

LEGAL SUPPORT FOR THE ACTIVITIES OF SELF-REGULATING ORGANIZATIONS (COMPARISON OF THE EXPERIENCE OF THE G7 COUNTRIES)

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The subject. A number of areas of professional activity in which there is mandatory self-regulation in the Russian Federation were selected: construction (as well as engineering surveys, architectural and structural design), the activities of arbitration managers.

The purpose of the article is to study the experience of foreign countries in the field of self-regulation. The study took into account the following aspects of regulation of professional activity: features of the regulatory framework, the presence or absence of professional associations that develop standards and rules of activity, especially membership in them.

In addition, the experience of regulation of medical activity as an example of the industry, which in Russia is actively discussed the feasibility of introducing mandatory self-regulation. The methodological basis for the study: general scientific methods (analysis, synthesis, comparison, description); private and academic (interpretation, formal-legal). Economically developed countries were taken, where self-regulation in certain areas have been existing for several decades: the United States, Britain, Germany, France, Italy, Japan, Canada.

Results, scope. The activities of self-regulatory organizations abroad are regulated by industry legislation, there is no special law on self-regulatory organizations, as a rule,

In contrast to the Russian practice, the emergence and further development of self-regulatory organizations abroad is not in direct connection with the emergence of mandatory legislation on mandatory membership in the self-regulating organizations.

In industries with a high degree of danger to third parties (construction, medical activities), in most countries, the system of state licensing is still maintained, which deserves a positive assessment and should be taken into account by the legislator when choosing areas of activity in which state licensing should be replaced by mandatory self-regulation.

In some foreign countries, representatives of consumers are included in the bodies of self-regulatory organizations along with representatives of the professional community, which deserves a positive assessment and can also be used in Russian practice.

Conclusions. Two models of self-regulation are used in foreign practice: voluntary and mandatory. In the case of mandatory self-regulation in foreign countries, as a rule, there is one self-regulating organization, which has the status of a national one. It is obvious that the state control exercised over one self-regulating organization is more effective and less costly than for many of them. Therefore, the experience of foreign countries concerning the transfer of powers to a single self-regulatory organization in the case of mandatory self-regulation should be used in the Russian practice.

1. Introduction.

Currently, self-regulation in the Russian Federation is carried out on the terms of Association of subjects of professional activity in self-regulatory organizations.

In our opinion, the self-regulatory organization (hereinafter – SRO) is the vested in a statutory order status of self-regulatory associations (unions) of business entities exercising regulatory, control, organizational security, and jurisdictional functions [1, p. 8].

The question of the need to reform the existing system of self-regulation in our country has repeatedly been raised in the legal literature [2, p. 27-28; 3 p. 103; 4 p. 30; 5 p. 21]. In our opinion, the further development of the system of self-regulation in the Russian Federation is impossible without analyzing the experience of foreign countries in which self-regulatory organizations have existed for decades.

A number of areas of professional activity in which mandatory self-regulation exists in the Russian Federation were chosen as the object of research in the framework of this article: construction (as well as engineering surveys, architectural and construction design), the activities of arbitration managers. From the point of view of geography, economically developed countries were taken, in which self-regulation in certain areas has existed for several decades: the United States of America, great Britain, Germany, France, Italy, Japan, Canada.

When studying the experience of foreign countries, the following aspects of regulation of professional activity were taken into account: features of the regulatory framework of activity, the presence or absence of professional associations that develop standards and rules of activity, features of membership in them.

In addition, the experience of regulation of medical activity as an example of the industry, concerning which the expediency of introducing mandatory self-regulation is actively discussed in Russia, was studied.

2. Foreign experience of legal support of activities of self-regulatory organizations in the field of construction.

In the United States, construction activities are regulated in detail by Federal law. However, a significant part of these norms is aimed at ensuring the implementation of state programs in the field of construction, the implementation of housing rights of certain categories of citizens.

A distinctive feature of the American construction legislation is also that the development of building codes is carried out by the system of standardization [6, p. 469].

The American national standards institute (ANSI), which oversees the creation, adoption, and use of standards and guidelines in various fields, serves as the national coordinator for standardization .

Model codes containing building codes and rules are developed by non-governmental non-profit organizations.

Such entities include professional associations of builders and related professions: for example, the Association of American General contractors-Associated General Contractors of America (AGC), a leading Association of the construction industry and representing the interests of more than 26,000 firms, the American Institute of architects (AIA), with more than 88,000 members, the national Association of home Builders (NAHB), with more than 140,000 members, and other organizations. Membership in these organizations is de jure voluntary. However, the need to join these organizations is due to high competition in the market [7, p. 234].

