

ECONOMIC AND LEGAL ASPECTS OF CHOOSING A LEGAL FORM BY ECONOMIC PLAYERS IN THE MARKET OF SOCIALLY SIGNIFICANT SERVICES

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In this paper the concepts of the socially significant service itself and the market of socially significant services are defined, their specific characteristics are designated. The principal differences between the parameters of functioning of commercial and non-profit organizations as competitive economic players in the market of socially significant services are elicited. The whole set of factors which define the economic and legal status of economic players in the market of socially significant services is defined.

Socially significant services have principal importance for providing essential necessities of each individual and the development of human potential and forming the abilities of a person to work, for satisfying the requirements of a society as a whole and the needs of the real sector of the economy.

With a view of defining the place and role of socially significant services in the general structure of services and in the conditions of necessity of differentiation of economic space into market and non-market sectors, we classify all services in the following way (fig. 1).

ity, non-selectivity and non-exclusivity. The following services are referred to as pure public services: the services of the state and municipal management, the services of the systems of national safety, the services of the protection of public order, the services of legislative regulation of public processes and social maintenance (social insurance, the state provision of pensions, the state social support and help, and also social services).

In the structure of the sector of private services in the pure state we can mark out two groups of services - consumer and industrial

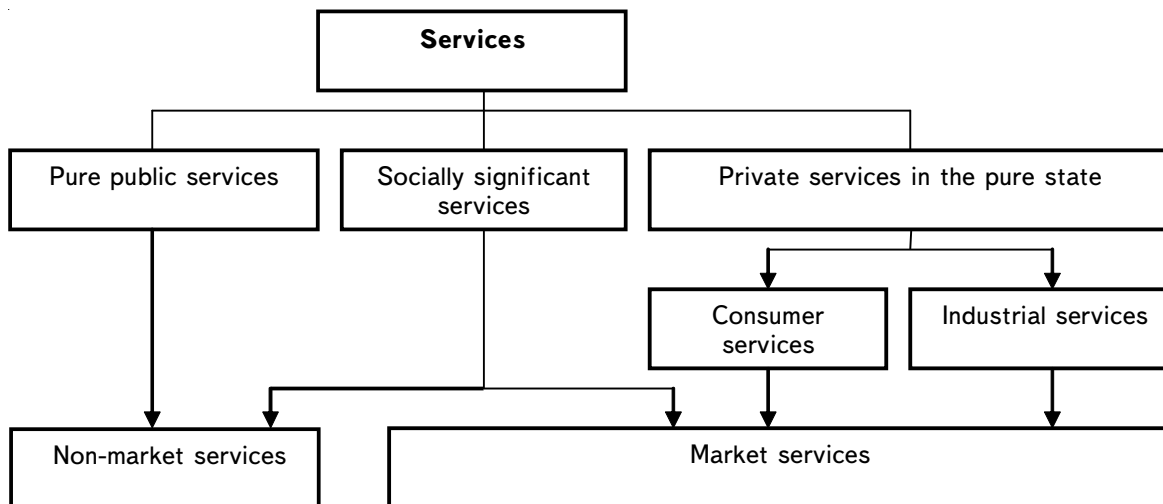


Fig. 1. Classification of the services

Pure public services possess the following characteristics: they do not go into market circulation, as they are given free-of-charge or on a preferential basis due to the funds of taxation, in the absence of rivalry for their consumption; they are characterized by indivisibil-

services. They are completely integrated in market relations, because they possess such qualities as: individualization of consumption, divisibility, selectivity, exclusivity, competitive character of granting, absence of monopoly among the participants of the market. The group of

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consumer services traditionally includes: household services, transport services, services of communication, housing-and-communal services, the services of banks, legal services, trade and public catering service, the services of physical training and sports, tourist services.

Industrial services are generally defined as a complex of engineering and consulting services; brokerage services; marketing services in support of the process of manufacturing, realization and promotion of production; construction and operation services of industrial, infrastructural, agricultural and other objects, which include preparation of feasibility reports, design development, services in training and consulting the buyers.

At the same time, there are socially significant services which have a number of specific features, caused by significant external positive effects, produced by them. These services are characterized by complicated dialectics of market and non-market, collective and individual basis. Educational services, health services and cultural services belong to this group.

