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**MEMBERS LEGAL STATUS OF SELF-REGULATING
ORGANIZATIONS**

Specialty 5.1.3 – private law (civil) sciences

DISSERTATION ABSTRACT
for the degree of PhD in Law sciences

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The relevance of the dissertation research topic. Currently, membership in self-regulating organizations (hereinafter referred to as SRO) acquires a special semantic and substantive load, as evidenced by a number of norms and legislative rules, which are reflected primarily in the Civil Code of the Russian Federation (hereinafter referred to as the CC RF). Since 2014 the legislator has fixed the rule in art. 49 of the CC RF according to which membership in the SRO is a fact directly related to the capacity emergence of a legal entity engaged in certain types of business activities for which membership in the SRO is mandatory. The above rule is designed to move away from such a method of state (public) regulation as licensing in relation to a number of entrepreneurial and professional types activities by replacing it with self-regulation, which is a private legal means of regulating entrepreneurial activity.

At the same time, the legislator's attempt to transform the methods and approaches of regulating entrepreneurial activity takes place not only in relation to those areas where licensing has been abolished. Currently, there are models of joint regulation (co-regulation) both from the state and from the SRO (for example, in the field of the financial market). In addition, the general principle of entrepreneurial activity self-regulation remains the optional participation in SRO (paragraph 1 of Article 4 of the Federal Law dated December 01, 2007 No. 315-FZ (ed. dated 07/02/2021) "On Self-regulating organizations" (hereinafter - the Federal Law "On SRO"), and a number of special laws enshrine in relation to a particular area of entrepreneurial or professional activity the right to create a SRO, membership in which does not affect the legal capacity emergence time of the subjects' relevant activity (for example, Article 18 of the Federal Law dated 07/27/2010 No. 193-FZ (as amended on 07/26/2019) "On an alternative dispute settlement procedure with the participation of an intermediary (mediation procedure)", Articles 31, 32 of Federal Law No. 38-FZ dated 03/13.2006 (as amended on 08.08.2024) "On Advertising"), etc.).

Thus, membership in the SRO becomes one of the most important ways of forming and developing entrepreneurship in Russia, the basis for regulating the

activities of business / professional entities, which themselves are involved in the selection process of those who will be in the relevant market, and who will build certain requirements for the results and products of the economy relevant branch.

Nevertheless, against the background of the self-regulation entrepreneurial / professional activities development, a number of issues related to the SRO members legal status remain unresolved, cause various discussions and continue to be controversial. Among such painful issues is the possibility establishing a truncated list of rights and obligations for SRO members, an exhaustive list of grounds for exclusion from SRO members, the introduction of mandatory self-regulation in other areas of entrepreneurial activity, which are built, among other things, on the basis of ethical and moral rules, etc.

It should also be noted that the SRO member legal status is built on the membership basis in the association, but at the same time it is supplemented and / or modified in connection with the SRO special functionality, which primarily affects the list of SRO members duties, which are a tool for ensuring the status of the SRO itself. A fairly broad and unlimited dispositivity measure in determining the SRO members corporate rights and obligations does not have the best effect on protecting the interest's issues of the members themselves and their corporate rights exercise. Therefore, it is necessary to build the boundaries and limits for the formation of the SRO members legal status themselves, as well as the very content of the elements of this status.

Thus, the study of the SRO member legal status is necessary and important, and will also improve the self-regulation institution with a focus on building an optimal set of SRO member rights and duties, as well as responsibility for his actions / omissions.

The degree of the scientific problem elaboration. Today, among the doctrinal sources in the field of jurisprudence, one can find many works on self-regulation, but above all these scientific works are related to the SRO legal status or a separate type of SRO. Moreover, the main peak of work on self-regulation falls on the period 2010-2017. In the future, the interest of researchers decreased somewhat, which is

explained by the fact that in many respects the SRO legal status was established in Russian reality (although the problems were not solved either in theory or in practice), and after 2017 there were only minor attempts by the legislator to return to improving the self-regulation institution.

Currently, issues of self-regulation, and above all in the aspect of mandatory membership in the SRO, have again become the subject of mass discussions, where the interlocutors are primarily government agencies representatives, who are, in fact, initiators of the self-regulation promotion in relation to those areas of entrepreneurial / professional activity where, as practice has shown, state regulation does not cope. Once again, the scientific community is included and involved in the discussion of improving the SRO legal status and its members issues. Among the researchers who have been intensively engaged and continue to deal with self-regulation issues, such respected scientists as I. V. Ershova, D. A. Petrov, Yu. G. Leskova, U. B. Filatova, V. V. Kvanina, M. A. Egorova, O. A. Serova, etc. should be mentioned.

