

**SOCIAL AND LEGAL COMPONENTS IN DEVELOPING SELF-REGULATION INSTITUTE OF  
CONSTRUCTION SECTOR: RESULTS AND PROSPECTS OF REFORMING LEGISLATION IN RUSSIA  
[1]**

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**Abstract.** The article is devoted to the study of social and legal components in developing self-regulation institution of construction activities. The article notes that self-regulating organizations in the field of construction perform a number of important functions that have a social orientation (regulatory, security, control and security, information). They, as well as other functions named in the Town Planning Code of the Russian Federation and the Federal Law "On Self-Regulatory Organizations", are subordinate to the main objectives of the activities of self-regulatory organizations in the construction field. At the same time, the goals of creating self-regulating organizations in the construction field specified in the legislation affect the legal assessment of functional purpose of these organizations. Based on a comparative legal analysis of domestic legislation and foreign countries such as the United States, Great Britain, and Germany, the authors draw conclusions about changing (reducing) the role of public authorities in performing social and public functions, and about tendency of involving the professional associations of entrepreneurs in this area. As a result of this study, the article authors reveal the positive dynamics of the development of social and legal components of the institute of self-regulation of construction activities in Russia. The article summarizes that self-regulating organizations should be considered as a legal model for the introduction and development of social entrepreneurship in the construction industry.

**Key words:** social and legal component, self-regulation institute, self-regulating organization, construction activity.

**INTRODUCTION.** The development of the construction industry, however, like many other economy sectors, can hardly be imagined today without improving its social components, which are also manifested in the legislation of the Russian Federation. As is known, the economy socialization is based on the formation of the public good, to which such economists as Karl Kautsky [2, p. 121] and John Maynard Case [3, p.134] have paid attention to in their writings. At the same time, we should not forget about the relationship of any type of business and society. According to M. Porter and M. Kramer, social business projects, as well as social policy, should follow the principle of creating common values, leading to the solutions beneficial both for society and for business [4, p. 78-79]. Of course, construction activities are aimed at improving the quality of life of the population, implementing a strategy to create a favorable living environment for all citizens of the Russian Federation and the most important human right - the right to decent housing. However, construction (as a type of economic activity) is fraught with great risks, including in terms of harm to human life and health. According to the data officially published by the National Association of Builders, about 38 people are injured every month in Russia, 20 of whom die [5]. Therefore, it is necessary to create such a mechanism (method) that would be aimed not only at eliminating such risks, but also at restricting access to the construction sector of poor-quality executors to perform various types of construction works.

**METHODS.** During the study, we used such methods as general scientific (logical and historical, system and structural approach, analysis and synthesis, etc.) and private scientific (specifically sociological, formal-logical, comparative legal). The comparative legal research method allowed comparing the norms of the current Russian civil legislation on self-regulating organizations with the provisions of legal acts of the USA, Great Britain, and Germany.

**RESULTS AND DISCUSSION.** Currently, legal literature widely discusses the issues on the principle of social responsibility of business and socially responsible behavior of entrepreneurs, which also covers fair business practices in relation to the suppliers and other business partners, as well as consumers and competitors [6, p. 7]. At the same time, traditional, for example, for educational institutions of higher education, public law elements begin to be combined with private law elements inherent in market relations [7, 305-312].

In the construction sector, the above is achieved through, first of all, the self-regulation institution, which is designed not only to "strengthen the market position of the most worthy players in the market of construction services" [8, p. 32], but also to ensure the social effect of the construction industry, to build an interaction mechanism between society, business and state.

Self-regulating organizations in the field of construction perform a number of important functions that have a social orientation, including such as:

1) regulatory (for example, by fixing certain rules for construction activities and standards for the introduction of capital facilities into operation, SRO eliminates various risks to human life, improves the quality of commissioned facilities, etc.). According to Article 55.5 of the Town Planning Code of the Russian Federation (hereinafter referred to as the TPC), the standards of a self-regulating organization (hereinafter referred to as the SRO) and the internal documents of the SRO (which may contain relevant rules for construction activities) are mandatory not only for all its members, but also for their specialists and other employees.

