

## THE MECHANISMS OF RESPONSIBILITY OF MEMBERS OF SELF-REGULATORY ORGANIZATIONS

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*Annotation*

The article deals with the problems of the liability of members of self-regulation organizations. It states that one of the reasons of unification SRO is to minimize business risk. In particular this allows providing compensation payments for insured persons. Model for liability involves the formation of certain funds SRO. An example of such a mechanism in Ukraine is MTSIU as one of the first unutilized SRO.

**Keywords:** entrepreneurship, risk, self-regulation, civil liability.

## МЕХАНИЗМ ОТВЕТСТВЕННОСТИ ЧЛЕНОВ САМОРЕГУЛИРОВАННЫХ ОРГАНИЗАЦИЙ

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*Аннотация*

В статье рассматриваются проблемы ответственности членов саморегулированных организаций. Констатируется, что одной из причин объединения в СРО является минимизация коммерческого риска. В том числе это позволяет обеспечить компенсацию выплат застрахованных лиц. Модель обеспечения материальной ответственности предполагает формирования определенных фондов СРО. Примером такого механизма в Украине является МТСБУ как одна из первых непоименованных СРО.

**Ключевые слова:** предпринимательство, риск, саморегулирование, гражданская ответственность.

Entrepreneurship is an independent, proactive, systematic, at your own risk activities undertaken by entities (entrepreneurs) in order to achieve economic and social benefits and profit. Economic activity creates the base economy of any type. Market economy becomes free in wide limits, which are determined by "market rules" and the relevant legal provisions. Thus, subject to legal regulation of economic activities (sale, trade, innovation) and market infrastructure (banking, securities turnover, insurance business) [1].

Private law is characterized by limited public influence what provided the fundamental principles of freedom of contract and freedom of entrepreneurial activity. The participants of civil turnover are free to turn in the contract, counterparties and determining contract terms with the requirements of the Civil Code of Ukraine, other acts of civil law, business traditions and requirements of reasonableness and fairness. Having legally-formed models of lawful behavior, the participants of legal relations can independently determine the limits of regulation of their relations, make self-regulation.

Currently, the legislation provides for the following means of regulatory effect on the activity of entities: public order; licensing, patenting and quotas; certification and standardization; application of standards and limits; regulation of prices and tariffs; provide investment, tax or other benefits; grants, compensation, innovation and targeted subsidies (Article 12. Commercial Code of Ukraine). Instead, principles, means or types of self-regulation are not codified in the act of governing economic relations.

I. Spasybo-Fateeva insists the necessity for a unified legal act -- namely, the Law "On the self-regulatory organizations", which would be controlled almost all activities of self-regulatory organizations, regardless of industry sector. It should be added that such a law will determine not only the legal status of these entities, but should provide a mechanism of self-regulation [2].

The only prerequisite for the overall regulation of the surveyed organizations is the Model Law on self-regulatory organization (31.10.2007). This recommendation refers to the act in self-regulation and self-initiative activities carried out by the subjects of business or professional activities or private pension funds and the content of which is the development and establishment of rules and standards specified activities, as well as monitoring compliance with these rules and standards.

Self-regulation of economic activities can balance private and public interests. The state delegating its authority regulator is able to move the overbearing influence on the

more important aspects of life and, in turn, self-regulation ensures the implementation of the rights of its members, representing their common interests, forming a single market, is able to regulate economic activity according to the economic situation.

Business is objective associated with some uncertainty and instability, the ability of non-operating results, which means the inevitability of risk, including the threat of loss of time, resources, profits until the probability of bankruptcy. As the main factors leading to the emergence of business risks in modern terms, include: economic crisis; criminalization of business; inflation; irresponsible economic exchange participants, because of absence of existing enforcement mechanisms to fulfill the obligations; unfair competition, frequent changes in tax laws, tyranny and corruption of officials and staff, etc. [3].

According to economists opinions risky situation associated with static process, which is caused by the following conditions: the presence of uncertainty; need to choose an alternative (it should be borne in mind that the refusal of choice is also a kind of choice); opportunity to assess the probability of the chosen alternative [4].