The study of substance and essence of the given services allows to reveal the principal features of these services, which mark them out among all other public services and predetermine the specificity of the market of socially significant services, namely:

- I. dual character;
- II. significant external effect, which has the public multiplicative character;
- III. the necessity to estimate the results of the granted services in the coordinates of both economic and social effect.

On the basis of the research of the activity of subjects of the sphere of educational services, services in the sphere of public health and culture, it is suggested to define socially significant services as socially focused economic activities, directly satisfying the vital personal needs of an individual and the society as a whole, embodied in non-material form, which are realized both on the market and non-market basis in connection with significant external effects of public character.

Thus, the market of socially significant services has certain specificity, which is substantially caused by the peculiarities of marketable goods, in view of which the borders of the market, its subjective structure and the qualitative contents of economic relations are formed.

I. Purchase and sale of benefits in the market of socially significant services presupposes, as a rule, simultaneous presence of the manufacturer and the consumer of service at one place, and the major part of this category of benefits is consumed regularly. As a result of this, the market of socially significant services is located: the area of functioning of the given market is determined by transport costs, price level for the appropriate services in a certain territory, and coincides with social borders (the zone of influence) of a city, a region, being, at the same time, a component of larger markets.

II. The functioning of the market of socially significant services has cyclic character. The growth of economy, the increase of business activity and well-being of people, and, therefore, the actualization of motives and requirements of a high level causes an increase in the demand in the market of socially significant services. Economic recession results in the obligatory return to first and foremost satisfaction of basic needs of an individual by non-market sector and to the formation of the superfluous offer of market services with synchronous reduction of demand.

III. In the market of socially significant services there circulate benefits with special properties, which people should consume regardless of their income. This kind of consumption is guaranteed by the government, which is not only one of the basic managing subjects in this market, but also the creator of the rules of play, both for itself, and for other subjects, protecting social rights of the citizens and providing the formation of extremely positive external effects of granting of socially significant services. The interest of the state in the control over the condition of this or that sector of the market of socially significant services grows proportionally to the increase of external effects from granting these services.

IV. The principle of obligatory character of granting selective socially significant services forms such a feature of the market as the combination of the budgetary and market basis of financing. It leads to the simultaneous existence of market and administrative pricing on homogeneous services.

We suggest to regard the market of socially significant services as a certain set of mech-

anisms and rules of granting services in the sphere of education, public health and culture, established by the state in the aim of providing for the interests of social development according to the model of balanced interaction of the state, business, non-commercial public sector and the society, by means of application of which social and economic relations between manufacturers and consumers of the given services are realized in connection with their purchase and sale, the prices are established, the strategies are formed and competitive positions of the subjects of the market struggling for the limited volume of demand are determined.

The imperatives of the present stage of development of the market of socially significant services are freedom of business and the tendency towards the intensification of competition as a form of mutual rivalry of the main managing subjects (commercial and noncommercial organizations) for the appropriate market niches.

The sphere of intersection of interests of subjects of the given market is represented in fig. 2.

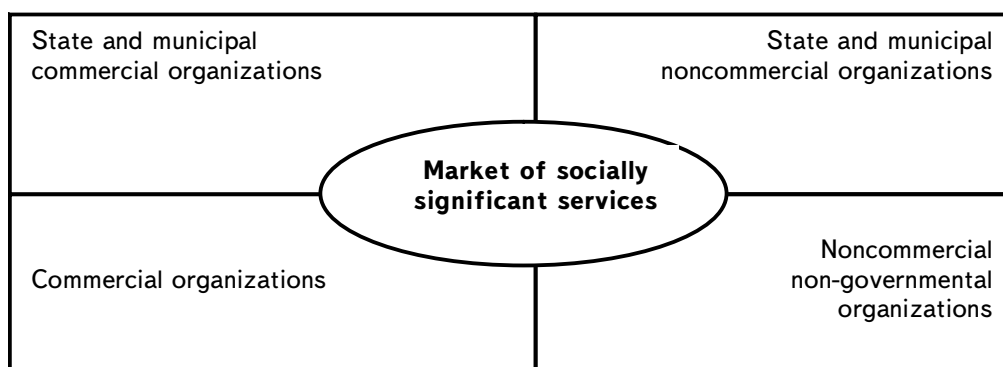


Fig. 2. Competitive connections and the sphere of intersection of interests of subjects of the market of socially significant services

The subjects of the market of socially significant services have the right to select any organizational legal form, set by the civil legislation of Russian Federation, taking into consideration the sectoral specificity and those restrictions, which form economic and legal model and rules of play in the given market (fig. 3).