2) *security* (creation of compensation funds of the SRO (Article 55.16 of the TPC) ensures the property liability of the SRO members, protects the rights and interests of consumers and victims of illegal actions of the SRO

members);

3) *control and protection* (by inspecting the SRO in the construction field on the fact of complying with the requirements of the legislation and the rules for carrying out construction activities, it is possible to prevent harm and to eliminate unlawful actions on the part of the SRO members). It should be noted that since July 1, 2017, the control and protection function of the SRO in the construction field has been expanded - henceforth, the SRO in the construction field also monitors the fulfillment of obligations under the construction contracts concluded using competitive contractor determination methods, as well as monitors the compliance of the actual total size of the obligations under the construction contracts concluded by the SRO member using competitive methods for entering into the construction contracts with the maximum amount of obligations, on the basis of which this SRO member contributed to the compensation fund for securing contractual obligations (Part 2 of Article 55.13 of the TPC). In addition, according to Part 11 of Article 55.13 of the TPC, the SRO in the construction field has the right to exercise public control in the procurement field;

4) *information* (currently, the legislator has fixed the rules on the need to maintain three types of registers and provide the information contained in them at the relevant sites using particular information technologies in the self-regulation field of construction activities: state register of self-regulatory organizations, register of the SRO members, national register of specialists in the construction organization). In addition, the responsibility of the SRO in the construction field includes the creation and maintenance of the website in the information and telecommunications network "Internet", the e-mail address of which includes the domain name, the rights to which belong to this self-regulating organization. The information that should be posted on this web-site is contained in Article 7 of the Federal Law No. 315-FZ dated December 1, 2007 (as amended on March 7, 2016) "On Self-Regulatory Organizations" [9] and in Article 55.9 of the TPC. The information function of the SRO allows fully assessing the abilities and competence of the SRO member and the SRO itself in the construction field. Recently, however, more and more questions have arisen about further reforming the informatization system in the self-regulation of construction activities. This is due, inter alia, to the fact that, so far, the accuracy of information about the SRO and its members is not associated with the electronic resources in practice. In this regard, the decision of the Office of the Federal Antimonopoly Service for the Novosibirsk region dated August 28, 2017 is indicative. In it, when selecting the applicants for the role of government contractor, the procurement bidder's application (according to the Federal Law No. 44-FZ dated April 5, 2013 (as amended on July 29, 2018) "On the Contract System in the Field of Procurement of Goods, Works, Services to Meet the State and Municipal Needs" [10]) was found to meet the requirements of the bid commission, despite the fact that the procurement participant has not been included in the register of the SRO members "Construction Regional Partnership". It was established that the procurement participant ceased its SRO membership on August 10, 2017 at 12:00 a.m., however, an extract from the register issued by the SRO, dated August 11, 2017, indicated the opposite (of the SRO membership) [11]. Thus, the Office of the Federal Antimonopoly Service for the Novosibirsk region on the issue of the ratio of information from the register (electronic resource) and an extract from it (paper) prioritized the latter, despite the fact that the extract did not contain reliable information.

All of the above functions, however, like the other functions specified in the TPC and Federal Law No. 315-FZ dated December 1, 2007 (as amended on July 3, 2016) "On Self-Regulating Organizations" are subordinated to three main objectives of the SRO in the construction field: 1) preventing harm to life or health of individuals, property of individuals or legal entities, state or municipal property, environment, life or health of animals and plants, objects of cultural heritage of the peoples of the Russian Federation; 2) improving the quality of construction, reconstruction, overhaul of capital construction facilities; 3) ensuring the fulfillment by the SRO members of the obligations under the construction contracts concluded using contractor determination competitive methods in accordance with the legislation of the Russian Federation (Article 55.1 of the TPC). At the same time, in relation to the SRO in the construction field, the legislator has not fully "realized" the social orientation of the SRO and the public interest that should be reflected in its activities, its functions and components of the self-regulation institution in the construction sector. In our opinion, such an activity goal of the SRO in the construction field as ensuring the fulfillment by the SRO members of the obligations under the construction contracts concluded using contractor determination competitive methods is rather aimed at ensuring public interest and meeting state needs (Federal Law "On the Contract System in the Procurement Field of Goods, Works, Services for State and Municipal Needs"). The stated activity objective of the SRO in the construction field relates only to the protection of the rights of state and municipal customers [12, p.92] and, unfortunately, does not provide for similar protection of other customers under the construction contracts, concluded without using contractor determination competitive forms, which looks like not fully justified and little understood, given the need to develop the social effect of activities of the SRO in the construction field.