The necessity for legal regulation of economic relations due to the demand to ensure a certain set of social interests that require regulation. This should be guided by the need to include as a condition of public relations to the subject of regulation due to the stay of this relationship within the social interests that are implemented right. With this in mind, we should agree with V. Mahinchuk which emphasizes that the legal point of view riskiness based on the fact that the scope of financial responsibility of contractors may be narrower than the harm caused proprietors, which makes the issue of additional guarantees of the business obligations to their participants [5].

Among the various types of risks to legal regulation is subject to the so-called commercial risk, since it is the basis of business. For economic exchange this risk is paramount in determining the legal form of the entity, in the second place -- the distribution of contractual risk.

Recent studies emphasize the need to establish common criteria for risk sharing in obligations that can be applied to most of liability. According to D. Arhipov, the imperative way of limiting the amount of risk should be used that may not be based on one of the participants, otherwise economically strong participant to the contract is able to translate all the risks on the weak side [6].

Self-regulatory organization (further -- SRO) regulates economic activity (in fact -- the market), members of which are members of the SRO. As such, the SRO is formed by

association of their participants who voluntarily joined the organization, powers and accept its rules (norms). Self-regulation is based on private ownership and appropriate forms of management and through the mechanism of free competition, the possibility of transfusion of capital and thus the free movement of funds within the relevant market [7], so within the relationship "market – consumer" rather than "entrepreneur- the consumer", which guarantees satisfaction of the requirements of consumers and market balance by preserving its participants.

Nowadays, Ukraine is quite self-generated fragments. Specific regulations for the establishment of SROs within the administrators of private pension funds; credit unions; in financial services and more. The impetus for the creation of the industry self-regulation may be a memorandum of intent on mutual cooperation in promoting self-regulation of business and professional activities in Ukraine (10.10.2008). However, still there is no relevant legal provision SRO development in Ukraine.

We should focus on this aspect as compensation or insurance liability mechanisms SRO members. The above mechanisms are appropriate within the self as an SRO by introducing appropriate local regulations to effectively manage the insurance capital market and analyze the risks of business activity, effectively compensate losses to consumers and others.

The above-mentioned Model Law on Self-organization provides among the requirements for SRO provision of additional financial responsibility of each member to the consumer of manufactured goods (works, services) and other third participant by selling relative to member firms and insurance requirements (or) by forming a compensation fund SRO.

According to the proposed model of the Model Law compensation fund was originally formed exclusively in cash-contributory members of the self-regulatory organization in an amount determined by the national law of each Member State. When used as a way of ensuring the self-responsibility of the members to consumers their products (works, services) and other third party systems of personal and (or) collective minimum amount of insurance coverage under the insurance contract each member is determined by national legislation.

Additional requirements for the minimum compensation fund self-regulatory organization and the minimum amount of coverage under the insurance contract liability of members of the self-regulatory organization may be established by national laws.

The grounds and procedure for payment of compensation fund established by the general meeting of the self-regulatory organization. Not allowed payments from the compensation fund (including those not allowed to return contributions from members of the self-regulatory organization), excluding payments in order to provide members of the self-responsibility to consumers their products (services) and other third parties. Debt obligations by self-regulatory organizations, including the obligation of compensation for a member of the self-harm can not be imposed on property compensation fund SRO.

One of the flashy examples limit the risks of entrepreneurial activity is the creation of the Motor (Transport) Insurance Bureau of Ukraine (further – MTSIU) as the only association of insurers that carry mandatory insurance of civil liability of vehicle owners for damages caused to third parties.

According to the Law of Ukraine "On mandatory insurance of civil liability of vehicle owners" main tasks MTIBU are:

payments from centralized insurance reserve funds compensation and reimbursements under the conditions stipulated by this Law;

management of centralized insurance reserve fund created in MTSIU to ensure fulfillment of its functions;

ensure Ukraine's membership in the international system of motor insurance "green card" and generally recognized performance obligations to competent organizations of other countries – members of the system;

gathering the necessary information on compulsory insurance of civil liability for generalization and propose improvement of the mechanism of compulsory insurance of civil liability;

cooperation with representative organizations of other countries in the field of insurance of civil liability, coordination of compulsory insurance of civil liability of owners and / or drivers – non-residents if their entry into the territory of Ukraine and the owners and / or drivers – residents – if they leave the Ukraine;

cooperation with the Ministry of Internal Affairs of Ukraine and other state authorities for compulsory insurance of civil liability;

preparation of insurance policies and contracts of compulsory insurance of civil liability, which shall be approved by the competent authority;

insurers to provide information on insurance claims on specific insurers.

