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The review provides a detailed analysis of main trends in Russia's economy in 2011. The paper contains 6 big sections that highlight single aspects of Russia's economic development: the socio-political context; the monetary and credit spheres; financial sphere; the real sector; social sphere; institutional challenges. The paper employs a huge mass of statistical data that forms the basis of original computation and numerous charts.

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6.5. Self-Regulated Organizations – the Evolution of the Law (2007–2011)

The development of the Laws on Self-Regulated Organizations ¹ (hereinafter – SRO) can be conventionally divided into two stages:

- I – April 1994 – July 2007;
- II – August 2007 – till now.

Let us review their main features.

At the 1st stage that began in April 1994 by the establishment of “self-regulated associations” as a SRO prototype for professional participants of the security market and ended in July 2007, self-regulated organizations were created spontaneously and on a limited basis. During this period, the SRO establishment was regulated by certain types of professional businesses limited to isolated areas, outside industries and major markets such as evaluation/appraisal business, investment foundations managers, bankruptcy commissioners, etc.

The key elements and tools of regulating SROs during this period were:

- 1) definition of the notion of a self-regulated organization as an entity established for coordination of its activities, representation of its members and for the purpose other than profit generation;
- 2) identification of state authorities that would control the self-regulated organizations;
- 3) the right and procedure for development of SRO performance standards and control over activity of the SRO members by the SRO.

During this period, SROs were not in majority: for 13 years they were set up in three areas only: valuation/appraisal (in May 1998), bankruptcy commissioners (October 2002) and audit boards of agricultural cooperatives (November 2006).

Starting 2001, the process of establishment of self-regulated agencies has intensified – each year new legal norms regarding SRO were established in Federal Laws such as: “On investment foundations” (2011), “On insolvency (bankruptcy) (2002), “On communications” (2003), “On housing and construction cooperatives” (2004), “On organization of insurance” (2005), “On advertisement” and “On agricultural cooperatives” (2006).

With the enforcement of Federal Law of 01.12.2007 No. 315-FZ “On self-regulated organizations” in July 2007, the 2nd stage of the development of the Laws on self-regulation began. Efforts to introduce the self-regulation intensified, and the share of organizations with mandatory self-regulation increased considerably.

The SRO Laws developed in two directions: by enforcing and amending the general Federal Law and by enforcing special Laws in all the areas where self-regulation was adopted.

6.5.1. Federal Law of 01.12.2007 No. 315-FZ «On self-regulated organizations”

According to the new Law, a self-regulated organization shall be a non-commercial organization based on the membership that unites the subjects of entrepreneurship by one of the following attributes:

- a unity of the sector of production of goods (works, services), e.g. construction. communications;
- a unity of the market of produced goods (works, services), the e.g. market of real estate/appraisal services/cadaster services;
- unification of subjects of professional business of a certain type, e.g. mediators, patent attorneys, auditors.

¹ As of November 1, 2010, 634 self-regulated organizations have been registered in Russia. Out-of-court settlement of disputes in SRO – Bankruptcy Commissioner, 2010, No. 6.

Such division, however, seems very conventional since the subjects of a certain professional activity can render their services on one market and can satisfy two attributes simultaneously, e.g. support to the commercial infrastructure of electric energy wholesale market - the Market Council.

The content of “self-supported and initiative” activity of such associations includes:

- development and establishment of SRO standards and rules;
- control over compliance with these standards and rules.

According to Federal Law “On self-regulated organizations” (Federal Law “On SRO”) (jointly with special norms about SRO), all self-regulated organizations were divided into 3 categories:

1) SRO to which the general legal norms are not applied and which are governed by special norms (see section 6.5.3 for details);

This category includes mainly SROs² established before 2001 that had sufficiently developed legal framework of regulation and practices of application of the legal norms; these relate to a financial market segment. Among these SRO are professional participants of the securities market, share investment funds, non-state pension funds, etc.³;

2) SRO that are governed by special norms on a number of issues defined by the general law; however these SRO are subject to general norms of the Federal law “On SRO”;

3) SRO that are not governed by special norms but are regulated by FZ “On SRO” exclusively; however special norms can be enforced also.

Two categories of entities can become SRO members:

1) subjects of entrepreneurship are individual entrepreneurs and legal entities engaged in entrepreneurship. To set a SRO, at least 25 such entities are required if the applicable federal laws do not provide otherwise;

2) subjects of professional activity are individuals (physical persons) engaged in professional business. To set a SRO, at least 100 such subjects of a certain type are required.

An organization is considered a self-regulated one if it meets the attributes of a non-commercial organization as set forth in the RF Civil Code and has the above mentioned number of members, if standards and rules of entrepreneurial or professional activity of a certain type are available (if the applicable federal laws do not provide otherwise) and if each SRO member will have additional property liability before consumers of produced goods (performed works and/or rendered services) and other persons⁴.

The SRO membership is voluntary according to the general rule. However, the federal laws can provide also for mandatory membership in SRO.

A SRO develops SRO *standards and rules* that are requirements to be obligatory complied with by all SRO members; these requirements relate to entrepreneurship or professional activities. The SRO standards and rules can contain requirements that are additional to those established by the law.

Disciplinary sanctions are provided for breaches of the SRO standards and rules.

The SRO standards and rules shall:

- comply with the business ethics rules;
- remove or mitigate a conflict of interests of the self-regulated organization members, their employees and members of a collegial governance body of the SRO.

The SRO standards and rules shall prohibit SRO members to perform any actions that could damage other subjects of entrepreneurship or professional activity; they also shall protect from:

- unfair competition;
- actions causing moral or other damage to the consumers of goods (works, services) and other persons;
- actions damaging the SRO business image or that of a SRO member.

² SRO of housing funded cooperatives enforced in 2004 are an exception.

³ See item 3, Article 1 of Federal Law “On self-regulated organizations” for details.

⁴ See, Article 13 of Federal Law “On self-regulated organizations” for details.

The SRO shall ensure release of the information about activities of the SRO members that may affect the rights and lawful interests of any person.

The functions of a SRO are similar to those of a non-commercial entity: to develop and establish the membership; to take disciplinary sanctions against their members, etc. The SRO has very large authorities in the area of *control over activities of their members*.

The SRO reviews the activities of their members using reports and other documents approved by the general meeting and provided to the SRO. Besides, the SRO:

- 1) complaints against actions of the SRO members and incidents of breaching the SRO standards and rules and the membership terms by SRO members;
- 2) conducts scheduled and off-scheduled audits of activities of the SRO members. (The controls entrepreneurship and professional activities of their members relating to compliance of the SRO standards and rules and the SRO membership terms;
- 3) reviews scheduled audit is held at least once every three years while an off-schedule audit is held in response to a claim of standards and rules breaching, and in some other cases).

Two key mechanisms of responsibility of the SRO members are established by the law:

- 1) disciplinary;
- 2) property-related.

Disciplinary sanctions can be taken against a SRO member based on the review results of complaints on the actions of the SRO member related to non-compliance with the SRO standards and rules and the SRO membership terms.

The following disciplinary actions can be taken against a SRO member:

- 1) an order to remove identified breaches by the set deadline;
- 2) a note of warning;
- 3) a fine;
- 4) a recommendation to exclude the member from the SRO; this recommendation is reviewed by the SRO standing collegial governance body.

Any decision on expulsion from the SRO members likewise any abuse of the rights and lawful interests of the SRO members by actions/no actions of the SRO and its employees and/or governance bodies can be contested in court. The SRO member concerned is entitled to demand from the SRO compensation for caused harm.

