

## Accountancy expertise in quantification of patrimonial damage

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**Abstract:** *The scope of the accounting expertise covers the entire economic and financial activity of an economic agent. It has as a research object the economic and financial situation of the patrimony and its capacity to generate profit, as it results from the primary documents and the technical-operative and accounting records regarding the legal input and output of the material and monetary values, with the ultimate aim of scientifically establish the correctness or inaccuracy of patrimony management.*

**Keywords:** *accounting expertise, efficiency, management.*

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### Introduction

The expertise is: „*the operation of one or more experts to find out facts, to control, to examine, to measure and to evaluate certain works,*” „*a research that consists of different operations specific to each specialty,*” „*a means of investigation, through which it is reached to obtain a sample, or to accurately assess an existing evidence,*” „*the operation entrusted to persons on the basis of their special knowledge, on the facts that judges could not themselves appreciate,*” „*a means of proof, governed by the Code of Civil Procedure, to which the court applies in the event that, in order to establish objective truth, it is necessary to clarify the factual circumstances for which specialized knowledge is required*” in the field of science, technique, cause or dispute that is being investigated, the expertise can be: technical, of civil navigation, merceological, medical, philatelic, graphological, forensic, accounting etc.

The accounting expertise is a form of scientific research carried out in order to clarify the manner in which certain facts, circumstances, situations of economic and financial nature are reflected in the documents and the technical-operative and accounting bookkeeping.

According to its purpose, accounting expertise may be judicial - required by certain institutions to deal with cases under investigation, inquiry or judgment - or extrajudicial - requested by interested natural or legal persons without an investigation, inquiry or judgment file.

Judicial accounting expertise "*is a means of evidence in court, a form of investigation and clarification of facts or circumstances of economic and financial nature, indicated by the judicial authorities, for the purpose of settling disputes between legal persons, between them and natural persons, and criminal trials on crimes that have damaged patrimony*".



Judicial accounting expertise is a means of proof at which the prosecuting authority or the court appeals, at the request of the parties or ex officio, for the purpose of clarifying certain facts and establishing the material truth. It is entrusted by the respective courts to specialists in order to ascertain and evaluate certain facts, which the judges could not obtain or appreciate themselves, establishing for this purpose the points on which the appointed experts are to decide.

As a specialized activity, the accounting expertise is characterized by the following features:

- *has as object the investigation of facts or situations of economic-financial nature;*
- *includes in its sphere the economic activity of an economic agent for the problems and objectives established by the judiciary;*
- *investigates facts and circumstances on the basis of the information provided by the economic record and its material supports;*
- *interpret the evidence data and formulate opinions on the issues investigated on the basis of the laws and normative acts regulating the respective field of activity;*
- *draws conclusions based on the findings made, which serve as a means of proof for the judicial authority that ordered the expertise;*

According to the judge's internal conviction, based on law and conscience, he is in a position to appreciate the probative force of accounting expertise, corroborated with other evidence and material evidence, and to accept or reject the conclusions formulated, depending on their scientific level and quality.

The accounting expertise has as its main task to contribute to finding the truth and to the fair solution by the judicial authority of the case under investigation or trial. It must provide, in the course of its investigations, a sufficiently strong and unambiguous proof for the accountability of persons guilty of violating legality, disregarding financial discipline and harming the patrimony.

For this purpose, the accounting expertise examines the causes which determined the deviations from the legal norms of economic and financial character, decipher the economic and financial relations between the parties at issue, characterizes the actual status of the respective economic agent in relation to the law and the normative acts that regulates the investigated field, establishing causality links and responsibilities.

From the study of the causes of damages to the patrimony, the expertise can reveal the deficiencies in the organization and management of the record system, the imperfections propagated along the decision-making process, as well as the omissions or errors committed in the performance of the service duties with negative consequences on the patrimony of the expertise economic agent.

### **The objectives of the judicial accounting expertise.**

The concrete objectives of the judicial accounting expertise are limited, in terms of content and period, to facts and circumstances that have generated litigation. Judicial accounting expertise may have as its objectives, for example, the determination of the extent of material and financial damage to the property, the period of damage, negligence or abuse of service in connection with the establishment and performance of contractual obligations, the establishment of delays in payment of the price, and the correctness of the calculation of the penalties, the determination of the quantities of products delivered between the parties to the dispute, the payment and the remaining payment, etc.