To give the model codes developed by professional associations the force of law, they are considered by specially created committees in the States, after which the model codes are submitted to the state legislature. The approval of the norms and rules developed by the professional community by the authorities testifies to the combination of the system of co-regulation and self-regulation in the USA.

Monitoring of compliance with the requirements of construction legislation is carried

out by municipal control bodies and bodies of higher state institutions (at the state and Federal levels).

A prerequisite for the implementation of construction and architectural activities is to obtain a license. Licensing is carried out at the state level by specialized government agencies-registration boards, which are created by types of professional activity [6, p. 469].

In the UK, each part of the United Kingdom has its own Building Act: the Building Act 1984 in England and Wales, the Building Act 2003 in Scotland and the Building Control Act 1990 in Northern Ireland. Despite the existence of sufficiently detailed legislation, an important role in the regulation of construction activities is played by self-regulatory organizations. These include the national House – Building Council of Great Britain (NHBC), the leading independent organization that adopts the rules for the construction of houses, considers complaints from buyers. Construction standards are developed by a Committee composed of representatives of the professional community and consumers. [8, p. 46].

According to the laws of Great Britain's membership in self-regulatory organizations is not mandatory. The license for construction is issued by the state authorities. In all parts of the UK, a two-tier control system consisting of Central and local authorities is used [6, p. 470].

A similar system of regulation, characterized by the presence of a sufficiently detailed national legislation and state licensing system, in which individual building rules and regulations are developed by associations of builders and other related professions, has developed in France, Germany, Italy.

The Japanese system of construction regulation is generally similar to the European one. Among the regulatory acts regulating construction, is the law of Japan on building regulation (Building Standard Law of Japan). The structure of the Japanese construction legislation also includes the Law on urban planning, the Law on energy conservation and others [6, p. 471].

Regulation is also carried out by non-profit associations of builders with voluntary membership, in particular the Japanese Society of

civil engineers-Japan Society of Civil Engineers (JSCE). The current membership of the organization is about 39,000. Among the powers of this organization is the development of codes of professional ethics, standards of activity, professional development of engineers.

Construction supervision is carried out by the Ministry of land management, infrastructure, transport and tourism, as well as administrative agencies appointed at the prefectural and municipal levels. To carry out architectural and civil engineering activities in Japan, you must obtain a license. The Ministry regulates the issues of professional examination of applicants for the title of engineers, as well as maintains a register of licensed specialists [6, p. 471].

Canada has national model codes containing building codes, such as the national building code and the national fire code, which are subject to each province and territory of Canada separately.

In Canada, as in other foreign countries, there are professional associations of industry representatives based on the principle of voluntary membership. For example, the Canadian Construction Association – CCA) is a non-governmental non-profit organization with more than 20,000 members. CCA not only develops its own rules of operation, but also takes part in the development of national model building codes approved by the authorities, that is, it is a subject of self-regulation and co-regulation.

Compliance with building codes is monitored by local authorities. Licensing of professional activity of architects and engineers is carried out in the form of state registration at the level of subjects and territories [6, p. 472].

The study of foreign experience in the construction sector allows us to come to the conclusion that in the field of construction in the world practice is dominated by state regulation. Existing professional associations of builders and other related professions are based on the principle of voluntary membership. In some countries, in particular in the United States and Canada, codes containing building codes are developed by professional communities and are subject to approval by public authorities, that is, there is a co-regulation.

3. Foreign experience of legal support of activities of self-regulatory organizations in the field of insolvency (bankruptcy).

In the United States, the main regulatory act governing the bankruptcy procedure is Title 11 of the US Code (11 USC Title 11-Bankruptcy) - the bankruptcy Code (Bankruptcy Code).

In the United States, the Executive Bureau of Federal managers of the United States-a special Executive body dealing with bankruptcy issues. The members of the Bureau, the Federal managers, are employees of the Federal government. The Bureau of Federal managers oversees the activities of the appointed managers of the bankruptcy estate.

Under title 28, section 586 of the United States code, each U.S. Federal administrator is responsible for establishing, in the region to which he or she is assigned, an Association of private managers entitled to act as managers of the bankruptcy estate, and for overseeing its activities. The rules for admitting persons to associations created by Federal managers are approved by the attorney General. Therefore, membership in the Association of private managers created by the state is a prerequisite for the implementation of the functions of the Manager of the bankruptcy trust.