According to the regulations of the Law of Russian Federation № 3266-1 of July 10, 1992 N 3266-1 "On education, state and non-governmental educational organizations" it can be created only within the organizational legal forms, stipulated by the civil legislation of Russian Federation for non-profit organizations (hereinafter referred to as NPOs). The characteristic feature of modern markets of medical and cultural services is the variety of organizational legal forms of managing subjects. As figure 3 shows, the activity on rendering medical and cultural services to the population can be carried out by both commercial and noncommercial legal persons of various organizational legal forms, and also by individual businessmen.

The choice of organizational legal forms by managing subjects in the market of socially significant services predetermines the key parameters of their functioning, namely:

- I. kinds and purposes of activity of the organization;
- II. the possibility of making profit from entrepreneurship activity and mechanisms of its subsequent distribution;

III. the volume of responsibility of the founders (members);

IV. the minimum volume of material resources, which is necessary to be brought into play at the initial stage of entering the market;

V. using this or that mode of taxation, system of accounting and reporting;

Field of activity	State and municipal commercial organizations	State and municipal noncommercial organizations	Commercial organizations	Noncommercial non-governmental organizations
Education	-	+	-	+
Health care	+	+	+	+
Culture	+	+	+	+

Fig. 3. Allowable organizational legal forms of managing subjects in the market of socially significant services

VI. the transmission of organization property ownership by its founders (members);

VII. the opportunity of getting a part of property at the moment of reorganization, liquidation of the organization or in case of exit from the number of founders (members);

VIII. management structure of the organization.

Let's consider the specified parameters in details.

I. So, when choosing an organizational legal form, it is necessary to determine what kind of activity the created organization will carry out, as the given parameter is a determinative factor, limiting the choice of organizational legal forms and what purposes the founders (members) of the organization pursue.

It is known, that the basic purpose of the activity of commercial organizations is profit earning, in contrast to NPOs, which are created for the achievement of social, charity, cultural, educational, scientific and administrative purposes, in the aim of protection of the health of citizens, the development of physical training and sports, the satisfaction of spiritual and other non-material requirements of the citizens, the protection of rights and legitimate interests of the citizens and organizations, the resolution of disputes and conflicts, rendering legal aid, and also in other purposes, intended for the achievement of public benefits (point 2, article 2 of the Federal law № 7-FL of January 12, 1996 On non-profit organizations).

NPO, in spite of the fact that the purpose of their activity is not profit earning, nevertheless, can be engaged in entrepreneurship activity if it coincides with the authorized purposes. Thus, the result of granting any services by NPOs is subjected to an assessment not only in economic, but, first of all, social effect (the development of human potential, the improvement of health of people, the creation of a favorable environment, the preservation and enrichment of cultural heritage).

In our opinion, the main practical problem is the differentiation of entrepreneurship and economic activities of NPOs. The economic activity of NPOs has auxiliary character, providing NPOs' participation in business circulation, and is connected with realization of their charter goals, as the final result and the purpose of realization of entrepreneurship and eco-

omic activities can set complicated questions of qualification, first of all, in the sphere of taxation. The solution of this situation seems to be found in the suggestion of some scientists to reserve the given differentiation only for tax purposes.

The definitions of entrepreneurship activity, given in the Civil Code of Russian Federation and Federal law № 7-FL "On non-profit organizations", do not coincide. In item 1, article 2 of the Civil Code of Russian Federation the following definition is given: entrepreneurship activity is independent risky activity, aimed at systematic profit earning by means of using property, selling goods, execution of works or rendering services by the persons, registered in this quality in the statute-established way.

With a view of Federal law № 7-FL "On non-profit organizations" the entrepreneurship activity is defined as profitable production of goods and services, adequate to the purposes of creation of an NPO, and also the purchase and sales of securities, property and non-property rights, participation in economic societies and in trust partnerships as a depositor.

The definition of entrepreneurship activity formulated and fixed in the Civil Code of Russian Federation and the Federal law № 7-FL "On non-profit organizations" do not contradict each other. At the same time, both of them seem to be not quite adequate and the legal definition of entrepreneurship activity given in the Federal law № 7-FL "On non-profit organizations" may be perfected.