The judicial accounting expertise comprises the economic and financial aspect of the facts and circumstances, the judicial side being exclusively the competence of the judicial authorities. For example, in litigation on damages, the accounting expertise provides the judicial authorities with clarification on the existence and proportion of the shortcomings in the patrimony of an economic agent, the nature of the act that caused the loss and the determination of liability. The objectives of establishing the guilt of the persons who have caused the material damage and the facts that generated them exceed the scope of the accounting expertise, these being the objectives of the criminal investigation.

The objectives of the accounting expertise, respectively the questions to be answered by the expert, shall be determined by the criminal investigative authority or by the court at the request of the parties or ex officio. In fact, judicial accounting expertise is a means of proof which is ordered, at the request or ex officio, by the law enforcement authority when, for the purpose of clarifying facts or circumstances of the case, the knowledge of an expert is required. Consequently, accounting expertise is performed only by persons who have the status of expert accountant.

The objectives (questions) to be solved for the accounting expert are established and recorded in writing in the "ordinance" by the criminal prosecution authorities or in the "court order" by the court. The accounting expertise solves only the objectives or problems indicated in the act by which it was ordered and only for the set period. The subject of the accounting expertise may be extended only with the approval of the authority that ordered it.

Objectives must: be formulated with objectivity, clearly and concretely, in strict logical order and within the limits of competence, rights and obligations of the accounting expert; address issues requiring theoretical and practical accounting knowledge; be closely related to the content of the case being judged and arising from the concrete circumstances of the case; exhaust all unclear aspects in that file; include all the circumstances of the case so as to prevent future formulation of new objectives; not require the accountant expert to enter legal frames of the facts investigated.

The appointment of the accounting experts *shall be done by the authority that orders the expertise, as the case, by ordinance (the criminal prosecution authority) or court order (the court).*

The accounting expertise can be performed by the person who is the accountant expert, which is included in the Chart of the Association of Accountant Experts and Authorized Accountants published annually in the Official Gazette. Making an accounting expertise can only be refused for good reasons, such as illness, vacation, special professional tasks, etc. The sound reasons for refusing to carry out the accounting expertise are not confused with incompatibility cases.

*The accounting expert is incompatible to perform the accounting expertise, in a given case, in the following situations:* he initiated the criminal proceedings, issued an arrest warrant, ordered the arraignment, made substantive conclusions as a prosecutor or was judge in the same file; was a witness or a representative (expert recommended by the party), or defender of a party - the witness quality takes precedence; is interested in solving the case in a way, that is likely to make him/her subjective; is part of the organizational system of one of the parties to the proceedings; ruled on matters that are the subject of the file, as a controlling, management, technical or specialized authority, or took part, as executant, in the preparation of primary documents, accounting, technical-operative records, etc.

The interested party has the right to request, in addition to the expert appointed on the recommendation of the local service, to participate in the carrying out of the expertise, at its expense, also an accountant expert



recommended by her, which is included in the Chart of the Association of Accountant Experts and Authorized Accountants. The expert recommended by the party has equal rights with the experts appointed by the criminal investigation authority (prosecutor or police) or by the court, based on the recommendation of the local services, being obliged to participate effectively in the accomplishment of the accounting expertise.

*The accounting expert appointed to perform the accounting expertise is entitled to:* examine the case file and other necessary documents; to participate in establishing the objectives of the expertise and to request the authority that ordered the expertise, the reformulation or the completion of the objectives; to receive, with the approval of the authority that ordered the expertise, clarifications and explanations from the parties; to request that control be carried out if it finds that the expertise cannot be carried out without prior checking; to be paid for the work done.

*The accounting expert has the following prohibitions:* entrust to another person the performance of the expertise for which he was appointed; to disclose the data that he or she has been aware of when performing the task he/she received; to raise and keep at his/her home the case file or the materials therein; to get from the parties any documents they may submit to the case file or attach them to the expert report; to carry out the financial control of managing, inventorying or updating accounting records; to make written explanations from parties or third parties and ask them for the expertise; to release the parties concerned or third parties copies after the expertise report.