Property liability of the SRO members to the consumers of goods, works and services manufactured/performed/rendered by the SRO members and other persons can be insured by using the compensation fund and the system of individual and/or collective insurance.

The compensation fund is initially formed by SRO members fees in the amount at least Rb 3,000 from each member. The minimal insured sum under a contract of liability insurance of each SRO member shall be at least Rb 30,000 per year.

Federal Law “On self-regulated organizations” regulates thoroughly the issues of placing cash funds of the compensation fund (Article 13). The Law also provides for broad opportunities in certain sectors/markets and type of business for SRO to define independently, by using the Federal Law and in some cases – the SRO internal documents – other terms including the procedure of building up the compensation fund, placement of its money, the minimal size and the procedure of insuring liability of the SRO members.

According to general rule, the SRO shall be liable for obligations of any SRO member (up to the compensation fund amount) that have arisen as a result of causing damage by defects of goods (works, services) manufactured by the SRO member. The SRO obligations may not be recovered from the assets of the compensation fund.

The Federal Law “On self-regulated organizations” sets a rather high level of requirements to information transparency about the SRO activities (Article 7, FZ “ On SRO”).

The enhanced control functions of the SRO require a specific procedure *of interaction of the SRO with the authorized bodies of executive power*. Thus, the SRO shall:

- 1) forward to the authorized body the SRO standards and rules, the membership terms and changes inserted in these documents;

- 2) data on the scheduled and conducted audits by the SRO of the activities of the SRO members and the audit findings.

The authorized body shall:

- 1) send to the SRO information about the findings of the conducted audits or entrepreneurial and professional activities of the SRO members;
- 2) appeal to court to delete the data on the non-commercial organization from the SRO State Registry; if the claim is met, the self-regulated organization loses its status (item 6 Article 3, FZ “On SRO”).

The SRO governance bodies are:

- 1) general Meeting of the SRO members – a supreme body convened at least once a year; the body deals with such issues as approval of the Charter, making changes therein, election of a standing collegial governance body, approval of the procedure for applying disciplinary sanctions, etc⁵;
- 2) standing collegial governance body – is made of the SRO members and independent members who do not have employment relations with the SRO and its members. Independent members shall make at least 1/3 in the standing collegial body of the SRO. If the Federal Law does not stipulate otherwise, the SRO standing collegial governance body’s Terms of Reference include approval of SRO standards and rules, decisions on joining and withdrawal from the SRO membership, setting specialized bodies of the SRO, etc.⁶ The functions of this body can be exercised by the General Meeting of the SRO members;
- 3) SRO executive body resolves issues of SRO economic and other activities that do not fall within the scope of competencies of the two bodies mentioned above.

Federal Service for State Registration, Cadaster and Mapping (RosReestr) maintains the SRO Federal Registry if no federal body is set up with control and supervision functions in a certain business area. The Registry data are deemed open and public. When a non-commercial entity is entered in the SRO Registry, this entity shall acquire the SRO status; when an entity is excluded from the SRO Registry, its status is lost. The State Registry Maintenance Procedure is set by Ministry of Economic Development of the Russian Federation⁷.

Distribution of supervision and control functions over self-regulated organizations between different state authorities (*Table 21*).

Table 21

Distribution of supervision and control functions over self-regulated organizations between different state authorities

| State control/supervisory authority 1 | Sector or type of activity of a SRO 2 |
|--|---|
| RF Ministry of Finance | - SRO of auditors; - SRO of credit cooperatives; - SRO in a micro-finance sector |
| Federal Service for Financial Markets (FSFM of Russia) | - SRO on the securities market; - SRO in the area of investment funds managing companies; - SRO in the area of housing funded cooperatives; |
| Federal Service for State Registration, Cadaster and Mapping (RosReestr) | - SRO of appraisers (in part); - SRO of bankruptcy commissioners (in part) |
| Federal Service for Insurance Supervision (Rosstrakhnadzor) | - SRO of insurers |
| RF Ministry of Agriculture | SRO of auditing councils of agricultural cooperatives |
| RF Ministry of Energy | Activity in support of functions of the commercial infrastructure of the electric energy wholesale market (Market Council) |

cont'd

| 1 | 2 |
|--------------------------------------|---|
| RF Ministry for Economic Development | - SRO of appraisers (in part); - SRO of bankruptcy commissioners (in part) |

⁵ See item 3, Article 16 of FZ “On self-regulated organizations” for details.

⁶ See item 7, Article 17 of FZ “On self-regulated organizations” for details.

⁷ Article 5.2.28.19 of Regulation of the RF Government of 05.06.08 No. 437 (version of 24.03.11 with amendments of 06.04.2011) “On Ministry of Economic Development of the Russian Federation”.

| | |
|---|--|
| RF Ministry of Communications (Mincomsvyaz of Russia) | - SRO in communications |
| RF Ministry of Regional Development | - SRO in the construction sector (in part) |
| Federal Service for Ecological, Technological and Nuclear Supervision | - SRO in the construction sector (in part) |

Where there is no control/supervisory body it means the Law does not specify it.

Coming back to general provisions on the SRO, note that the rights of the SRO, its officials and employees are limited by a number of terms. Thus, the SRO shall not:

- 1) execute entrepreneurial activity;
- 2) incorporate economic partnerships and companies engaged in entrepreneurship which is the subject of self-regulation for the particular SRO and become a member of such partnerships and companies;
- 3) exercise a number of actions and deals (if the federal laws do not specify otherwise) such as:
 - pledge the SRO property or make the property a surety against obligations of other persons;
 - grant surety for persons that are not SRO employees;
 - act as a mediator in selling goods (works, services) manufactured by the SRO members;
 - etc.

There is also a number of restrictions for the sole executive body of the SRO⁸.

6.5.2. Development of the SRO general laws in 2008–2011

During 2007–2011, the right to establish self-regulated organizations was fixed in the above mentioned Federal Law and in other 8 Federal Laws. In 5 cases out of 8, the establishment of a SRO in this or that form is mandatory and the segments to which such norms apply are critical segments of the economy in terms of their social importance like construction, electric energy wholesale market, design and engineering, etc.

For the reviewed 4-year period considerable changes in the Federal Law ‘On self-regulation’ occurred only once – *in July 2008 No. 148-FZ of 22.07.08* (hereinafter – Federal Law ‘On SRO’ - new version). Exceptions are the right of using compensation fund assets not only to secure the property liability of the SRP members and the right of return of contributions of the SRO members as per the applicable federal laws; these rights were enforced in July 2010 (No. 240-FZ of 27.07.10). Such innovations have been typical for legal regulation starting from the mid of the 2000’s. They have been actively used, e.g. in the bankruptcy law⁹. On one hand, such clauses ensure flexibility of the application of laws while on the other hand – they establish unjustified ‘specific’ conditions for separate market players thus disrupting competition. Thus, a SRO engaged in construction and design, and engineering surveys is allowed, e.g. to invest the assets of the SRO compensation fund in order to increase its size. Such SRO has also the right of return of the SRO members’ contributions¹⁰.

The new version of the Federal Law ‘On SRO’ was not an exception as it also contains ‘specific’ new clauses regulating particular cases:

- 1) possible establishment of a SRO not only for self-regulation but for other purposes that will be specified in ‘other federal laws’;
- 2) possibility not to establish control bodies that supervise the compliance of the standards and rules by the SRO members, if this possibility is established ‘by a federal law’;
- 3) non-obligatory key requirements to the SRO activity (sub-items 1-3, Federal Law ‘On SRO’, new version) in the instances ‘established by federal laws’:

⁸ See items 4 and 5 of Article 14 of FZ No. 315-FZ dated 01.12.2007 ‘On self-regulated organizations’ for details.

