decisions and it is practically impossible to combat this. This is exactly the direction in which we are going to go.

**D. Afanasiev:**

Our colleague at the other end of the hall.

**V. Motyagin:**

Hello, Vladimir Motyagin, Committee on Transport, St. Petersburg Regional Association, Business Russia. My question is the following. Recently, Finland passed a law that protects legitimate carriers from illegal carriers. In the West, there are already some laws: if the law is not effective, then the law of the guillotine is enacted. We have accumulated a lot of problems in the transport sector, with a mass of laws that contradict one another. Is it not time to clean up these laws and to look at the transport industry?

**B. Titov:**

Well, yes, it is necessary to create a transport ombudsman.

**V. Motyagin:**

I am ready.

**D. Afanasiev:**

Please.

**T. Rogozina:**

Tatiana Rogozina, the American Chamber of Commerce. I would like to take this opportunity to appeal to the distinguished Deputy Minister of Internal Affairs and ask you: are you going to work with us on the issue of intra-corporate fraud? Let us meet consistently and talk about how we can work with you. To put it mildly, the authorities are reluctant to take these cases on and it is very important to companies that we strengthen internal corporate culture.

Thank you.

**I. Zubov:**

I do not see any problems. In my speech, I did not talk about the fact that there is the issue of commercial bribery, which is a criminal offense. Please come see me personally. We will have a talk and then you will go, where you need to go.

**B. Titov:**

When you go there, take me with you.

**D. Afanasiev:**

Dear colleagues, speaking of where we all need to go, it is now time for us to end our session. We have taken advantage of the fact that this is one of the last sessions at the Forum and abused the rules a little, but now it is time for us to leave.

First, I would like to thank the audience for their active participation and questions.

Secondly, I would like to ask you all to thank the panellists for coming and speaking to us.

Thank you very much.