On the basis of investigation of NPOs' activity, we suggest to define entrepreneurship activity of NPOs as initiative, risky activity realized by means of profitable production of goods and services, purchase and sales of securities, property and non-property rights, participation in economic societies and in trust partnerships as a depositor, adequate to the purposes of creation of an NPO, the financial result of which goes to the fund of compensation of target expenses and investment fund development, providing continuous reinvestment in the aim of forming the offer of appropriate services and the development of social capital of the organization.

Various restrictions of entrepreneurship activity of some NPOs, connected with certain kinds of obligations, can be established by the

legislation of Russian Federation. As a whole, the specified restrictions are rather insignificant and allow NPOs to take active part in economic circulation.

Perfection of legislative regulation of the activity of subjects of the market of socially significant services should be carried out in the line of establishment of an efficient regime of differentiation of entrepreneurship and economic activities of commercial and noncommercial organizations.

II. As it was mentioned above, the activity of both commercial and noncommercial organizations is focused on effective functioning. Thus for commercial organizations the only sufficient and necessary criterion of efficiency is profit earning, while for noncommercial organizations profit earning is just one of auxiliary criteria of estimation of efficiency of their activity.

Accordingly, on the principle that the key moment of choosing an organizational legal form is the realization of material interests of the proprietors, the question of extraction of the profit in the perspective and mechanisms of its subsequent distribution becomes very important.

The procedure and forms of extraction and distribution of profit in commercial organizations depend on the organizational legal form, for example:

- ◆ in a limited liability company the profit is distributed proportionally to the shares of members in the authorized capital of a company or otherwise according to the charter;

- ◆ in a joint-stock company the profit is distributed in the form of dividends;

- ◆ in a production cooperative the profit is distributed between its members according to their personal labor participation, and also according to the size of the share.

Profit of NPOs by operation of law (item 1 article 50 of the Civil Code of Russian Federation) can not be distributed between its founders (except for consumer cooperative society), and should be spent on the authorized purposes, providing persistent reinvestment and self-development. The principal moment is the direction of all financial outcomes of the activity to the fund of compensation of target expenses and the investment fund of development of target activity. NPOs use all money resources exclusively in the aim of forming the offer of the

appropriate services and development of social capital. Dividend distribution of profit is excluded.

Thus, the creation of an organization in the organizational legal form, stipulated for NPOs, deprives the founders of the right of distributing profit among themselves, however, it does not exclude the founders' opportunity of extraction of benefits from realization of basic activity in other forms (by using services, produced by the organization, and other benefits on equal terms with the third parties, and by being in labor relations with NPOs, i.e. getting wages).

Now NPOs rendering paid socially significant services, as a rule, are supervised by insider groups like the founders or top management. For these structures the situation when the same group of physical persons simultaneously acts as founders (officially or informally) and as the top managers is rather typical. Control over the financial streams, realized in extraction of benefit in the form of wages, the size of which is determined not by the ratio of salaries and efficiency of managerial decisions, is a specific prerogative of the founder - the head, who is in labor relations with the organization and often is the way of optimization of the size of taxation basis.

Such an approach to the organization of NPOs's activity reduces the efficiency of the process of formation of the funds of self-development, as is in itself a pure deduction from the activities of the organization. The specified ways of distribution of income of the organization cut down opportunities of attracting the external capital, limiting forecasting time-frame of NPO management to the short-term period. Certainly, in the countries with highly developed corporate economy there is also a problem of insider rents, but it is not the dominant model of extraction of incomes and it has incidental character.

Undoubtedly, the point of view, according to which the main motive of labor activity of the person is to receive benefit (money and equivalent values) is not indisputable, as it rejects the presence of public forces aspiring to the high ideals, but in reality it is necessary to say that it has the right for existence.

Analyzing the question of the ways of achieving the authorized purposes and the mo-

tives of the founders of NPOs, functioning in the market of socially significant services, it is necessary to note that there are some legislative guarantees which fix a complex of arrangements aimed at the protection of property interests of NPOs and, accordingly, at providing the achievement of the authorized purposes of NPOs (article 27 of Federal law № 7-FL On non-profit organizations).

