

# "From Regulation to Self Regulation"

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**In July 2008, the State Duma passed the Federal Law No. 148-FZ "On Amendments to the Town Planning Code of the Russian Federation and Other Statutes of the Russian Federation" ("Statute"). The Statute introduces several substantial amendments to the construction business in Russia and delegates regulation over construction activity to self-regulating organizations. The Statute amends two other Federal laws as well: "On Licensing of the Certain Types of Activities" and the Town Planning Code of the Russian Federation.**

First, according to the Statute, starting from the first of January 2009, *issuance by the state authority of licenses* for performing activities in the spheres of projecting, construction and engineering surveys was ceased.

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Second, from the first of January 2010, requirement for licensing in the spheres of projecting, construction and engineering surveys will be ceased as well. Therefore, starting from the first of January 2010, in order to operate in construction business no special governmental permission is required any more. However, all existing licenses officially will not cease their activity until the end of period on which they were issued but practically there will be no necessity in them. Nevertheless, existence of a license will be considered as a plus when issuing admission certificate for a construction company.

## From State Licensing to Self Regulation

The Statute introduces a period of temporary transformation from the state licensing to self

regulating in construction business. This period will last for one year and six months (from July 2008 to January 2010). During the above mentioned period, construction business can be performed on the grounds of:

- the previously issued license, received before the first of January 2009; and
- the admission certificate for the certain type of work, issued by the *self regulating organization* ("**construction SRO**").

After the 1<sup>st</sup> of January 2010, construction business must be performed exclusively on the grounds of admission certificates received from the construction SRO

## Construction SRO

Under the Russian laws, self regulating<sup>1</sup> – is a type of activity that is performed by entrepreneurs. It is aimed to develop and install the rules of their activity and control compliance of the installed rules. One of the types of self regulating organization is a construction SRO, members of which are the parties that operate in the construction business.

The Statute introduces a range of requirements for construction SRO. The main of them are:

- construction SRO must be registered as a non-profit organization in the form of non-profit partnership;

<sup>1</sup>Additional information about selfregulating and selfregulating organizations can be found in the Federal law No. 315-FZ "On Selfregulating Organizations".

- construction SRO must have the following management bodies: the general meeting of the members, collegial executive body and an executive body;
- the amount of the members must not be less than one hundred of legal entities and (or) entrepreneurs;
- construction SRO must have compensation fund which is formed in the amount of not less than one million Rubles (about 32 000 USD<sup>2</sup>). In case the construction SRO requires its members to insure their general liability, the amount of compensation fee decreases to not less than 300 000 Rubles (about 9 500 USD) per single member; and
- existence of local requirements for issuance of the admission certificates, rules of control over the activity of members, document, settling responsibility for violating the rules by the members and a range of other documents<sup>3</sup>.

As of the date of this publication, the state authority that supervises the construction SRO (the Federal Service on Ecological and Technological and Nuclear Supervision) has registered twelve construction SRO<sup>4</sup>.

### **The Procedure of Receipt of Admission Certificate for Construction Business**

In order to receive the admission certificate for the certain type of construction activity, the company has to be a member of the construction SRO. Legal entities, foreign legal entities and individual entrepreneurs are entitled to be the members of construction SRO.

<sup>2</sup>An exchange rate 31,15 Rubles per one USD settled by the Central Bank of Russia on the 17<sup>th</sup> of June 2009 was used in this memorandum.

<sup>3</sup>Full list of requirements for documents for the construction SRO can be found in the chapter 6.1 of the Town Planning Code of the Russian federation.

<sup>4</sup> The list of all construction SROs can be found on the following link <http://www.gosnadzor.ru/sluqba/sreestr.html>

In order to become a member of the construction SRO, the applicant must provide the construction SRO with:

- application on admission as a member of the construction SRO;
- copy of the document confirming the fact of the record in the state registry of the company;
- copies of all foundation documents (for the legal entities); and
- documents confirming compliance of the applicant with requirements for issuance of the admission certificate for a certain type of activity(ies).

Likewise, depending on internal fees of the construction SRO, an applicant must pay:

- an admission fee (from 20 000 Rubles (about 650 USD) to 100 000 Rubles (about 3 200 USD));
- fee to the compensation fund (from 300 000 Rubles (9 500 USD) in case of existence of requirement in the construction SRO to insure general liability and from 1 000 000 Rubles (about 32 000 USD) in case of absence of such requirement; and
- annual or monthly membership fee (from 50 000 Rubles (about 1 500 USD) to 450 000 (about 14 500 USD).

Upon receipt of documents, the construction SRO in thirty days is obliged to make a decision on whether to accept the applicant or whether to decline the applicant from admission.

In three working days after accomplishment of all necessary actions (receipt of the decision on admission, payment of admission and compensation fees), the company receives admission certificate for conducting certain type of activity.

### **Liability for not Receiving an Admission Certificate for the Certain Type of Activity**

According to the Code of Administrative Offences of the Russian Federation, after the first of January 2010 conducting construction works, reconstruction, capital repair of objects of the capital construction without admission certificate is illegal and will lead to imposition of an administrative fine in the amount ranging from 40 000 Rubles (about 1 300 USD) to 50 000 (about 1 500 USD).

Repeated infringement during the year when the first infringement occurred leads to imposition of an administrative fine in the amount ranging from 40 000 Rubles to 50 000

Rubles (about 1 300 and 1 500 USD respectively) or suspension of activity of the company for the period up to ninety days.

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**Legal fine for construction without the admission certificate constitutes from 40 000 Rubles to 50 000 Rubles or suspension of business for 90 days**

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*The comment has been prepared by Dmitry Pavlov, Lidings Law Firm Associate. If any questions occur you can contact him: [DPavlov@lidings.com](mailto:DPavlov@lidings.com), phones: +7 495 228-18-66, +7 495 913-67-42.*