⁹ E. A. Apevalova, A. D. Radygin. Bankruptcies in the 2000’s: from a raider instrument to the ‘double standard’ policy– ‘Economic Policy’ August, 2009.

¹⁰ For details see: 4-5, Art. 3.2 of Federal Law dated 29.12.04 No. 191-FZ ‘On Enforcement of the Town Planning Code of the Russian Federation’.

- availability of standards and rules of entrepreneurship/professional activity mandatory for compliance by the members;
 - securing additional property liability of the SRO members to consumers of works and services by insurance and establishing compensation funds;
- 4) no obligation to disclose information to the majority of consumers of the manufactured goods and services and to shareholders, investors, creditors in the instances “established by a federal law” (p. 4, Article 7, Federal Law “On SRO”, new version).
- 5) possibility to use the compensation fund assets to keep, increase and invest the assets not by managing companies, if this is “specified by a federal law” (P. 5, Article 13, Federal Law “On SRO”, new version). The reduced control over placing and investment of funds is usually used to derive unlawful profits, to misuse funds, to abuse authorities, etc. Eventually all these reduce the performance efficiency.

While in some instances we talk about the necessity to have a flexible regulation with account for sector and regional specifics, in the above mentioned cases a specific institutional environment will be created for a narrow group of people, thus the legal environment will be diluted and the effect of the legal regulation will be reduced.

As for systematic innovations, we’d like to focus on the following:

1. *Enhanced risk of reduction of protection of the consumers’ rights* as a result of establishment by the federal laws of a different procedure for the formation of the compensation fund, its minimal size, investment of the fund assets and insurance of the liability of the SRO members (p. 4, Article 13, Federal Law “On SRO”, new version). Earlier, the federal laws could specify only *additional requirements* to the size of the compensation fund and insurance.

2. *Expansion of the area that would be regulated by special federal laws* by incorporating issues relating to the SRO legal status; the procedure of enrolling members and the rules of the SRO membership, control over the SRO members activity (part 2, Article 1, Federal Law “On SRO”, new version).

3. *Additional authorities granted to the SRO:*

- review of complaints on the SRO members’ actions and cases of abuse of the standards and rules and membership terms by the SRO members. This function corresponds to introduction of administrative responsibility for abuses in this area (see below);
- other authorities provided by the federal laws.

4. *Application of the Law on SRO to organizations registered outside the Russian Federation – now these organizations can become SRO members* (p. 3, Article 2, Federal Law “On SRO”, new version).

5. *Imposition on the SRO of the obligation to assure transparency of information* that affects rights and lawful interests of any person (p. 5, Art. 4, Federal Law “On SRO”, new version).

6. Fixing the general rule – the approval of the Procedure for regular and one-off payments by the SRO members at the General Meeting of the SRO members. However, a federal law or a SRO Charter can provide otherwise.

7. *Possibility to redistribute the authorities from the standing collegial body to the General Meeting of the SRO members* on the issues of approval of SRO standards and rules (and amendments thereof), setting SRO special bodies, approval of the regulations on such special bodies and rules on their activity.

8. *Extension of the list of grounds for refusal to enter the data on SRO in the State Registry* (e.g. where there are no standards and rules for entrepreneurial and professional activities, or additional property liability of the SRO members is unsecured, etc.). In such cases we can talk about the improved level of requirements to the SRO responsibilities and performance.

9. *Extension of the list of grounds for expulsion of a non-commercial organization from the State Registry* due to incompliance with the legal requirements (e.g. the number of the SRO members, the size of the compensation fund).

10. *Extension of the list of grounds for expulsion of a non-commercial organization from the State Registry in response to the request of the federal authorized body.* This actually means the

termination of the SRO activities. If, e.g. more than two requirements of the Federal Law “On SRO” are abused by the SRO within one year (in addition to the requirements set forth in part 3, Article 3); or if other federal laws are breached and these breaches are not corrected or cannot be corrected.

11. Establishment of periodicity of the General Meeting of the SRO members – at least once a year.

12. An open list of rights that can be delegated by the members of a SRO association (union) to an association (union).

13. Fixing the SRO membership right in other (except Chambers of Commerce and Industry) non-commercial entities.

6.5.3. SRO legal regulation by special laws and its development in 2008–2011.

The Federal Law “On SRO” is the main law regulating the relations that emerge with the acquisition and termination of the SRO status and the SRO activity. However, other federal laws can also regulate specific relations associated with the SRO (p. 2 Art. 1, Federal Law “On SRO”). There are 20 such laws altogether, and each of them highlights this issue differently (see *Table 22*).

Table 22

SRO legal regulation by special laws

| | SRO | | | | | | | | SRO members vs SRO | Means of securing property liability of the SRO members | | | | | | |
|---|---|---|-----------|--|-------------------|-----------------------------------|------------------------|----------------------------|--------------------|---|------------------------------------|--|-----------------------|----------------|-------------------|------------|
| | Notion | Type of association | | Procedure of acquisition and termination of the SRO status | Number of members | Functions, rights and obligations | Rights and obligations | requirements to membership | Envisaged | Compensation fund | | | Insurance | | | |
| | | Mandatory | Voluntary | | | | | | | Envisaged | Size of SRO members' contributions | Terms and procedure of investing the fund assets, <small>investments</small> | Compensatory payments | Envisaged | Type of insurance | Obligatory |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | |
| The Federal Law “On SRO” applies to | Law “On the organization of insurance in the RF” of 27.11.1992 No. 4015-1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| | FZ “On agricultural cooperation” of 08.12.1995 No. 193-FZ | + | + | - | + | + | + | + | + | - ¹ | - | + | - | - | - | |
| | FZ “On valuation activity in the RF” of 29.07.1998 No. 135-FZ | SRO | + | + | - | + | + | + | + | + | + | + | + | + | + | - |
| | | National Council on Valuation Activity | + | - | + | + | + | + | - | - | + | - | + ² | + ³ | - | - |
| | FZ “On insolvency (bankruptcy)” of 26.10.2002 No. 127-FZ | SRO | + | + | - | + | + | + | - ⁴ | + | + | + | + | + | + | - |
| | | National Association of the SRO of bankruptcy commissioners | + | - | + | + | + | + | - | + | + | + | + ⁵ | - | - | - |
| FZ “On electric energy” of 26.03.2003 No. 35-FZ | + | + | - | - | - | + | - | + | - | - | - | - | - | - | - | |

