On legal regulation of investment of financial resources of the compensation funds created by self-regulatory construction organizations

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Abstract. The article deals with the issues of legal regulation of investment of financial resources of the compensation funds created by self-regulatory organizations, identifies features of this process in the construction industry of the Russian Federation, analyzes methods of investing financial resources of compensation funds in modern Russian reality. The shortcomings of the investment policy are identified, conclusions about the need to improve legal regulation in the Russian legislation are drawn.

1. Introduction
In the economic area, self-regulation is one of the main factors of innovative development of the government, its implementation indicates a qualitatively new stage in the system of interaction between the government and society. The development of self-regulation leads to a redistribution of management functions between public structures and the self-regulation system. It is aimed at increasing efficiency of economic development. Self-regulation creates a favorable environment for doing business, which is characterized by a decrease in administrative barriers, as well as an increase in the role of the state and business in the economy) [1].

In foreign countries, self-regulatory structures have been developing for a long time, have extensive experience and are used as an alternative to public administration. In Russia, this institute has been developing since 2007, when Federal Law No. 315 On Self-Regulating Organizations was adopted. According to this law, in various industrial sectors, self-regulatory organizations (SROs) were created. One of the most striking examples is the construction industry.

Since 2007, the regulation of SROs in the construction sector has been developing and improving. The amendments were made by Federal Law No. 315 on SROs, special legislation and by-laws and regulations governing the construction sector. One of the main documents defining the specifics of self-regulatory organizations is the Urban Planning Code of the Russian Federation [2]. According to N. Seraya, “the most significant innovations were implemented by Federal Laws No. 372 and No. 340 77 (in particular, the concept of a legal status of SROs established by Article 55.2 of the Town Planning Code of the Russian Federation, which allowed transferring the procedure for obtaining SRO permits to...
the regions providing for the compensation funds (compensation funds limit the list of persons, types of work for which registration of SROs is required, replacement of the admission mechanism by mandatory membership, etc.) [3].

Compensation funds are one of the basic mechanisms of self-regulation. They embody the basic idea of self-regulation - the collective responsibility of members of self-regulatory associations for the results of their work. In world practice, there are various forms of compensation mechanisms, but their main element is the compensation fund created by intermediaries with active participation of the public and market infrastructure institutions.

2. Compensation funds

According to Russian law, design, research and construction organizations have to be members of one of the SROs. A self-regulatory organization, according to B. Bedin, is one of the institutions of the real estate market [4]. As of January 30, 2020, 120 SROs were included in the state register. They can be of the following types:

1) self-regulatory organizations including members performing engineering surveys;
2) self-regulatory organizations including members developing project documents;
3) self-regulatory organizations including members performing construction works.

At the same time, regardless of the membership, they have to create two funds - a fund for damage compensation and a fund to secure contractual obligations of a self-regulatory organization. Both funds are created to ensure property liability of SRO members: obligations as a result of damage to the person or property destroyed fully or partially. The need to create a compensation fund for securing contractual obligations is caused by the non-fulfillment or improper performance of obligations by members of self-regulatory organizations under concluded contracts. Thus, there is a two-level legal capacity for members of the SRO. On the one hand, the emergence of the legal capacity of members arising in connection with the payment of a contribution to the compensation fund, giving rise to the right to conclude construction contracts by members for the performance of works that affect the safety of capital construction projects, and secondly, special legal capacity arising in connection with payment of a contribution to an additional compensation fund for securing contractual obligations, which is mandatory only for members who intend to conclude construction contracts for you completing works affecting the safety of capital construction projects using competitive contracting methods [5].

The resources of each compensation fund are placed into special bank accounts opened on an unlimited basis. Further movement of resources is regulated by article 55-16 of the Town Planning Code of the Russian Federation. This article was introduced in 2016 by the Federal Law “On Amendments to the Town Planning Code of the Russian Federation and Legislative Acts of the Russian Federation” and other rules were in force until its adoption. Until 2016, the resources of the SRO compensation fund could be deposited in any assets, except for bank accounts of members of the self-regulatory organization; it is not allowed to invest resources placed into these accounts in securities issued by members of the SRO. The amendments adopted in 2016 tightened the rules for investing resources of the compensation funds of the SRO.