So, the mechanism of the resolution of a conflict of interests between the interested persons (the head and the deputy head and also the persons in top management of an NPO or the bodies of supervision of its activity) and and NPO which arises when an NPO arranges certain deals, is set by law. First of all, the person, interested in the specific deal, the party of which is or intends to be an NPO, at the existence of any other contradictions of interests of this person and an NPO, is obliged to inform the top management of the NPO or the body of supervision of its activity about his interest before the moment of decision making about the conclusion of the deal. The deal the fulfillment of which is the subject of such interest should be approved by the management of the NPO or the body that supervises its activity.

III. When choosing an organizational legal form it is necessary for the founders to estimate the degree of responsibility which they are ready to take for the obligations of the organization, created by them.

The founders (members) of commercial organizations, in particular, the participants of a limited liability company and the shareholders of a joint-stock company are not responsible for the obligations of the company and run the risk of losses connected with the activity of the company within the limits of cost of contributions brought by them. The responsibility of the founders (members) of a production cooperative is subsidiary (in case of insufficiency of property of a production cooperative the responsibility is placed on its members).

Speaking about the responsibility of NPOs it is necessary to note that depending on the volume of the civil-law responsibility we can mark out:

◆ NPO, having by virtue of the law, full (without attraction of additional resources on the part of the founders, members) and independent property responsibility;

◆ NPO with additional (subsidiary) responsibility of its members;

◆ NPO whose character of responsibility depends on acceptance of special normative legal acts (the state corporations).

An NPO, being a rightful economic player, generally bears independent responsibility for its obligations. If not said otherwise by the law or by the articles of the association, neither the founders nor the members of the legal person are responsible for its debts as well as the legal person does not account for the debts of the founders (members). Concerning the state corporation other regulations can be stipulated by the law on the state corporations.

The founders (members) of commercial and noncommercial organizations whose responsibility has a subsidiary character bear significant risks, as in the case of insufficiency of property of the organization a penalty can be imposed on the property of the founders (members). Subsidiary responsibility acts as a special case, therefore, the legislation precisely determines the cases of the existence of additional responsibility of the founders for the obligations of an NPO. So, subsidiary responsibility may be carried by the founders of institutions, associations and unions.

Thus, it is possible to draw a conclusion that from the point of view of the level of responsibility the founders of NPOs whose responsibility is not subsidiary according to the law or to the constituent documents have the most advantageous position (a fund, a noncommercial partnership, an autonomous noncommercial organization).

IV. Monetary resources are necessary for the activity of any organization, and for some organizational legal forms the law stipulates the minimal size of the starting capital.

To create a commercial organization the founders should provide the minimal size of property, guaranteeing interests of creditors and generate the authorized capital. The law differentially defines the minimal size of the authorized capital of commercial organizations of various organizational legal forms:

◆ the size of the authorized capital of a limited liability company should be not less than one hundred minimum wages, established by the federal law for the date of submission of documents for the state registration of a limited liability company;

◆ the minimum size of the authorized capital of a joint-stock company should be not less than one thousand minimum wages, and a close joint-stock company - not less than one hundred minimum wages.

For noncommercial organizations the minimal size of property (the authorized capital) is not stipulated. When creating an NPO, the founders do not have to form its authorized capital, therefore it is possible to create an NPO even in the situation when material resources are initially absent.

V. Taking into account some features of taxation, the system of accounting and reporting of organizations of various organizational legal forms, it is necessary to estimate tax consequences and expenses for conducting book keeping and the submission of the reports connected with the activity of the organization within the framework of this or that organizational legal form.

The set of problems is connected with the interrelation between the positions of the legislation on education, public health and culture, providing special preferential rules of taxation of the appropriate organizations and the norms of legislation of Russian Federation on the system of taxation, providing privileges only in strictly limited cases.

As it follows from the analysis of the system of state regulation and taxation, there are no tax privileges for the profit tax based on the status principal for commercial and noncommercial organizations.

Examining the order of taxation for the value added tax (VAT) and granting privileges to the subjects of the market of socially significant services, it is necessary to note that the list of the operations which are not subject to the taxation for the given tax includes the following kinds of activities (article 149 of the Tax code of Russian Federation):

◆ medical services, rendered by medical organizations and (or) institutions, medical services, rendered by doctors, engaged in private medical practice with the exception of cosmetic, veterinary and sanitary-and-epidemiologic services;

◆ services of preschool establishments, services teaching children in circles, hobby and sports groups and studios;

◆ educational services of NPOs in industrial practice (in the directions of the basic and

additional education, specified in the license) or educational process, with the exception of consulting services, and also rental services;

◆ services, rendered by establishments of culture and art.