| | | | | | | | | | | | | | | | | | |
|--|---|---|---------------------|---|---|---|----------------|---|---|-----------------|---|----------------|----------------|-----------------|---|---|---|
| | FZ “On communications” of 07.07.2003 No. 126-FZ | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | “City Planning Code of the RF” of 29.12.2004, No. 190-FZ | SRO (of respective types ⁶) | + | + | - | + | + | + | - | + | + | + | + | - | + | - | + |
| | | SRO National Associations (of respective types) | + | + | - | + | - ⁷ | + | - | + | + | - ⁸ | + ⁹ | - | - | - | - |
| | FZ “On advertisement” of 13.03.2006 No. 38-FZ | + | - | - | - | - | + | - | - | - | - | - | - | - | - | - | - |
| | FZ “On the State Real Estate Cadaster” of 24.07.2007 No. 221-FZ | + | - | + | - | - | + | - | - | - | - | - | - | - | - | - | - |
| | FZ “On patent attorneys” of 30.12.2008 No. 316-FZ | - | - | + | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | FZ “On auditing activity” of 30.12.2008 No. 307-FZ | + | + | - | + | + | + | - | + | + ¹⁰ | - | - | - | - ¹¹ | - | - | - |
| | FZ “On credit cooperation” of 18.07.2009 No. 190-FZ | - | + ¹ 2 | - | + | + | + | - | + | + | + | + | + | + | + | - | + |
| | FZ “ On energy saving and improvement of energy efficiency” of 23.11.2009 No. 261-FZ | - | + | - | + | + | + | + | + | + | - | - | - | - | - | - | - |
| | FZ “On micro-financial activity and micro-financial organizations” of 02.07.2010 No. 151-FZ | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | FZ “On the mediation procedure” of 27.07.2010 No. 193-FZ | - | - | + | + | + | + | - | - | - | - | - | - | - | - | - | - |
| | FZ “ On heat supply” of 27.07.2010, No. 190-FZ | - | + | - | + | + | + | - | + | + | + | - | - | + | - | + | + |

cont'd

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 1 |
|---|--|---|---|---|---|---|---|---|----|----|----|----|----|----|----|---|
| The Federal law “On SRO” shall not apply to | FZ “On the securities market” of 22.04.1996 No. 39-FZ | + | - | + | + | + | + | - | - | - | - | - | - | - | - | - |
| | FZ “On non-state pension funds” of 07.05.1998 No. 75-FZ | + | - | + | - | - | + | - | - | - | - | - | - | - | - | - |
| | FZ “On investment funds” of 29.11.2001 No. 156-FZ | + | - | - | + | - | + | - | - | - | - | - | - | - | - | - |
| | FZ “On funded housing cooperatives” of 30.12.2004 No. 215-FZ | - | - | + | - | - | + | - | - | - | - | - | - | - | - | - |

¹ The minimal size of the fund is established (part 4, Article 33.1, part 12 Article. 33.1).

² If a SRO is liquidated and/or the data on this SRO are deleted from the Unified State Register of the SRO of Appraisers, the assets that make up the SRO compensation fund shall be transferred to National Council on Valuation Activity. The requirements to the procedure of investment of the transferred assets are similar to the requirements to the procedure of investment of assets of the SRO compensation fund. The assets of the SRP compensation fund that have been transferred to the National Council shall be returned, after 4 years, in cash form to the persons that were the members of the said SRO. (Art. 24.8).

³ A request to receive a compensatory payment from the compensation fund can be submitted, also to the National Council on Valuation Activity, if the assets of the compensation fund of the SRO of appraisers have been transferred thereto (Art. 24.8).

⁴ A small number.

⁵ To the procedure of investment of the SRO compensation fund assets that are transferred to a National Association of the SRO and to the procedure of compensatory payments from its funds, are similar to the requirements to the procedure of investment of assets from the SRO compensation fund and the procedure of compensatory payments from the fund assets (item. 23 Art. 25.1).

⁶ SRO based on the membership of persons engaged in engineering surveys, preparation of design documents and construction (Art. 55.3).

⁷ All SRO.

⁸ Within thirty days from the date of entry of the SRO data into the SRO State Registry the SRO shall pay an affiliation fee to the National Association of the SRO and make other payments for the needs of the National Association of the SRO of the respective type according to the procedure in the amounts set forth by the All-Russia Congress of the SRO, this is a specific feature of self-regulation in this area (part. 5.1 Art 55.20).

⁹ After the data about a SRO are excluded from the SRO State Registry, the assets of the compensation fund shall be credited to the account of the National Association of the SRO of the respective type and can be used for payments only associated with SRO subsidiary liability for the obligations of the members of such organization. The National Association of the SRO shall invest the assets of the said compensation fund according to part 4, Art. 55.16 (p. 8 Art. 55.16).

¹⁰ The establishment of the compensation fund and investment of its assets shall be made according to the procedure set forth in Art. 13, FZ “On SRO”(i. 14 Art. 17).

¹¹ An auditing company /individual auditor during the audit have the right to insure liability against breaches of the contract on auditing services and/or liability for damaging property of other persons as a result of the audit (Art 13). However, this is not related to the SRO membership.

¹² Except credit cooperatives of the second tier (item. 3 Art. 35).

The following Federal Laws do not have a clause on the SRO: “Organization of the insurance in the RF”, “On communications”, “On micro-financial activity and micro-financial organizations. They only refer to a possibility of a SRO being established.

The *Federal Law “On patent attorneys”* neither regulates the SRO activities. However this Law provides for several norms related to the SRO (Art. 5, part. 2 Art. 6, part. 2 Art. 9).

The *Federal law “On advertisement”* includes Chapter 4 that has two clauses only: the one deals with the SRO notion (Article 31) while the other – with the SRO rights (Art. 32).

The *Federal Law “On the State Real Estate Register”* also establishes the SRO rights only (Art. 34).

The *Federal Law “On the mediation procedure”* regulates the procedure of acquiring the SRO status and the SRO functions (Art. 18, 19).

Regardless of the importance to self-regulate the commercial infrastructure of the wholesale market, the *Federal Law “On electric energy”* has only one article on the SRO purpose, functions (Market Council) and requirements to the membership of a Market Supervisory Board and its competences (Art. 33).

Only organization of the wholesale market of electric energy and capacity is based on self-regulation of its participants (part 2, Art. 31), and there is no SRO for retail markets. The membership in the SRO (Market Council) for the wholesale market participants and those of wholesale electric energy is compulsory (Art. 35).

The following group of the Federal Laws regulates the SRO activities in more details.

The *Federal Law “On agricultural cooperation”* contains provisions regulating the activity of the SRO of the auditing boards of agricultural cooperatives, and such provisions can be found in a number of articles (Art. 1, 31 & 32). Their main part, however, is summed up in Article 33.1 which regulates the SRO activities in full.

This SRO has specific membership: a cooperative or a board of cooperatives must compulsory become a member of an auditing board (p. 3 Art. 31) while the auditing board must be a member of one of the SROs (part. 7 Art. 31).

Many articles of the *Federal Law “On valuation activity”* deal with SRO. In addition, Chapter III “Regulation of valuation activity” including 22 Articles regulates the SRO activity.

The National Council on Valuation Activity is a special feature of self-regulation in this area (Art. 24.10) likewise the compulsory way of securing property liability of the SRO members (Art. 24.6).

The *Federal Law “On insolvency (bankruptcy)”* (Art. 21–26.1) describes self-regulation in a similar way.

Chapter 6.1 “Self-regulation in the area of engineering surveys, architectural and construction design, construction, reconstruction and capital repair of capital construction facilities (Art. 55.1 – 55.23) of the *RF City Planning Code* contains the main provisions about the SRO.

The self-regulation rules can set requirements to insurance of civil responsibility by the SRO members (part. 12 Art. 55.5). Such requirements, however, can be compulsory if the SRO sets forth the size of contribution to the compensation fund which is lower than the legally established minimal size (with no requirement to insurance) (Art. 55.4, 55.5, 55.16).

The SRO membership issue is resolved ambiguously.

The types of works that affect the safety of capital construction facilities must be performed only by individual entrepreneurs or legal entities that have work permits issued by the SRO. Other types of work can be performed by any individual person or a legal entity (Art. 47, 48, 52). In other words, the membership is compulsory for those individual entrepreneurs or legal entities only that intend to execute a certain type or types of work that can affect the safety of capital construction facilities.