In our opinion, it is the membership relationship in SRO as a subject of corporate law that today deserves increased attention, deeper and more detailed development, since many features (features), and even the content of this status may not always fit into the traditional (classical) representations of membership relations in corporate organizations as a whole, and even more so not in any way they can be explained by the approach to membership in terms of participation in business entities. Therefore, for the science of corporate law, it seems to us that the SRO membership issues development will be the answer to many problematic issues that still remain unresolved.

The purpose and objectives of the study. The purpose of the dissertation research is the scientific development of theoretical and practical provisions, which together make it possible to build a uniform scientific approach to the formation of SRO member legal status meaningful elements, to solve the legal regulation fundamental problem of the specific membership relations variety in the SRO.

The purpose of the study is achieved by solving the following tasks:

- to conduct a comparative legal characterization for the SRO and its members status legal regulation in Russia and in a number of foreign countries, identifying positive and negative aspects in their functioning and development;
- to determine the concept and legal nature of membership in the SRO, highlighting the specific features of the named status;
- to show the variety of membership types in the SRO and explore the features of each studied membership types;
- to disclose the SRO members rights and obligations, to identify gaps and conflicts of the Russian Federation current legislation in the implementation of these rights, to determine the limits and boundaries of their implementation and execution;
- to consider the specifics of the SRO member responsibility which can be characterized as corporate responsibility;
- to build a list of ways to acquire the status of SRO a member, as well as to show the procedure for acquiring membership in the SRO, related to the certain actions sequence and the legal facts number emergence;
- to investigate the specifics of the methods and procedure for membership termination in the SRO, as well as to identify the legal consequences of membership termination in the SRO.

The object and subject of the study. The object of the study is social relations arising from the corporate rights emergence, termination, and implementation, in the performance of SRO member duties, as well as upon the onset of his responsibility as constituent elements of the SRO member legal status. The subject of the dissertation research is the sectoral Russian and foreign legislation norms, judicial precedents, doctrinal sources devoted to some problematic membership issues in the SRO.

The theoretical and methodological basis of the study. The theoretical basis of the dissertation was the modern scientists works not only on self-regulation issues (I. V. Ershova, D. A. Petrov, U. B. Filatova, A.V. Barkov, Yu. G. Leskova, T. V. Dautya, etc.), but also on issues that lie in the bosom of corporate law (works on, for example, such questions such as the concept ratio of "member of a corporation",

"founder of a corporation", "participant of a corporation", or, for example, the ratio of the right to management and membership, etc.). Therefore, the author was based on the works of such prominent scientists in the field of corporate law as S. D. Mogilevsky, I. S. Shitkina, A.V. Gabov, O. V. Gutnikov, D. V. Lomakin, V. V. Vanin, V. A. Laptev, I. A. Samoilov, etc.

The theoretical constructions foundation of the dissertation research is represented by the works of prominent civilists on the legal entities system and the place of corporate organizations / corporate non-profit organizations in them (E. A. Sukhanov, N. V. Kozlova, T. V. Soyfer), as well as the works of scientists - representatives of the entrepreneurial law science (E. P. Gubin, V. A. Vaypan, I. V. Ershova, A.V. Barkov, etc.)

The author also analyzed some foreign literature in terms of how exactly the self-regulation concept and its functionality are presented in foreign SRO models, and among such interesting works it is worth highlighting the work of P. Collin, which allowed to navigate through the diversity of the foreign SRO functionality, or Wang Fan's research on self-regulation issues directly in China.

The methodological basis of the research is represented by a wide range of applied research methods, but at the same time it is generally based on the traditional approach of presenting material from the general to the particular, which involves the use of general scientific methods (dialectical method of cognition, structural-system method), as well as private scientific methods (formal legal, comparative legal, method of legal modeling). The statistical method was also used in the work in order to clearly show the real quantitative indicators of certain legal phenomena development in practice.

The information base of the study is primarily represented by regulatory acts, including the CC RF, the GRC, other special federal laws that consolidate the legal status of an industry SRO member, as well as Decrees of the President of the Russian Federation and Government resolutions regulating certain issues of the SRO member legal status. The foreign legislation on the SRO legal status and its members of such states as the USA, Great Britain, Canada, Germany, Australia, France and

China also formed the information basis for the subsequent author's conclusions contained in this dissertation research.