According to paragraph 8 of Article 55.16-1 of the Town Planning Code of the Russian Federation, resources of only one fund can be invested (resources of the damage compensation fund). Maintaining and increasing the size of the compensation fund is a goal of its investment.

A further analysis of legislation showed that SROs are vested with the right to choose a financial market entity that will facilitate the transformation of resources of the compensation fund into investment resources. It is possible to transfer the funds of the fund to trust management of a management company that has a license for the management of investment funds, mutual funds and private pension funds, or to a professional participant in the securities market - trust manager. (Clause 9 of the Town Planning Code). In addition, it is permissible to place resources into deposit accounts.

3. Investment of resources of the compensation fund
Today, investing resources of the compensation funds into securities is a common practice of the SROs. This is due to the development of self-regulation in the construction and housing and utilities sectors, the arbitration management and insurance sectors, the securities market, the audit sector, etc. SROs make decisions in favor of management companies. The possibility of transferring compensation funds to trust management is provided for by paragraph 5 of article 13 of Federal Law "On self-regulatory organizations" [7]. Due to the fact that there are no additional legislative acts regulating the interaction between management companies and SROs, general practice can be used as an example. One of the main aspects of the interaction between the management company and the SRO is development, coordination and adoption of an investment declaration. This document should contain a list of assets available for placement of resources, as well as the structure of the investment portfolio. The management company must take into account the risk acceptable to the founder of trust management, urgency, expectations regarding future portfolio profitability and other parameters. Federal Law No. 315 imposes the following restrictions on the management company:

- more than 10% of resources of the compensation fund cannot be invested in real estate;
- at least 10% of resources of the compensation fund should be in federal government securities.

Consequently, additional requirements for the composition and structure of the investment portfolio formed at the expense of the compensation fund are determined by the investment declaration adopted by the management company in conjunction with a self-regulatory organization.

Based on a service agreement, a specialized depository monitors compliance with restrictions on compensation fund assets, rules for placing such resources and investment requirements.

Both the management company and the specialized depository are selected as a result of a competition, which allows the SRO to maximize goals pursued when investing in the compensation fund.

Data on the number of companies licensed to manage securities are presented in Table 1.

**Table 1. Number of companies licensed to manage securities**

| Parameter                                      | unit of measurement | I quarter 2017 | I quarter 2018 | I quarter 2019 | III quarter 2019 |
|------------------------------------------------|---------------------|----------------|----------------|----------------|------------------|
| Number of companies having securities management licenses | unit       | 321            | 264            | 227            | 208              |
| Clients                                        | thousand persons   | 39,7           | 92,6           | 168,9          | 259,4            |
| including customers - individuals             | thousand persons   | 39,1           | 92,0           | 168,4          | 258,9            |
| including customers - companies                | thousand persons   | 0,6            | 0,6            | 0,5            | 0,5              |
| including active customers                    | thousand persons   | 12,0           | 27,0           | 32,0           | 54,1             |
| Share of active customers                     | %                  | 30,2%          | 29,2%          | 19,9%          | 20,9%            |
| Number of companies with 75% of customers     | unit               | 3              | 3              | 3              | 2                |
| Volume of investment portfolios                | billion rubles     | -              | 801            | 914            | 1 051            |

* Source: Bank of Russia [Electronic resource]. Access mode: [http://www.cbr.ru](http://www.cbr.ru) (accessed February 14, 2020) [8]

According to Table 1, since the first quarter of 2017, there was a decrease in the total number of companies engaged in securities management activities. A decrease occurred against the background of increased requirements for their activities set by the Bank of Russia. We can assess this trend as positive, since measures taken by the Bank of Russia contribute to the recovery of this sector and should improve quality and reliability of the compensation funds.