The SRO can expel from the SRO members an individual entrepreneur or a legal entity if the individual entrepreneur or the legal entity has no permit certificate for at least one type of work that may affect the safety of capital construction facilities (p. 2 Art. 55.7).

However, Article 55.15 on disciplinary sanctions imposed by the SRO against SRO members sets forth the following actions:

- termination of the term of the work permit certificate for the works that may affect the safety of capital construction facilities in relation to a certain type or types of work (item 4 part 2 Article. 55.15);
- Expulsion from the SRO membership (item 5 part 2 Art. 55.15).

According to this Article, the termination of the work permit does not mean the expulsion from the SRO members as these are two different sanctions. This runs contrary to the above mentioned Article 55.7, which says that the absence of the work permit certificate for *at least one type of work* that may affect the safety of capital construction facilities leads to a decision of expulsion from the SRO members.

Many provisions of the *Federal Law "On auditing activity"* deal with self-regulation, but there are also special articles about the SRO of auditors (Art. 17–22).

This Federal Law sets very strict requirements to the SRO membership (Art. 18).

Auditing Activity Board is worth mentioning (Art. 16). Unlike the mentioned above SRO National Associations this Board is established as an authorized federal body. Among its members are so many representatives from the SRO of auditors that makes the Board critical for self-regulation purposes.

In terms of regulation of the SRO activity, *the Federal Law "On credit cooperation"* is equal to such laws as the Federal Law "On valuation activity in the RF", the Federal Law "On insolvency (bankruptcy)", the RF City Planning Code and/or the Federal Law "On auditing activity (Art. 35–41).

The Federal Law "On energy saving and improvement of energy efficiency" describes in detail the procedure of self-regulation. However, it does not contain provisions on securing property liability of the SRO members.

The Federal Law "On heat supply" is rather new. Probably because of this, the self-regulation of this area has a lot of questions.

Thus, a non-commercial organization can become a SRO in the area of heat supply provided this organization secures additional property liability of each member before the consumers by using the following (Art. 24):

a) the compensation fund of at least RUR50,000 for each member of the non-commercial organization if the organization established a requirement to insure the civil liability by its members; inception of the insurance cover may occur in case of damage caused by defective works and services in heat supply – in the amount of at least RUR15,000 per each member of the non-commercial organization;

b) the system of individual and/or collective insurance of the liability.

The text of the Article assumes that in order to acquire a SRO status, the property liability must be secured by both ways. However, looking at item "a" we see that the compensation fund size depends on the requirement to its members to insure the civil liability.

The liability insurance requirements to the SRO members are compulsory if the compensation fund is at least RUR50,000 per one member (part 1 Art. 24).

The Federal Law does not keep any direct reference to the nature of association in SRO. Thus, a number of issues may arise.

1. A non-commercial organization can receive a SRO status in the area of heat supply if its members are legal entities supplying heat and/or they are heat network companies, and/or individual entrepreneurs (part 1 Art. 24).

A heat supplying company is a company that sells to consumers and/or heat supplying companies generated or purchased heat energy (capacity), a heat carrier and that owns, by the

property right or on any other lawful ground. the sources of heat energy and/or heat networks in the heat supply system by which the consumers receive heat energy.

A heat network company is a company rendering services in transferring heat energy.

These provisions apply to regulation of similar relations with involvement of individual entrepreneurs (Art. 2).

The membership in the SRO is not specified as a compulsory condition for performing these types of activity.

2. SRO in the area of heat supply must develop and approve the requirements to issuance of a *work permit certificate in relation to works that affect the safety of the heat supply facilities* (part 3 Art. 24). In this case, the membership in the SRO will be compulsory only for the individual entrepreneurs or the legal entities that intend performing works affecting the safety of the heat supply facilities.

Further in the Law the legislator gives the following definition of the permit certificate: “*a permit certificate to execute certain types of work or types of work in the area of heat supply*” (e.g. part 1 Art. 25 and others), this seems to be a more general notion. Thus the range of entities for which the membership in SRO is compulsory expands.

3. A person/entity in relation to whom the permit certificate is refused to be issued, must, jointly with the local government authorities of a settlement or a city district where this person/entity supplies heat, prepare a plan of actions for securing reliable heat supply under no permit certificate conditions. If certain types of work are performed by a person with no permit certificate, the SRO in the area of heat supply this person is a member of shall not be liable for this person action (no action) with the assets of the compensation fund (part 8 Art. 27).

To become a member of a SRO in the area of heat supply, an individual entrepreneur or a legal entity files an application for this SRO membership by stating certain type or types of work in the area of heat supply for which they intend to receive work permit certificates (item 1 part 2 Art. 26).

The person/entity who becomes a SRO member and meets the permit certificate requirements, is issued such certificate no later than within three business days after the date when the respective decision is made, the membership fee is paid and the contribution is made to the compensation fund of this SRO (part 5 Art. 26).

Incompliance with the permit certificate requirements for certain types of works/activities in the area of heat supply can be a basis for refusal to admit an individual entrepreneur or a legal entity as a member of the SRO (part 4 Art. 26).

It means that the refusal to issue the certificate is equal to the refusal in SRO membership. Thus, a person/entity *who has been denied a permit certificate cannot become a SRO member in the heat supply business*, and this contradicts the provisions of part 8, Art. 25. The Federal Law does not have the provisions that would state that an individual entrepreneur or a legal entity being a SRO member may *not be refused* a certificate.

4. The following disciplinary sanctions are imposed on the SRO members (part 6 Art. 27):

- a) suspension of the permit certificate term of action;
- b) termination of the permit certificate term of action;
- c) expulsion of a faulty person/entity from the SRO membership.

In the first instance, a SRO member continues to be its member regardless of the absence of the right to carry out business in the heat supply area. Two other sanctions demonstrate that the termination of the permit certificate term would not automatically lead to the expulsion from the SRO membership. These are two different actions.

Thus one can talk about a mandatory membership for those individual entrepreneurs or legal entities who intend to do works that may affect the safety of the heat supply facilities.

The action of the Federal Law “On SRO” does not apply to the SROs of professional participants of the securities market, joint-stock investment funds, managing companies and specialized depositaries of investment funds, shared investment funds, funded housing

cooperatives, non-state pension funds, credit agencies, credit history agencies (item 3, Art. 1 of the FZ “On SRO”).

The Law establishes that the relations arising in connection with the acquisition or cessation of the status of such SRO and their activities shall be defined by federal laws regulating the respective type of activity. However, by now, the following federal laws have been enforced: regulating activities of the professional participants of the securities market (Federal Law “On the securities market”), activities of non-state pension funds (Federal Law “On non-state pension funds”), activities of the managing companies of investment funds (Federal Law “On investment funds”), activities of the funded housing cooperatives (Federal Law “On funded housing cooperatives”). However, there are not many provisions on the self-regulation in the said laws.

Federal Law “On funded housing cooperatives” specifies that the SRO of the funded housing cooperatives is regulated by the Federal Law and therefore refers to the special Federal Law on the SRO of the funded housing cooperatives. However, such law has not been adopted yet. Joining a SRO is voluntary. Three Federal Laws state this implicitly (Federal Law “On the securities market”, Federal Law “On non-state pension funds” and Federal Law “On funded housing cooperatives”).

The SRO functions, rights and obligations in the above mentioned laws correspond to the main functions, rights and obligations provided for in the Federal law “On SRO”.