The creation of self-regulatory organizations is not provided by US law. However, persons acting as managers (lawyers, accountants, etc.) may be members of professional associations (American bar Association and other associations). However, this membership does not involve participation in bankruptcy proceedings. In this regard, it can be concluded that it is in the field of bankruptcy in the United States, self-regulation is absent.

In the UK, all bankruptcy proceedings are governed by the companies Act 1985(The Company Act 1985), the insolvency Act 1986 (Insolvency Act) and the insolvency Rules 1986 (the Insolvency Rules 1986) detailing this act [9, p. 192].

These regulatory legal acts provide that in order to carry out the activities of the arbitration Manager must be a member of a recognized professional organization (Recognized professional

bodies) or have the permission of the Ministry of trade and industry.

A recognized professional organization is an organization approved by order of the Minister of trade and industry and trade on the recommendation of the insolvency Service, a division of the Ministry. In addition, a recognized professional organization should develop rules for the activities of its members. In addition to regulatory powers, these organizations monitor the activities of their members, consider complaints of participants in bankruptcy proceedings and apply disciplinary measures to their members.

The following organizations have recognized professional organization status: the Chartered Association of Certified Accountants; the insolvency Practitioners ' Association; the Institute of chartered accountants in England and Wales; And the Institute of chartered accountants in Ireland); The Institute of chartered accountants in Scotland; the Law Society; the Law Society of Scotland [10, p. 276].

The monitoring Division of insolvency professionals of the insolvency Service monitors the activities of recognized professional organizations and arbitration managers licensed through the Ministry.

Thus, in the UK in the field of bankruptcy, the system of mandatory self-regulation exists along with the system of state licensing.

In Germany, there is the insolvency Law of 1994 (Insolvenzordnung). Control over the activities of bankruptcy managers is carried out by the court. Obtaining any special license to participate in bankruptcy proceedings is not required. The legislation also does not provide for the establishment of professional associations of competitive managers. However, bankruptcy managers are usually selected from among lawyers and accountants who are members of professional associations of lawyers and accountants. Given that bankruptcy managers are members of professional associations not associated with the position of bankruptcy Manager, it should be noted that there is no self-regulation in the field of bankruptcy in Germany.

A similar system of regulation in the field of bankruptcy has been developed in Italy and Japan.

France is characterized by a fairly developed

system of legislation in the field of bankruptcy. Among the legislative acts in the field of bankruptcy are: act No. 84-148 of 1 March 1984 concerning the prevention and amicable settlement of difficulties in enterprises ("Relative a la prevention et au ruglement amiable des difficultes des entreprises"); Decree No. 85-295 of 1 March 1985; Act No. 85-88 of 25 January 1985 concerning the rehabilitation and judicial liquidation of enterprises ("Relative au redressement et a la liquidation judiciaire des entreprises"); decree No. 85-1388 of 27 December 1985; Decree No. 88-430 of 21 April 1988; Act No. 85-89 of 25 January 1985 concerning judicial administrators, authorized liquidators and experts in assessing the situation in enterprises ("Relative aux administrateurs judiciaires, mandataires-liquidateurs et experts en diagnostics d'entreprises").

Control over the activities of managers is exercised by the court and the Prosecutor's office.

French legislation provides for the compulsory registration of managers and liquidators in the national lists drawn up by the national Commission of managers and the national Commission of liquidators, respectively. Thus, inclusion in the list is the licensing of managers and liquidators. The national commissions are composed of judges, representatives of the court of accounts, scientists and the most authoritative managers and liquidators.

Given the constituency of national commissions, and the fact that their functions are limited to the compilation of a list and the imposition of disciplinary measures, national commissions cannot be recognized as self-regulatory organizations.

Canada has the bankruptcy and Insolvency Act 1985 (Bankruptcy and Insolvency Act) .

Canada is characterized by a fairly strict state regulation of the institution of insolvency. Regulatory, control and other functions in the area under consideration are performed by a special state body - the service Of the superintendent for bankruptcy [9, p. 206]. The service develops and approves standards for the activities of participants in bankruptcy proceedings, monitors their compliance, and issues licenses to trusts (arbitration managers). Accordingly, there is no

self-regulation in Canada in the field of bankruptcy.