NPOs which make payments to physical persons, as well as commercial organizations are regarded as payers of the uniform social tax in full, with the exception of the NPOs created in the form of public organization of invalids.

Since 2004 the tax on property of organizations is estimated and paid according to the positions of chapter 30 of the Tax code of Russian Federation. Russian and foreign organizations, including NPOs, are regarded as tax bearers of the tax on property.

Many complicated questions in the sphere of taxation of managing subjects in the market of socially significant services can be solved mainly by means of legislative work. Thus, at the given stage its basic direction should be the following: inclusion of the rules which take into account the specificity of economic relations in the sphere of education, public health and culture, into the positions of accepted codified acts (the Tax code and the Budgetary code of Russian Federation).

When choosing an organizational legal form for working in the market of socially significant services, it is necessary to estimate the expenses on book keeping and reports' submission. NPOs, as well as commercial organizations, conduct book keeping and submit reports according to the Federal law № 129-FL of November 21, 1996 On book keeping and the Order of the Ministry of Finance of Russian Federation № 34n of July 29, 1998 On the statement of Position on conducting book keeping and the accounting reports in Russian Federation.

According to the Order of the Ministry of Finance of Russian Federation № 34n of July 29, 1998 On the statement of Position on conducting book keeping and accounting reports in Russian Federation, NPOs have the right not to submit the Report on movement of money resources in the structure of annual accounting reports, and in case of absence of appropriate data, they also have the right not to submit the Report on changes of the capital and the Appendix to accounting balance. It recommended

to NPOs to include the Report on target use of the received resources in the structure of annual accounting reports.

Besides accounting reports noncommercial organizations, as well as commercial ones, submit tax and statistical reports in the order established by the legislation.

Thus, the order of conducting book keeping and submitting reports for commercial and noncommercial organizations has some differences, however the simplified order of submitting accounting reports is established only for public associations.

VI. At the initial stage the founders (members) of the organization inevitably face the necessity to transfer any property to the organization. Such transfer can be accomplished in various ways which demand appropriate legal registration. Time and financial costs will depend on the way of assignment.

The founders (members) can transfer property to a commercial organization (limited liability company and joint-stock company) in the following ways:

- ◆ by making contributions to the authorized capital of a limited liability company or by purchasing of the shares, placed by a joint-stock company, at the time of creation of the company;

- ◆ by making contributions to the authorized capital of a limited liability company or by purchasing of additional shares, placed by a joint-stock company, at the situation of increasing of the authorized capital of a company;

- ◆ members of a limited liability company, according to the charter or the decision of general meeting, can make contributions to the property of a limited liability company.

Besides property can be transferred to commercial and noncommercial organizations under the civil-law contract, taking into consideration the restrictions established by the law.

The founders (members) can transfer property to an NPO in the following ways:

- in the form of regular and one-time receipts from the founders, voluntary property payments and donations (for all organizational legal forms of the noncommercial organizations);

- in the form of voluntary or obligatory membership dues (for NPOs, having membership, such as a consumer society, noncommercial partnership, association, public organization etc.).

The order of regular receipts from founders (members) is defined by constituent documents of the organization.

VII. In the situation of making a choice between the commercial and noncommercial form of conducting the activity the question of receiving the property transferred to the organization becomes very important for the founders in case of leaving the organization (the termination of participation), and also in the case of liquidation of the organization.

As to the commercial organizations (limited liability company, joint-stock company), their members have liability rights, therefore they can demand to return the enclosed resources (a part of property of the organization) in the case of their leave (the termination of membership).

Besides, the member of a limited liability company has the right to sell or to dispose the share in the authorized capital of the company in the other way. The shareholder has the right to sell or to dispose shares, belonging to him, in the other way.

The founders of NPOs do not keep the rights to the property transferred to the organization, therefore they can not apply for reception of property in case of leaving the organization, with some exceptions.

Thus, the legal status of founders (members) of a consumer society and a noncommercial partnership is the closest to the legal status of founders (members) of commercial organizations.

VIII. One of the most important questions for managing subjects in the situation of choosing an organizational legal form is the possibility of supervising its activity and generating the structure of management adequate to the purposes and requirements of the founder.