According to part 5, Art. 3, Federal Law “On SRO”, the obligatory requirement on securing by the SRO of additional property liability of each SRO member before the consumers of the manufactured goods (works and services) and other persons as per Art. 13 of Federal Law “On SRO” (the creation of a system of individual and/or collective insurance; setting up a compensation fund) shall be mandatory if the Federal Law does not provide otherwise. If the Law specifies a means of securing the property liability that differs from the compensation fund or insurance, these will not run contrary to the Federal Law “On SRO”.

Thus, the means of securing the liability specified by the laws that are not covered by the Federal Law “On SRO” will not contradict the norms of the Federal Law “On SRO”.

Though *the Federal Law “On the Securities market”* does not specify any means of securing the property liability of the SRO members, one should apply Art. 17 of the Federal Law of 05.03.1999, No. 46-FZ (the version dated 04.10.2010) “On the protection of rights and lawful interests of investors on the securities market” that states that the SRO shall establish a compensation and other funds to reimburse for damage incurred by investors who are physical persons as a result of activities of the professional participants who are members of the SRO.

The Federal Law “On non-state pension funds” establishes that the SRO shall secure a warranty fund or a mutual insurance society to finance the liability to indemnify losses caused by the SRO members in performing their activities (part 5, Art. 36.26).

According to the *Federal law “On investment funds”*, before a federal law is enforced that sets forth the terms and the procedure of compensatory payments to individuals for damage caused as a result of non-performance or improper performance by the joint-stock investment funds, managing companies, specialized depositaries and the persons maintaining registries of the owners of investment units imposed on them by the relevant law or the agreement on obligations, the procedure of protection of property rights of individuals shall apply according to which the losses in the form of actual damage caused by the individuals who are shareholders of joint-stock investment funds, individuals who are owners of investment units shall be compensated from the assets of the federal compensation funds set up as per the RF Law “On the protection of rights and lawful interests of investors on the securities market” (art. 63)¹¹. This fund, however, is not related to self-regulation.

The Federal Law “On funded housing cooperatives” provides for creation of a reserve fund which assets can be used to secure contingent expenses only and to cover cooperative losses. Such

¹¹ Art. 19, Federal law of 05.03.1999 , No 46-FZ (the version dated 04.10.2010) “On the protection of rights and lawful interests of investors on the securities market”.

assets may be contributed to a unified reserve fund set up by the SRO of funded housing cooperatives if a cooperative is a member of the SRO. The aims of the formation of the reserve fund, however, do not correspond to the main aims of setting up the compensation fund.

All the laws may be divided into *three groups* in terms of changes in the SRO special legislation.

The *1st group* includes the laws enforced before the Federal Law “On SRO”. These laws are: “On the organization of insurance activity in the RF”, Federal Laws “On agricultural cooperation”, “On the valuation activity in the RF”, “On insolvency (bankruptcy)”, “On electric energy”, “On communications”, “On advertisement” and “On the State Real Estate Cadaster”, the RF City Planning Code.

The *Federal Laws “On communications”, “On advertisement” and “On the State Real Estate Cadaster”* initially included the provisions on the SRO. Such provisions were also incorporated in the Law “On the organization of insurance activity in the RF” on March 7, 2005, and in the *Federal Law “On agricultural cooperation”* – on March 11, 2006. In both cases no substantial changes on the SRO activities were made.

The *Federal Law “On electric energy”* had the notion of self-regulation at the start. On 04.11.2007, however, the provision was modified, and the Trade System Administrator of the wholesale market was replaced for Market Council. A direct reference was also made that the SRO is the Market Council.

The first version of the *Federal Law “On the valuation activity in the RF”* dated 29.07.1998 contained the SRO provisions. Self-regulation was considered as an addition to the state regulation (Art. 22, 24).

Since 27.07.2006, the SRO membership has been a mandatory condition for performance of valuation. The following changes have been made:

1. The following requirements become mandatory for appraisers: insurance of liability (Art. 4, 24.6, 24.7), compliance with the standards, valuation rules and the rules of business and professional ethics; also the requirement to pay contributions (Art. 15).

2. Now the valuation activity is regulated not only at the government level. National Board on Valuation Activity develops federal standards for valuation. The SRO of appraisers develops and approves the standards and rules of valuation (Art. 18, 20).

3. The number of Articles regulating SRO has increased from one to sixteen (Art. 22, 22.1-22.3, 23, 24.1-24.10). They include, among others:

a) the notion of the SRO (Art. 22);

b) the procedure of entry of a non-commercial organization in the Unified State Registry (hereinafter – the USR) of the SRO of appraisers and the grounds thereof (including the requirement of the minimal number of members and availability of a compensation fund) (Art. 22, 23, 24.2, 24.6, 24.8, 24.9);

c) a larger list of the SRO functions, rights and obligations and the requirements to the SRO membership (Art. 22.1, 22.2, 22.3, 24, 24.1);

d) the procedure for SRO control over valuations and the procedure of application of disciplinary sanctions to the SRO members (Art. 24.3, 24.4);

e) the provisions/norms regulating activities of National Board on Valuation Activity and other associations of the SRO of appraisers (Art. 24.10).

The norms regarding the SRO Expert Council appeared in the version dated 24.07.2007 (Art. 24.2).

Since 27.12.2009, a state duty has been established for the entry of a non-commercial organization in the USR of the SRO of appraisers (Art. 23).

On 22.07.2010, (with the introduction of Chapter III “State Cadaster Value”) Art. 24.16 on the expert review of the report on definition of the cadaster value by the SRO was included in the Federal Law.

On 01.07.2011, the list of documents required for inclusion of non-commercial organizations into the USR of the SRO of appraisers was extended (Art. 23).

Significant amendments were made in the Federal Law on 11.07.2011 including:

- 1) norms on the single qualification test: if a member of the SRO of appraisers passes this test, this member can become a member of the SRO Expert Council; and on the qualification certificate issued in confirmation of passing the single qualification test (Art. 16.2, 21.1, 21.2, 24.2);
- 2) the SRO of appraisers which expert has prepared and got approved a positive expert opinion shall bear a joint liability for losses caused to the customer who concluded a valuation contract or for property damage caused to third parties by the action (no action) of an appraiser, as a result of identified violations of the federal standards on valuation and the valuation standards and rules (Art. 24.6).

The Federal Law "On insolvency (bankruptcy)" in its first version of 26.10.2002 required compulsory membership in the SRO.

Material changes were made in the version of 30.12.2008, e.g.:

1. Norms on the SRO National Associations were added (Art. 2, 26.1).
2. The compulsory terms of the SRO membership were changed.

The minimal service record on a leading position was reduced from 2 years to one year. At least two years of probation were included for an assistant to the bankruptcy commissioner as an equal alternative to the requirement for the leader's service record and the period of at least 6 months for probation as an assistant to the bankruptcy commissioner (part 2 Art. 20).

The requirement of no record of convictions for economic crimes and crimes of moderate severity, grave and exceedingly grave crimes was substituted for the requirement of no penalty/punishment in the form of disqualification for administrative offences or in the form of termination of right to hold certain positions or to perform certain types of activity as a result of the court sentence, and also the requirement to have no record of convictions for deliberate crime (part 2 Art. 20).

The registration as an individual entrepreneur was excluded from the list of compulsory terms.

New requirements have been developed: a SRO member shall have a contract of compulsory insurance of the liability; a SRO member shall pay contributions as stated by the SRO, including contributions to the SRO compensation fund (part 3 Art. 20).