Thus, the analysis of foreign experience of regulation in the field of insolvency (bankruptcy) indicates that in this area, state regulation prevails. In countries where there is a system of mandatory self-regulation, it exists along with the system of state regulation.

4. Foreign experience of legal support of activity of self-regulating organizations in the sphere of medical activity.

In addition to studying the experience of regulation in spheres of activity in which Russia currently has mandatory self-regulation, it is interesting to study the experience of regulation of medical activity as an industry in which the introduction of mandatory self-regulation in Russia is only planned [11, p. 2].

In the USA in the field of medical activity there are national, regional, city professional associations, associations on separate specialties. The largest Association is the American medical Association (AMA), whose goals are to develop standards of medical education, medical ethics programs, measures to improve the health of the population, lobbying for laws that meet the interests of patients and doctors [12, p. 80]. Membership in this organization is voluntary. The condition of medical activity is the presence of a license, which is usually issued by the States [13, p. 259-260].

A similar system, which provides for state licensing of activities and the presence of voluntary associations of doctors, exists in Italy.

There are also a significant number of professional associations in the health sector in the UK. The largest organization is the General Medical Council (GMC). The governing body of the GMC is the Council, which on a parity basis includes members of the public and physicians [14, p. 87]. Top medical Council develops standards for doctors, sets educational standards, considering customer complaints, resolves disputes and takes disciplinary action in case of violations, maintains a register of qualified doctors .

After passing the registration in the General medical Council, the doctor is entered into the register and receives a license to carry out medical

activities in the territory of the United Kingdom [15, p. 776]. Thus, in the UK in the field of medical activity there is a mandatory self-regulation.

In Germany, the German medical chamber (Bundesärztekammer) exercises powers to develop standards of medical activity, monitor their compliance, consider patient complaints, apply disciplinary measures to doctors [16, p. 180].

The Federal medical chamber unites 17 medical chambers in the Federal lands. The legislation provides for mandatory membership of all doctors in Germany in the Federal medical chamber.

Under French law, the right to practice medicine is granted only to members of the national Council of the Order of physicians (Conseil National de l'ordre des Médecins). The national Council of the Order of physicians is an independent organization that issues permits for medical practice, considers cases of disciplinary offenses. An important function is the drafting of the code of medical ethics, the development of explanations to the code. Thus, in France, as well as in Germany, there is a system of mandatory self-regulation in the field of medical activity.

In Japan, there is the Japan Medical Association (JMA), founded in 1916. Among the main functions of this organization are the development of standards and practical recommendations for doctors, providing continuing medical education, as well as promoting healthy lifestyles and providing affordable quality medical care. Membership in the JMA is voluntary. The number of JMA members is approximately 165,000, or about 60% of all licensed physicians in Japan. Thus, in Japan, along with the state licensing system, there is voluntary self-regulation.

In Canada, licensing of medical activities is carried out by the public authority—the Medical Council of Canada (MCC).

The Canadian Medical Association (CMA) is the largest Association of physicians in Canada and represents their interests at the national level. The CMA is a voluntary Association of physicians and trainee physicians that develops standards of care.

Thus, self-regulation of medical activity is actively developing in foreign countries. In a number of countries, state regulation has been

replaced by mandatory self-regulation with a single national SRO.

5. Conclusions.

The analysis of the foreign experience in the sphere of self-regulation allows to formulate the following conclusions:

1. The activities of self-regulatory organizations abroad are regulated by industry legislation, as a rule, there is no special law on self-regulatory organizations.

2. In contrast to the Russian practice, the emergence and further development of self-regulatory organizations abroad is not in direct connection with the emergence of mandatory legislation on mandatory membership in the SRO as a condition of professional activity.

3. In world practice, two models of self-regulation are used: voluntary and mandatory. In the case of mandatory self-regulation in foreign countries, as a rule, there is one SRO, which has the status of a national one. It is obvious that the state control exercised over one SRO is more effective and less costly than for many of them. Therefore, the experience of foreign countries concerning the transfer of powers to any one self-regulatory organization in the case of mandatory self-regulation should be used in domestic practice.

4. In industries with a high degree of danger to third parties (construction, medical activities), in most countries, the system of state licensing is still maintained, which deserves a positive assessment and should be taken into account by the legislator when choosing areas of activity in which, in the opinion of the state, state licensing should be replaced by mandatory self-regulation.

5. In some foreign countries, the bodies of self-regulatory organizations, along with representatives of the professional community, include representatives of consumers, which deserves a positive assessment and can also be used in Russian practice.

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