The structure of management of commercial organizations is substantially settled by the law. For NPOs the appropriate structure in most cases is defined by the charter and depends on the discretion of the founders.

So, the investigation shows that the economic-legal status of a managing subject in the market of socially significant services is determined by a set of factors (fig. 4).

Firstly, the economic-legal status of managing subjects of the given market is determined by the branch specificity of segments of the market of education, public health and culture services in view of the restrictions considered above.

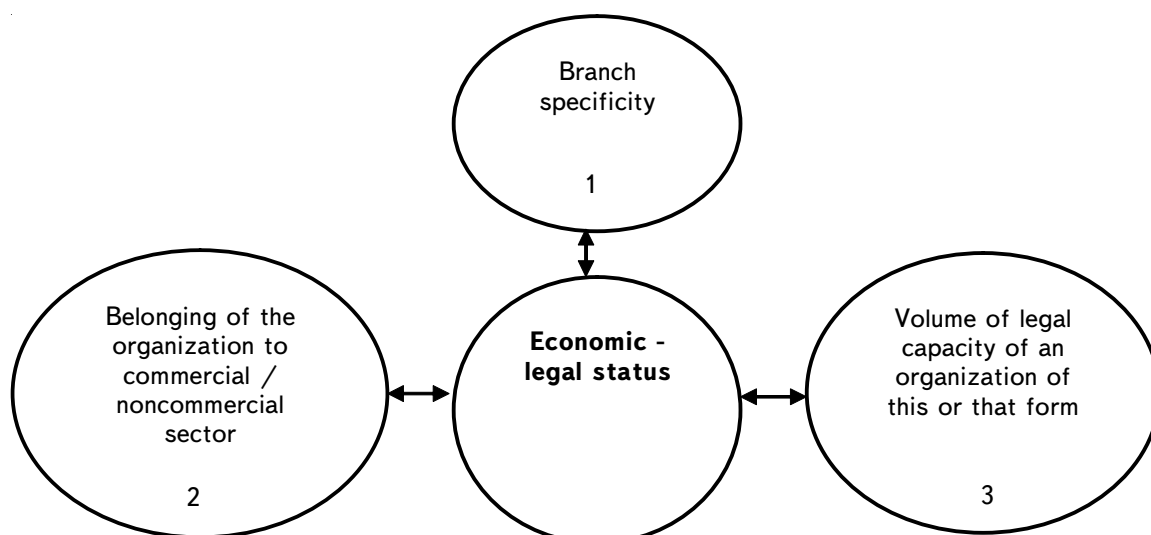


Fig. 4. The factors, determining economic-legal status of managing subjects in the market of socially significant services

Secondly, the determining factor is belonging of this or that organization of social sphere to a commercial or noncommercial sector of the market of socially significant services.

Thirdly, in the process of analyzing of the civil legislation, we have made the conclusion, that generally the Civil code of Russian Federation and the Federal law № 7-FL On non-profit organizations connect the possible volume of legal capacity of organizations with this or that organizational legal form, that is a set of the concrete attributes objectively allocated in the system of common attributes of the legal person and essentially distinguishing the given group of legal persons from all others.

With the help of the results of comparative analysis of parameters of functioning of managing subjects in the market of socially significant services we revealed some features of economic-legal status of commercial and noncommercial organizations regarding kinds and purposes of their activity, the volume of responsibility of the founders (members), opportunities of extraction of profit and the mechanisms of its distribution, features of taxation etc.

Thus, it is possible to draw a basic conclusion, that the position of NPOs which are the

basic and in some cases the only managing subject (for example, in the sphere of education) in the market of socially significant services in comparison with commercial organizations is unclear. On the one hand, NPOs are limited in their economic activities by the authorized purposes and the principle of exclusion of profit distribution. On the other hand, they create a growing share of cumulative public product, take active part in the development of factors of economic activities and are integrated in the structure of public production process.

So, managing subjects making a choice of an organizational legal form for working in the market of socially significant services, with a view of increase of their competitiveness and achievement of the authorized purposes of the organization should take into account the economic and legal aspects considered above.

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2. Federal law № 14-FL of February 08, 1998 On limited liability companies.

3. Federal law № 208-FL of December 26, 1995 On limited joint-stock companies.