The SRO is entitled to set other requirements to competences, integrity and independence of the bankruptcy commissioner as the membership conditions (part 4 Art. 20).

3. The activities of the STO governance bodies and the specialized bodies are now regulated by a separate article – 21.1.

4. The compensation fund provisions were incorporated into a separate article 25.1.

5. The scope of the SRO rights and obligations has expanded (Art. 22). The SRO now has the right to certify insurance companies, appraisers, professional participants of the securities market who maintain the registry of the securities owners and other entities that a bankruptcy commissioner may engage to secure commissioner's obligations from the debtor's funds.

The following articles dealing with the SRO activities are considered new: 22.1, 22.2, 23.1, 24.1, 25.1 и 26.1.

The later versions regarding self-regulation have not changed considerably.

Since 27.12.2009, a state duty has been imposed on the entry of a non-commercial organization in the USSR of the SRO of bankruptcy commissioners (part 1 Art. 21).

From 22.04.2010, the SRO functions have been extended due to changes in §4 dealing with the bankruptcy of financial organizations.

On 28.12.2010 it was established that the federal standards, the standards and rules of professional activity can set forth additional requirements to securing property liability of the bankruptcy commissioner for non-performance or improper performance by the commissioner of his/her obligations relating to bankruptcy (part 5 Art. 20.4).

Though the *RF City Planning Code* was enforced back in 2004, the norms regulating the SRO activity (including separate Chapter 6.1 (Art. 55.1–55.23)) appeared only on 22.07.2008. On the

same date the second version of the Federal Law “On SRO” was passed; this version had the greatest number of changes for the entire term of action of this Law.

On 27.07.2010, the following major amendments were introduced in the Code:

- 1) where the works on preparation of design documents (part 5.1 Art. 48), organization of construction, reconstruction and major overhaul (part 3.1 Art. 52) of a capital construction facility are included in the list of works that may affect the safety of capital construction facilities, the person/entity who prepares the design documents or the construction of such facility must have a permit certificate issued by the SRO allowing for doing works in preparation of design documents or organization of construction;
- 2) article 60 that sets forth the procedure for indemnification of damage caused as a result of defective works was supplemented with the following provisions:
 - whenever the data on a SRO that issued the permit certificate for works that affect the safety of the capital construction facilities are removed from the SRO State Registry, the National Association of SRO of the respective types shall have the joint liability up to the assets of the compensation fund of the said SRO credited to the account of this National Association (part 3.1 Art. 60, part 8, Art. 55.16);
 - part 5 defines persons/entities, SRO among them, who can bear joint liability for damage caused by defective works (e.g. the Russian Federation, an RF subject. etc.) (part 5, Art. 60);
- 3) to receive a permit certificate, the set of requirements has been supplemented by the notion of “certification” (sub-item 6, item 1, part 6, Art. 55.5, item 3, part. 8, Art. 55.5);
- 4) minimal requirements have been established to the issuance of the work permit certificate for preparation of design documents (part 8.1, Art. 55.5) and organization of construction (part 8.2, Art. 55.5);
- 5) it is established that an individual entrepreneur or a legal entity who have the permit certificate are entitled to perform the said works provided the cost of their preparation under one contract does not exceed the estimated cost of work execution based on which the respective SRO member paid its contribution to the compensation fund. The number of contracts that the SRO member can conclude is not limited (part 1.1 Art. 55.8);
- 6) the permit certificate is issued to a SRO member only after the SRO member has paid a contribution to the SRO compensation fund to increase the total size of the contribution of this member up to the contribution size set forth by the SRO for the members who have received the permit certificate for the said types of works but not lower than the minimal size of the contribution to the SRO compensation fund. (part 10.1, Art. 55.8);
- 7) the provision according to which the same person cannot be a leader of the standing collegial governance body of the SRO for two terms in succession was excluded (part 4 Art. 55.11);
- 8) the SRO rights on control over activities of the SRO members have been expanded (part 1, Art. 55.13);
- 9) if earlier the cash assets of the SRO compensation fund could be invested in the assets only for the purpose of the fund maintenance and increase, now the cash assets of the compensation fund can be invested in deposits and/or deposit certificates in Russian credit agencies (part 4, Art. 55.16);
- 10) the minimal size of the contribution to the SRO compensation fund for one SRO member was established (part 6, Art. 55.16, part 7, Art. 55.16);
- 11) it is established that only one National Association of the SRO of the respective type can be created (part 2.1, Art. 55.20);
- 12) the functions of All-Russia SRO Congress have been supplemented. The Congress elects President of the National Association of the SRO for 2 years and determines its authorities. The same person cannot hold the position of the President of the National Association of the SRO for two terms in succession (item 2.1, part 3 Art. 55.21);
- 13) an Article on state control of the National Associations of the SRO has been introduced (Art. 55.23);

14) a SRO shall be a member of the National Association of the SRO of the respective type since the date of entry of the respective data thereof in the SRO State Registry. This SRO must pay a membership fee to the National Association of the SRO of the respective type within 30 days as well as other contributions for the needs of the National Association of the SRO of the respective type according to the procedure and in the amount established by the All-Russia SRO Congress (part 5.1 Art. 55.20).

The **2nd group** comprises the Federal Laws passed after the Federal Law “On SRO”. These include: “*On patent attorneys*”, “*On audit activity*”, “*On credit cooperation*”, “*On energy saving and improvement of energy efficiency*”, “*On micro-financial activity and micro-financial organizations*”, “*On the mediation procedure*”, “*On heat supply*”.

Their common feature is that the SRO provisions were adopted together with these laws. There were no changes in the legal provisions, and in cases changes have been made they have been minor. Thus, *the Federal Law “On auditing activity”* was amended on 01.07.2010 as follows:

- each SRO of auditors shall adopt the rules of independence of the auditors and audit companies endorsed by the Audit Board. The SRO of auditors is entitled to include in these rules additional requirements (item 2.1 Art. 8);
- requirements to the membership for an individual auditor in the SRO are to comply with the internal control rules over work quality (sum-items 5, item 3, Art. 18, sub-items 4.1 item 6, Art. 18).

The amendments of 28.12.2010 clarify that the SRO of auditors issues to an auditor a qualification certificate (item 1 Art. 11). The SRO of auditors shall not place any demands or conditions while issuing the auditor’s qualification certificate. The SRO of auditors has the right to charge a fee for the issuance of the auditor’s qualification certificate in the amount not exceeding the certificate manufacturing and shipment costs. The issuance date of such certificate shall be the date when the SRO of auditors makes a decision to issue the qualification certificate to the auditor (item 7 Art. 11).

The **3rd group** includes the federal laws that are not covered by the Federal Law “On SRO”.

In the federal laws such as *Federal Law “On the securities market”*, “*On investment funds*” and “*On funded housing cooperatives*” the SRO provisions were specified since the date of enforcement of these laws. The SRO provisions in the last two laws have not been amended considerably while the *Federal Law “On the securities market”* was amended on 15.04.2006 by adding training of individuals in the area of professional activity on the securities market and also if a SRO is an agency accredited by the relevant federal executive authority for the securities market; grading qualification examinations and issuing qualification (Art. 49).

In the version dated 11.07.2011, Article 51.5 “Approximate terms of agreements and general agreement (the uniform contract) on the financial market” was added that specifies some of the SRO rules.