The dissertation research information base also includes Charters and internal documents of SRO various types (in total, more than 110 local acts of SRO were analyzed, of which 25 were reflected in the text of the dissertation). In addition to the information sources presented, the author also widely used the results of judicial practice (the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, Arbitration courts in the Russian Federation), statistical data from government agencies (Federal Tax Service, Ministry of Justice, Rosreestr, Rostekhnadzor) and non-profit organizations (for example, the national association of SRO based on the membership of persons engaged in construction, - Nostroy).

The validity and reliability of the research results is ensured by the formation of conclusions based on the analysis and interpretation of the Russian Federation regulatory legal acts, law enforcement acts, SRO charters and internal documents, scientific research (dissertations, monographs, scientific articles, abstracts of reports at scientific conferences), as well as the dissertation research of certain scientific research methods applied by the author that allow to build the right approach and direction in forming own original author's conclusions.

The provisions submitted for defense and having scientific novelty are formulated by the author primarily based on the new conceptual approach to the concept of membership in the SRO presented in the dissertation research, which differs from the traditional understanding in legal science of membership relations as exclusively internal corporate relations, as well as by building features of the membership relations specific characteristics in the SRO, highlighting various classification SRO membership groups. The author considers not only the SRO members corporate rights and obligations, but also presents their implementation and execution limits, identifies ways to solve the problems of implementing membership rights and obligations in SRO, proves the need to form a unified model of SRO member responsibility based on a single SRO compensation fund and SRO subsidiary responsibility. The proposals submitted for defense are a reflection of the

research goal solution set in the dissertation, and represent new theoretical scientific results and practical approaches to solving the tasks of dissertation research.

The dissertation author has built the following provisions, which are submitted for defense:

1. Membership in the SRO as a corporate relationship between the SRO and its member, regulated by the norms of the Russian Federation civil legislation, has the form and type not only of classical internal corporate relations in connection with the named organization management activities, but also includes external corporate relations based on the member participation in the SRO entrepreneurial and professional activities regulation through the adoption of rules and SRO standards that are mandatory for execution and compliance by all members of this organization, and in cases established by law, for all subjects of a certain activity type, accompanied by the SRO obligation to monitor their execution and impose corporate responsibility measures in case of non-fulfillment or improper execution *(the provision submitted for protection corresponds to paragraphs 6 and 17 of the specialty passport 5.1.3. – private law (civil) sciences)*.

2. Associate SRO members are any interested persons with a truncated set of corporate rights and obligations, the list and content of which are provided for in the Charter and other internal SRO documents, formed on the legislative parameters basis of status unified basic components for the legal status of the named membership type in the SRO. Associate members must necessarily be involved in external corporate relations, and accordingly, in the SRO activities as persons who, along with other SRO members, provide an independent approach to the conditions and requirements for certain types of entrepreneurial and professional activities *(the provision submitted for protection corresponds to paragraphs 6 and 17 of the specialty passport 5.1.3. – private law (civil law) sciences)*.

3. Building models of compulsory and optional membership in relation to a particular type of entrepreneurial or professional activity should be based on an institutional insufficiency forecast of state regulation, which should be understood as the institutions inefficiency current state in any branch of law, the assessment of

which signals a significant slowdown in the legal institutions development in comparison with new social needs. The introduction of mandatory self-regulation is also required when regulation by the state is impossible (for example, with regard to ethical and moral norms and rules). It is proposed to introduce a model of mandatory self-regulation in the field of blogging, which can be built either according to the type of classical mandatory self-regulation, functioning on the basis of general principles and requirements (established in the Federal Law "On SRO"), or according to the type of co-regulation that is currently being carried out in the financial market in relation to microfinance organizations and consumer credit cooperatives (Federal Law No. 223-FZ dated 07/13/2015 (as amended on 07/02/2021) "On SRO in the field of financial market"). It is also proposed to introduce mandatory membership of customs representatives in the SRO in order to form the independence of their legal status from state bodies decisions *(the provision submitted for protection corresponds to paragraphs 6 and 17 of the specialty passport 5.1.3. – private law (civil) sciences)*.

4. Membership in the SRO as a set of corporate rights and obligations is formed on the basis of the SRO functionality, which necessarily includes regulatory, security, control, representative (protective) and information functions. The necessity of expanding the SRO security function substantive component, which can be supported by the corporate property right of the SRO member to a target loan, is proved. Therefore, it is proposed to consider the SRO compensation fund not only as a way to ensure the property liability of SRO members, but also as a way to ensure the fulfillment of any SRO members contractual obligations. The content expansion of the SRO representative (protective) function should be formed on the basis of the introduction as a SRO member mandatory corporate right of his ability to apply to an arbitration court established by the SRO or the SRO association (national association) for dispute resolution *(the provision submitted for protection corresponds to paragraphs 6 and 17 of the specialty passport 5.1.3. - private law (civil law) sciences)*.