There is one more method of investing resources of compensation funds - placement of resources into deposit accounts. In order to regulate the mechanism of placement of resources of the damage compensation fund, the “Rules for the placement and (or) investment of resources of the compensation fund of a self-regulatory organization dealing with engineering surveys, architectural and construction designing, construction, reconstruction, and overhaul of capital construction objects” were adopted; they
were approved by the Decree of the Government of the Russian Federation of April 19, 2017 No. 469 [9]. According to this document, the resources of the compensation fund can be placed only into a deposit account in the currency of the Russian Federation. Requirements for credit organizations are set by the Decree of the Government of the Russian Federation “On requirements for credit organizations in which it is allowed to place resources of compensation funds of self-regulatory organizations dealing with engineering surveys, architectural and construction designing, construction, reconstruction, capital repair of capital construction projects” of September 27, 2016 No. 970 [10]. According to this decision, the credit institution has to meet two criteria:

- have a universal license of the Bank of Russia for banking operations;
- the amount of own resources should be more than 100 billion rubles.

As of February 1, 2020, there are three hundred and ninety-six credit organizations in Russia. The number of banks with equity of more than 100 billion rubles is significantly less (Table 2). Thus, approximately 3% of credit institutions operating in the Russian Federation meet the requirements of the Decree of the Government of the Russian Federation No. 970.

| No | Name                     | Thousandrubles |
|----|--------------------------|----------------|
| 1  | Sberbank                 | 4 510 352 502  |
| 2  | VTBBank                  | 1 652 738 873  |
| 3  | BankGPB                  | 772 413 091   |
| 4  | Rosselkhozbank           | 488 656 516   |
| 5  | Alpha-Bank               | 469 673 252   |
| 6  | FCOtkrytie               | 325 126 053   |
| 7  | MOSCOW CREDIT BANK       | 275 597 790   |
| 8  | UniCreditBank            | 218 958 900   |
| 9  | Raiffeisenbank           | 188 361 613   |
| 10 | Promsvyazbank            | 153 690 045   |
| 11 | Rosbank                  | 150 905 627   |
| 12 | Bank «VBRR»              | 133 840 277   |
| 13 | Sovcombank               | 118 136 665   |

* Source: Bank of Russia [Electronic resource]. Access mode: http://www.cbr.ru (accessed February 14, 2020) [8]

In addition to the fact that resources of the compensation fund can be placed into the deposit accounts of the same credit organization where a special bank account is opened, Rules No. 469 provides for several more restrictions.

First, the placement of resources becomes possible if there is a decision of the general meeting of members of the self-regulatory organization.

Secondly, Rules No. 469 established a limit on the resources (no more than 75% of the compensation fund of the self-regulatory organization). Thus, 100% of the resources cannot be placed in deposit accounts. At the same time, the placement of resources into a fixed term deposit account is a more attractive option. In terms of risks, the term deposit and the special bank account have no differences, because if a license is withdrawn, the credit institution can lose these resources in the same amount. The deposit insurance system does not apply to legal entities. Given the level of interest rates and the level of inflation, the resources are placed into deposit accounts to be preserved rather than increased.

Thirdly, it is forbidden to purchase deposit certificates issued by this credit institution.

The SRO can terminate the bank deposit agreement unilaterally for a number of reasons, after which the credit institution is obliged to transfer the resources placed into the deposit account to a special bank account. The obligation should be fulfilled during ten days; the term of the bank deposit agreement (one year) makes it impossible to invest resources of the compensation fund in the long-term active operations of banks. Despite large amounts accumulated by the construction sector, it does not solve the problem of attracting "long" money in the Russian economy.
4. Conclusion
Monitoring of judicial practice demonstrates a large number of litigations on the issue of compensation funds created by SROs. An analysis of the existing legislation and law enforcement practice allows us to identify problems of compensation fund regulation. The issues requiring timely resolution include civil liability of SROs in the field of construction, the legal regime of the SRO’s compensation funds and the legal regime for investing resources of SRO’s compensation funds.

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