SRO provisions were included in the *Federal law “On non-state pension funds”* only on 10.01.2003. The version of 06.12.2007 clarified that now the SRO shall be the SRO of funds and organizations that keep pension accounts under respective agreements with the funds (Art. 36.26).

6.5.4. Development prospects of the SRO legislation

It is obvious that the process of implementation of the general policy on reducing the role of the government in the economy will trigger an intensive process of partial transfer of the control and supervision functions over SRO various activities, sectors and markets.

Thus the RF State Duma of the Federation Council during 2010–2011 reviewed in the first reading the draft laws envisaging the establishment of SRO in the following sectors

- 1) health care;
- 2) protection of animals;
- 3) water supply and sewerage;
- 4) fire safety;
- 5) actuarial activity.

There are also proposals to introduce self-regulation for cadaster engineering, patent attorneys, expert reviews of industrial safety, real estate management. A draft law on setting a SRO for housing and public utilities is also reviewed.

Besides, a possibility is reviewed to set requirements to compulsory membership in the SRO for some professional participants of the securities market (brokers and the persons/entities who manage securities and render services to those who are not qualified investors). All SROs support the idea of compulsory membership of professional participants and managing companies, however, those who are not SRO members have a different opinion. Mid-size and small companies consider the compulsory membership as an additional financial load, and their concerns are justified and confirmed by the SRO with compulsory membership. While making a decision on this issue, the interests of investors should be also taken into account as the level of their protection can be improved considerably at the expense of compensation funds which will be used as a source of compensatory payments for losses incurred.

There are also sectors where the proposals on the SRO initiated in 2011 were not adopted as legal provisions including SRO of managing companies of multifamily houses (though the ruling party was very active in their promotion); SRO of the compulsory inspection centers for transportation vehicles.

The degree of preparedness of the market/sectors for self-regulation is a critical issue that must become a corner stone. However, the implementation of the government objectives to reduce the degree of state regulation, to reduce budget costs etc. is not enough to make SRO activity effective. Before a SRO is established the following is required:

- to analyze the market/sector to see whether they are prepared for “independent and initiative actions”, effective control by the SRO bodies of the activities of the SRO members, and implications of introducing a SRO on the market/in the sector;
- to develop measures of state control and supervision during a transition period and further to compensate for inefficient implementation of the self-regulation functions by non-commercial companies.

As practices show, in such sectors as valuation the control and supervisory functions are ineffective; unfair players and poor professionals are not “washed out” even by bringing them to responsibility; thus the applicable legislation must be corrected and the functions of the control and supervisory bodies must be modified in this sector.

Establishing SROs in the sector of heat supply and possibly in water supply and sewerage sectors would be extremely negative in the country where 42% of rural residential houses only are equipped with water pipes, 32% - with sewerage, 20% - with hot water pipes. The scale of the task (required capex) has been beyond the government capacity; and it would be an urban utopia to rely on the SRO effectiveness.

In February 2011, the draft law “On amendments in the Federal law “On the securities market” and other legal acts of the Russian Federation” No. 469229-5 was passed in the first reading. However the law was not enforced by the end of 2011. This new draft envisages the following provisions:

1. Obligation to be members of the SRO of professional participants engaged in brokerage and management of securities if they provide services to non-qualified investors.

2. Obligation to be members of the SRO of managing companies which rules of the trust management include the issue of equity shares to non-qualified investors.

3. Obligation of the SRO of brokers and/or managing companies, the managing companies of shared investment funds to set up compensation funds to compensate individuals who are not qualified investors for losses caused as a result of insolvency (bankruptcy) of the said professional participants of the securities market and managing companies.

4. Requirements to the content of standards (rules) of the SRO of brokers, managers and dealers.

The proposed actions are deemed to be justified and they could improve effectiveness of the SRO activities and protection of the interests of the qualified investors on the securities market.

There is also a number of ideas which discussion and implementation could be quite successful:

1. Proposals from the professional community of bankruptcy commissioners regarding higher level of responsibility of the bankruptcy commissioners to ensure the effective instrument of compensation for losses incurred in the course of the bankruptcy procedure are quite fair. Thus, some of the community representatives propose increasing the minimal size of the compensation fund up to RUR20 mln. If so, the compensatory payments for one case could reach RUR5 mln.
2. The concept of passing regulatory acts on the development of mechanisms of out-of-court settlement of disputes and arbitrations that was not incorporated in the legislation seems to be quite constructive; this concept have been implemented practically in a number of SRO at the level of the National Association of the SRO of bankruptcy commissioners.
3. At the moment, the National Association of the SRO of bankruptcy commissioners does not have the functions of control and supervision over the SRO of bankruptcy commissioners; these functions are proposed to be introduced with the regulatory function being the main one.
4. The right to develop standards and rules in construction must be replaced by the respective duty fixed by law, with the requirements to the content of such documents and responsibility for performance. Given the complexity of the SRO structure, diversity of the SRO members and types of works, this duty possibly will be established at the level of NOSTROY¹².
5. In the area of the construction SRO, Rostekhnadzor supervisory functions should be enhanced; today they are poorly implemented, and there is a significant number of offenses committed by SRO.
6. To introduce a common responsibility instead of a special administrative responsibility in each sector for offenses committed by the SRO and their leaders is proposed; this will considerably enlarge the area of application also in relation to the SRO types regulated by the law.
7. The list of works affecting safety at the capital construction facilities should be reduced as the list contains works that do not affect the safety of the facilities; also there is certain duplication of works in the general and special (for hazardous and technically complicated facilities) lists.
8. Uncertainty in the authorities of the SRO and the federal government should be resolved in connection with the right to issue a work permit certificate with regards to works that affect safety of the capital construction facilities (the uncertainty emerged after the Russia's Ministry of Regional Development issued Order No 624 on December 30, 2009).
9. To improve transparency of the SRO activity on the financial market is required by publishing a SRO annual report at the SRO web-sites and the web-sites of the Federal Service for Financial Markets. Besides, to assess self-regulation efficiency, the RF Ministry of Economic Development suggests stepping-up demands to the SRO on information disclosure by the member-companies including publishing of all member companies' reports at the SRO site.
10. As the legislation does not regulate administrative responsibility of persons/entities engaged in professional activities and the officials of the SRO of appraisers (as a result of this, corruption is facilitated, the number of unfair appraisers grows, and the officials of the SRO of appraisers often demonstrate arbitrary behavior towards their members), to make changes in the RF legislation is necessary to establish responsibility of the persons who carry out professional activities and of the SRO officials.

In general we can speak about the absence of a special responsibility of self-regulated organizations for abusing the SRO members in their internal activities and of a more specialized responsibility in some of the sectors like valuation¹³ of agricultural and financial cooperatives, etc.

¹² NOSTROY – National Association of builders is a non-state non-commercial organization based on the obligatory membership of self-regulated organizations in the construction sector.

¹³ The RF Ministry of Economic Development, e.g. identifies the following gaps in the legal regulation of the SRO on valuation that must be corrected:

- 1) no legal provision that would fix the obligation of the SRO of appraisers to submit to the authorized body documents and information as per the Law on valuation activity;
- 2) no legal provision that would fix the notion and types of the expert review of reports on valuation, and requirements to the experts of the SRO of appraisers;

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- 3) no approved procedure for supervision of the activities of the SRO of appraisers, neither there is a list of legal grounds for RosReestr to perform off-scheduled audits;
 - 4) no legal provision that would fix the authorities to develop and approve the procedure for monitoring the SRO of appraisers' activities and for monitoring of this SRO by the relevant executive authorities.