5. The SRO member legal status specifics are filled with the execution and implementation peculiarities of corporate rights and obligations, as well as the responsibility of SRO members:

- the right to participate, which can be transformed situationally into an obligation to manage the SRO activities, presupposes specific powers, including participation in the activities of specialized SRO bodies, as well as participation in the rules and standards formation/addition of SRO members entrepreneurial / professional activity;

- the presence of a group (collective) corporate responsibility of SRO members for the formation and replenishment of the SRO compensation fund;

- the SRO corporate rights and obligations represent a single indivisible complex of the SRO membership, they cannot be transferred in full or in part, except for the obligation to pay membership fees and contributions to replenish the compensation fund, which can be performed by another SRO member in connection with his corporate interest in maintaining the SRO status and a SRO member who does not fulfill such a duty;

- property and non-property corporate rights and obligations of SRO members are not subordinate to each other, but represent interrelated elements of the SRO legal status, subject to independent regulation at the level of not only the law, but also local SRO regulations;

- failure to fulfill SRO members corporate duties entails negative consequences in the form of corporate responsibility, namely disciplinary measures, the list of which is determined by the Russian Federation legislation and local SRO regulations;

- the SRO member civil liability in case of its duties non-fulfillment or improper fulfillment is supported by the SRO responsibility, which should always be subsidiary and have no differentiation depending on the unfulfilled obligations type of the SRO member (*the provision submitted for protection corresponds to paragraphs 6 and 17 of the specialty passport 5.1.3. – private law (civil) science*).

6. Membership in the SRO should not be subordinated to the territorial boundaries of the SRO functioning and its member in the same subject of the Russian Federation, since this violates the SRO member's corporate rights and interests. It is proposed to exclude the regional principle of creating an SRO in the field of construction and, as a result, the composition formation of SRO members in the field of construction exclusively through construction activity monoterritorial subjects *(the provision submitted for protection corresponds to paragraphs 6 and 17 of the specialty passport 5.1.3. – private law (civil) sciences)*.

7. With regard to the membership termination in the SRO, it is necessary to review legislative and doctrinal approaches due to their uncertainty and the legal regulation obvious insufficiency of the SRO members legal status: a) with regard to building the boundaries and limits of the SRO conditions formation for optional membership termination in the SRO, it is necessary to establish an imperative ban on the additional property obligations introduction of a SRO member in the event of his withdrawal from the SRO members composition, as well as to link the withdrawal from the SRO membership with the moment of the SRO member will expression, and not with the SRO decision; b) in relation to the compulsory method of SRO membership termination (exclusion from the SRO membership, which is at the same time a measure of SRO member corporate responsibility), a judicial procedure should be established; c) it is necessary to separate the consequences of membership termination depending on the termination method (optional or compulsory), and the adverse legal consequences of membership termination in the form of inability to become a SRO member within a certain time period should be associated only with forced methods of membership termination in the SRO related to corporate responsibility measures; d) provide for the possibility of transferring corporate rights and obligations in the order of succession during the SRO member reorganization *(the provision submitted for protection corresponds to paragraphs 6 and p. 17 of specialty passports 5.1.3. – private law (civil law) sciences)*.

Based on the study results and on the basis of the provisions submitted for protection, the author formulated proposals for amendments and additions to the Federal Law "On Self-regulatory Organizations":

The theoretical and practical significance of the research is determined by the author's conclusions and recommendations formulated in the dissertation, which can be used to improve the legislative regulation of the SRO member legal. In addition, the presented results of the dissertation research can be applied in educational activities – in the lawyers' preparation for business.

Approbation of the research results. The dissertation was completed, discussed and approved at the Department of Business, Labor and Corporate Law of the M. M. Speransky Law Faculty in the Institute of Law and National Security of the Russian Academy of National Economy and Public Administration Under the President of Russian Federation (Presidential Academy).

Individual issues reflected in the dissertation are disclosed in reports at seven international and Russian scientific conferences.

A number of dissertation provisions are published in the author's articles issued in scientific publications, among them peer-reviewed scientific publications included in the list of the Higher Attestation Commission (hereinafter - the Higher Attestation Commission) under the Ministry of Education and Science of the Russian Federation, with a total volume of 5.1 pp.

The structure of the work. In accordance with the research purpose and objectives outlined by the author, the structure of the work is also constructed. The work includes eight paragraphs combined into three chapters, as well as an introduction, conclusion and a list of sources used (bibliography).