

**THE LAW ON SELF-REGULATING ORGANIZATIONS:
THE RESULTS OF IMPLEMENTATION**

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The self-regulating organization of builders (SRO) is a type of a non-profit organization based on membership of individual entrepreneurs and legal entities that are involved in construction, reconstruction, major maintenance of capital construction objects.

This status can be obtained by any organization that is

- ▲ based on membership of partners involved in construction business and
- ▲ created as a non-profit partnership
- ▲ meets the requirements established by parts 1 and 2 in article 55.4 of the Urban planning code of the Russian Federation.

These requirements include the following points:

1. association type should be a non-profit organization including at least a hundred members, individual entrepreneurs and (or) legal entities;
2. indemnification fund has to be at least one million rubles per each member of non-profit organization. Or if such an organization has established the requirement for every member to have insurance of civil liability that can incur in case of infliction of damage owing to shortcomings of the performed work which influence capital construction objects' safety then the insurance should be at least three hundred thousand rubles per each member of a non-profit organization;
3. availability of the specific documents stated by a part 1 in article 55.5 of the Urban-planning code of the Russian Federation.

According to the same document the main objectives of the self-regulating organizations are:

1. prevention of infliction of damages to life or to health of individuals, property of individuals or legal entities, the state or municipal property, environment, life or health of animals and plants, objects of a cultural heritage (historical and culture monuments) of the Russian Federation peoples (hereafter "damage") owing to shortcomings of construction work which influence capital construction objects' safety and are caused by members of the self-regulating organizations;
2. improvement in quality of performance in construction, reconstruction, major maintenance of capital construction objects.

The lines of the self-regulating organization's activity are creation and the approval of the documents provided by article 55.5 of the Urban-planning code of the Russian Federation, as well as control of its members' compliance with the requirements of these documents.

Since July 1, 2010 any construction company should be a member of one of the self-regulating organizations (SRO) and has the permit to work from it. Nearly two years the construction community operates according to these new rules, and, in my opinion, it is high time to sum up.

Before the introduction of the law on SRO, some analysts worried that medium-sized and especially small business can't work after its enforcement. That is because all entrance and membership fees, payments into an indemnification fund and civil liability insurance would make construction companies' bank accounts almost one million rubles smaller. As for the design and survey organizations they would lose on 500–600 thousand rubles.

Seven months after the law on SRO came into force, number of market participants has been actually reduced. Though about 350 thousand construction licenses were given across Russia, not more than 250 thousand organizations entered SRO.

But the matter is that it is extremely difficult to define if the current crisis or the mentioned law is to blame for that. We have to take into account the fact that some companies could obtain the license once some time ago and then they stopped their industrial activity even before the crisis or the law on SRO coming into effect.

Moreover small business was given some benefits as the legislator allows individual construction, that is, for example, construction of cottages for individuals, to be performed without entering SRO and without obtaining the permit to work from a public organization .

During public discussion on the law on SRO some market participants noted that in small cities with the population of about hundred thousands it will be difficult to create SRO because it will not be possible to have even one hundred construction companies in a place like that so there will be not enough participants even for one SRO.

However, builders began to enter SRO from the other regions so all who wanted to, could enter a SRO.

As experts observed, in 2010 across the country especially in regions there were a lot of companies' mergers and acquisitions at the construction market. Swindlers increased their criminal activity speculating on desire to save money. For example, the Internet is full of announcements of the approximately following contents: «Entering a SRO in one day, payment is 10 thousand rubles».

Across the country at least one hundred construction companies responded to such announcements. They bought those useless pieces of paper and as a result were worked until the first check of the Federal Service for Ecological, Technological and Nuclear Supervision. And after the construction company was caught working with false documents, it is extremely difficult to restore a good name and to enter a legal SRO.

Some entities had to change the legal profile of the company because of the dealing with swindlers. Some of them had to leave the market at all. After such embarrassment it is really difficult to restore reputation.

To become a member of a legal SRO it is necessary to go through the serious check. The public organization should check employees of the candidate carefully as well as their education and employment history.

The equipment which the organization operates with is subject to check as well. The level of amortization of this or that construction equipment is studied too, for example, the current state cargo lifts, a crane and so on. And even if one crane or the cargo lift causes questions, entering a SRO will be postponed.

And no need to say that it would be the same result if the company was caught on attempt to bypass the law. After all any director of construction company understands, that it is impossible to become a member of legal SRO in one day, having paid 10 thousand rubles for it.

The aspect of the law concerning dividing of SROs into design companies and construction ones was debatable as well. As at the same firm could be involved in both activities so it would be necessary for it to enter two SROs. And that means it is necessary to collect two packages of documents and to pay membership fees and contributions to indemnification funds to two organizations. However, in large cities mixed SROs were created and so this problem was solved.

Talking about the negative consequences of the law on SRO implementation experts noted that members of one organization can be forced to cover a loss to the third parties which was caused by the member of their SRO. And in fact there were situations like that.

In that case the internal commissions within SRO were created to resolve a conflict. As a rule payments from the indemnification fund were discharged after considering a particular case in court only. As a result receiving money by the damaged third parties could take a lot of time.

Let's observe our region. Non-profit partnership "Self-regulating corporation of builders of Krasnoyarsk Krai", (SRO NP "SKS") is the first in Krasnoyarsk Krai and the eleventh SRO in construction in Russia. Its members are such large construction organizations, as:

- ▲ JSC BFK-Yenisei,
- ▲ JSC Vankorneft.
- ▲ JSC Krasnorskpromstroy,
- ▲ JSC Kultbytstroy,
- ▲ JSC Monolit,
- ▲ JSC KPNU "Severo vostoeklektronmontazh",
- ▲ JSC Krasnoyarsknefteprodukt,
- ▲ JSC Sibagropromstroy.

Summarizing the aforesaid, it would be reasonable to give some recommendations to the new construction companies which have not entered any SRO yet, or to the organizations that would like to replace public organization:

1. Before entering this or that SRO get some information on, what entities are the registered members of the organization
2. Check if the participants of SRO are reliable.
3. Learn who works as personnel in this SRO and where their office is located.
4. Ask what software the staff uses. Remember that all the documents from SRO arrive at the Federal Service for Ecological, Technological and Nuclear Supervision. So if there is no special programs in the organization, and data on members is entered into SRO documentation manually. This means the staff can make a mistake, having created something that can be at least a reason for check on your organization from the Federal Service for Ecological, Technological and Nuclear Supervision.
5. There should not be too many people in the staff of SRO, because obviously all of them get salary from membership fees of your organization and the others. An optimum number is one or two employees of SRO per 30 members of public organization.

As final remarks let's look at some figures. The statistics of last year says that the number of incidents and failures was reduced by almost 13 %. The number of the construction workers who accidentally died at work were less by 15 %.

So it is possible to come to the conclusion that the main goal of prevention the life and health damages was achieved, and the system of self-regulation organizations managed to be applied successfully.

References

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