However, the above-mentioned goals of creating the SRO in the construction field influence the legal assessment of the functional purpose of respective organizations. In addition to the fact that these functions of the SRO carry a social effect component, they also, as indicated in the letter of the Committee on Land Relations and Construction of the State Duma of the Federal Assembly of the Russian Federation No. 3.31-22/100 dated February 11, 2015 "On the Activities of Self-Regulatory Organizations", are public legal, provided that the performance of these functions is aimed at achieving the goals that are specified in the Civil Code of the Russian Federation.

**SUMMARY.** Thus, one can observe a change (decrease) in the role of public authorities in the performance of social and public functions and the involvement of professional associations of entrepreneurs in this area. It should be noted that in such foreign countries as the USA, Great Britain, Germany it is considered quite acceptable to create a

legal entity with the transfer of powers to perform certain types of public functions [13, p. 9]. G. Metzger notes that the privatization of state (public) functions is becoming more common in the United States [14, p. 31]. With reference to the legal status of self-regulating organizations in the American market, R. S. Carmel concludes that these organizations are a peculiar combination of private self-regulation and delegated state regulation [15, p. 1, 3-5].

**CONCLUSIONS.** Thus, there is a tendency in the development of social and legal components of the self-regulation institute of construction activities currently in Russia. It seems that the SRO in the construction field should be considered as a legal model for the introduction and development of social entrepreneurship in the construction industry.

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### References

1. The study was carried out with the financial support of the Russian Federal Property Fund, the project "Self-Regulatory Organization as a Legal Model for the Implementation and Development of Social Entrepreneurship in the Construction Field" No. 18-011-00974.
2. Kautsky Karl. Ethics and Materialistic Understanding of History (Research Experience). Series: Reflecting on Marxism. M.: URSS. 2003. - 136 p.
3. Keynes J. M. The General Theory of Employment, Interest and Money. M.: Gelios ARV, 2002. - 352 p.
4. Porter M. E., & Kramer M. R., (2006). Strategy and Society. The link between competitive advantage and corporate social responsibility. Harvard Business Review, PP. 78–92. URL: <http://classes.uleth.ca/200803/mgt3031d/Porter%20&%20Kramer%20HBR.pdf> (access date 15.08.2018).
5. Nostroy. Monitoring of Accidents and Incidents. URL: [http://nostroy.ru/information-disclosure/monitoring\\_proishestviya](http://nostroy.ru/information-disclosure/monitoring_proishestviya) (access date 09.08.2018).
6. Blagov Yu.E., Ivanova E.A. Corporate Social Responsibility in Russia: Lessons from the National Report on Social Investments // Russian Management Journal. 2009. No. 1. V. 10. P. 3-24.
7. Makarov T.G. Private-Law Status of a Higher Education Institution / T.G. Makarov, E.V. Kobchikova, O.A. Cheparina, S.V. Barabanova, V.V. Nasonkin // Journal of Advanced Research in Law and Economics. - Spring 2016. - Volume VII, Issue 2(16). - P. 305-312.
8. Sociology in the Construction Industry: Lecture Notes [Electronic resource] / L.V. Vlasenko et al.; ed. by E.A. Shnyrenkova / Ministry of Education and Science of the Russian Federation, Moscow State Construction University - Network electronic edition. M., 2014. – 73 p. URL: <http://euis.mgsu.ru/resources/izdatelskaya-deyatelnost/izdaniya/izdaniya-otkr-dostupa/2014/1689/1227.pdf> (access date 18.08.2018).
9. Official Gazette of the Russian Federation. 2007. No. 49. Art. 6076
10. Official Gazette of the Russian Federation. 2013. No. 14. Art. 1652.
11. Decision of the Office of the Federal Antimonopoly Service for the Novosibirsk Region No. 08-01-373 dated August 28, 2017 // Accessed from Legal Reference System "ConsultantPlus".
12. Zabelin A. V. Modern Trends in the Development of Legislation on Self-Regulatory Organizations in the Construction Industry // Laws of Russia: Experience, Analysis, Practice. 2016. No. 7. P. 90 - 94.
13. Allgemeines Verwaltungsrecht / von Hartmut Maurer. - 13., überarb. u. erg. Aufl. – München: Beck, 2000. P 9. – 841 p.
14. Metzger G. Privatization as Delegation // Columbia Law Review. – 2003. – Vol. 103. – № 6. – P. 31-35.
15. Karmel R. S. Should Securities Industry Self-Regulatory Organizations be Considered Government Agencies? // (2008). Brooklyn Law School, Legal Studies Paper. – 2008. – № 86. – P. 1-5. URL: <http://ssrn.com/abstract=1128329> (access date 15.08.2018).