

The Senior Partner of Inmar Legal Ltd. Dmitry Kafanov (to the left). Photo: courtesy of Inmar Legal Ltd.

Dmitry Kafanov: We must revise our legislation on strategic industry investments.



The Senior Partner of a legal firm widely known in the Far East – Inmar – giving his commentary on his speech at a law session within EEF-2016.

Vladivostok, 14th September, PrimaMedia. A law session focusing on development of the Far East – Law and Greater Competitiveness of the Russian Far East in the APR, a session that became a key one for the relevance of issues brought up, – was held within the II Eastern Economic Forum which took place on the 2nd and 3rd of September in Vladivostok at the Russky island FEFU campus. The session had leading Russian and foreign lawyers discuss the most important legal aspects in regard to promotion of the Far East investment attractiveness, point out various drawbacks of the existing legislation that inhibit the flow of foreign investments into the national economy, review current issues in dispute settlement and propose ways to deal with the said issues. RIA PrimaMedia has addressed the Senior Partner of Inmar Legal Ltd. Dmitry Kafanov for some comment on his speech at a law session within EEF-2016 to be published within the Author's Column. Here it is:

"The subject of my speech was quite a tricky one, such that has opposite takes on it everywhere – the revising of laws on foreign investment in strategic industries of Russia. On the one hand, there is no doubt that whatever new economic and legal developments occur, the priority should be given to Russian national interests.

On the other is what was pointed out at several sessions of the forum held – that current legislation that sets out the procedure of making foreign investments into Russian strategic

industries is out of keeping with the changed political and economic reality and stands in the way of successful attraction of full-fledged financial investment from our Asian economic partners.

At the law session I touched upon a particular case of the said highly debatable issue and drew attention to the necessity of law harmonization in the sphere of regulation of foreign investment in fisheries that would allow for effective use of opportunities offered by such new investment institutions as Advanced Special Economic Zones and Free Port of Vladivostok.

On the 3rd of July, this year, some amendments has been made to the Federal Act *On Fishing and Preserving the Aquatic Biological Resources* which introduced changes revolutionary for the industry and yet long overdue, viz. the allowance of quotas for exploitation of aquatic biological resources for the purposes of investment if making real investments into the Russian fishing ship building industry, into fish processing, and other infrastructure projects of our fishery sector.

At the same time, despite the changes mentioned, when it comes to the coordination procedure of foreign investors in the Russian fisheries, not merely it was not simplified, but in some cases it became more complicated and obscure.

Because of a number of technical legal gaps and incoherencies in the current legislation, it has become extremely hard to implement a foreign investment project in the sphere of fishery basing on utilization of investment quotas and using the mechanisms of Free Port of Vladivostok or Advanced Special Economic Zones.

I would also like to note that nonetheless the President of Russia Vladimir Putin has time and again spoken of prevention of mala fide foreign participants within the industry, and that now it is a year and a half that relevant prohibitive amendments were introduced into the laws – still, as far as can be judged from the news appearing in the media from time to time, some foreign companies continue to use illegal fishing activities making advantage of various tricks with legal technicalities, while the regulatory authorities has not instigated a single lawsuit connected with the corresponding cases of violation of the Federal Act *On Procedures for Foreign Investments in the Business Entities Important for Russian National Defense and State Security* and Federal Act *On Fishing and Preserving the Aquatic Biological Resources*.

I would like to mention that there was one time we had a meeting with the administration of the Federal Antimonopoly Service where we brought into view the legal and institutional instruments that can be used for evasion of law.

I think of this as an unsound state of things; it contradicts the Russian national interests, the goals of breakthrough and intensified development for the national fisheries.

Consequently, I believe that along with the practice of law enforcement towards mala fide market players becoming more rigor and deficiencies in the functioning of relevant government services being remedied, we need an introduction of a special simplified

regime for foreign investments into the Russian fisheries industry for the projects carried out within the Advanced Special Economic Zones and Free Port of Vladivostok.

To put this into practice our firm prepared a corresponding bill and an explanatory note which will be delivered among the resolutions of the law session held within Eastern Economic Forum”.