In fact, MTSIU is entitled SRO. In the absence of legislation on the SRO can identify entities that received SRO, pursuant to special legislation and legal entities acting as SROs (Exchange, Chamber of Commerce, etc.). It should be noted that according to the Provisions approved by the Cabinet of Ministers of Ukraine on September 28, 1996 [8] to January 6, 2005 MTSIU was a legal entity of public law (public institution), performing public functions regulation of insurance. Now the state has put it beyond state control, giving the following powers:

1) MTSIU is the guarantor of redress;

2) If MTSIU accordance with the rules of the international system of motor insurance "green card" was made compensation for the insurer – member of the association or the owner and / or registered in Ukraine vehicle which used abroad forged or altered illegally way insurance certificate "Green Card" and caused an accident, the related costs and MTSIU routine payments from insurance guarantee fund shall be reimbursed by such persons MTSIU in full.

3) MTSIU has the right to bring emergency commissioners, experts or entities in the state which is the average commissioner or experts, in the manner prescribed by the Authorized body for the evaluation of the insurance and the amount of damages in cases specified in Article 41 of this Law.

Under the Charter MTSIU to meet these obligations Bureau members to policyholders and third parties at the Bureau established centralized insurance reserve funds. The sources of the formation of centralized insurance reserve funds are:

basic and additional guarantee fee in the amount determined MTSIU;

deduction of premiums insurers compulsory insurance of civil liability in the amount determined by the Coordinating Council MTSIU;

returned MTSIU recourse in order funds for damage resulting from accident damage;

voluntary contributions and donations.

It is necessary to examine in detail the types of assets MTSIU that under the statute are:

a) insurance guarantee fund designed to provide a complete guarantee the solvency of insurers Bureau members and their obligations under the extension of the term of compulsory insurance of civil liability in the event of insolvency, and to ensure the solvency of the Bureau during

settling with representative organizations of other countries in the field of insurance of civil liability, which the Bureau has concluded agreements on mutual recognition agreements such insurance and mutual settlement of issues relating to damages.

The minimum amount of insurance guarantee fund, structure, order of its formation, placement and use of the fund shall be set in accordance with applicable law and regulations on insurance guarantee fund, the provisions on the procedure and conditions for the formation of centralized insurance reserve funds and provisions on the procedure for allocation of funds centralized insurance reserve funds Bureau approved by the Presidium of the Bureau and approved by the Coordinating Board Bureau.

b) Fund for victims of road traffic accidents (Fund for victims) is used for making payments to victims in cases provided by legislation on insurance against civil liability.

The structure, formation Fund for Victims, location and use of the fund established under the laws of Ukraine, the provisions of the Fund for the victims, the provisions on the procedure and conditions for the formation of centralized insurance reserve funds and provisions on the procedure for allocation of funds centralized insurance reserve funds Bureau approved Presidium Bureau and approved by the Coordinating Board Bureau.

In addition, for the purpose of preventive measures aimed at improving road safety and reducing the number of insurance claims for compulsory insurance of civil liability, a fund preventive measures Bureau.

The limits of private law regulating economic activities allow the use of model legislation provided for lawful behavior. Consequently, the relationship formed as selfregulation, which now become increasingly very important for entrepreneurship. It is the development of self-regulation will emerge a market economy, left to the professional market and limit the possible impact of abusing state.

The advantages include the SRO model limit business risk by setting relative to member firms and insurance requirements (or) by forming a compensation fund of SRO. Formation of SRO legislation should be in accordance with existing rules on legal entities, including non-commercial partnership, and in accordance with the rules of contract law. In particular, it concerns the establishment and activities of the

SRO of the insurance (reserve) capital (fund), the management of these funds, and the use of contractual structures as insurance, management, guarantee, etc. recourse. Optimal model of self-regulation will ensure the interests of entrepreneurs (by minimizing their business risk).

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