In Romania of the transition period towards the market economy, economic and financial criminality, in all its forms, has registered alarming proportions, in all areas of activity, against the backdrop of the economic and social imbalances with multiple causality and the tense processes, caused by these changes.

Phenomena of aggression of national wealth, illegal transfers of capital, large-scale thefts, fraudulent bankruptcies, smuggling and tax evasion, abuses and special deceptions, falsification of documents of any kind, massive removal currency in the country etc. have emerged and permanently developed. Most of the complex crimes discovered in the economy were accompanied by acts of corruption, committed both by persons with management functions and those with control, audit or expertise tasks. Under these circumstances, it is understandable that the European Commission is worried that enlargement to the East could infected the Union with the microbe of corruption.

In order to provide favorable premises for preventing and combating economic and financial criminality and developing a healthy business environment, professional accountants have a duty to manifest themselves with increasing responsibility for the satisfaction of professional, ethical and deontological requirements, as well as for the expression of respect and attachment to the service of public interest, defined as "*the collective welfare of the community and institutions, served by professionals in accounting*". In civilized communities, professional accountants play an important role in society, which is why their responsibility cannot be reduced to meeting the individual needs of a customer or the state, but it must be reported primarily to the public interest.

The audience to the products and services of the accounting profession are managers, investors, banks, employers, business communities, the international community, and law enforcement institutions that give great confidence to professionals in the field, relying on their decisions on objectivity, integrity, independence and professional competence, qualities that ensure equidistance between the requirements of non-convergent interests.



The lack of firmness of the professional accountant, the perversion between personal financial interest and the objective public interest, lack of strength of character to keep untouched personal dignity are causes where weaknesses can seriously affect the quality of the professional act, sometimes until it becomes subject to criminal law.

The goals of the accounting profession are represented by the activities carried out at the highest standards of professionalism in order to meet the requirements of the public interest at the highest level of performance. To meet this goal, four essential requirements must be fulfilled: the credibility of information to make the best decisions, the professionalism, the quality of the services provided, and the trust of the users in the services provided by the professionals.

Deontological behavioral force accounting experts, professionals in the field, to act and behave in a manner compatible with the good reputation of their profession, the Association of Accountant Experts and Authorized Accountants in Romania being the guarantor for the public of the quality and reliability of its members' works.

*Thorough professional training*, competence, independence, material dissimulation, morality, probity and dignity are essential intrinsic qualities of an accounting expert. Resistance to pressures of any kind, which can irreparably affect independence, integrity and objectivity, is also essential.

*Independence* as an essential condition for the effective pursuit of the profession determines that the liberal accounting profession is incompatible with the status of an employee or a civil servant, with the entrepreneurial or marketing nature, so that the person who is engaged in liberal accounting services must be strictly limited to them. Only in the case of full independence, any professional accountant may be and express him or herself freely of any interest which might undermine his or her integrity or objectivity. In this context, integrity must be interpreted as an obligation of the professional accountant to be right, honest and sincere in the performance of his work and missions, and objectivity corresponds to the detachment of all that is subjective, of an impartial, devoid of prejudices and preconceived ideas behavior.

The accountant should maintain an independent mind in thinking, action and behavior that allows him to perform the mission with integrity and objectivity, but at the same time he must be outside any real relationship that could be interpreted as incompatible with the requirements of integrity, objectivity, independence and professional judgment. *The most common threats to independence and objectivity are self-interest, self-control by giving up expressed opinions, giving up your own beliefs, familiarity with the client and intimidation, through real and perceived pressures and threats, from managers, directors or employees of the client company.*

*Compliance with the principle of professional secrecy*, protecting the client for the activities he performs, requires the accountant expert not to use or to appear to use that information for his own benefit or for the benefit of a third party. He is obliged to communicate information about the activity of his client only under the conditions stipulated by the law, such as the commission of some crimes by him, in real activity carried.

In Romania, C.E.C.C.A.R., pays great attention to the application of the national ethical code of professional accountants, which is the taking over and application in the Romanian accounting profession of the ethical code of the International Federation of Accountants (IFAC).

Only by respecting the principles of ethics and deontology, the professionals in the field ensure the strength, reputation and the necessary capacity; through the services they provide, to develop the business environment and the Romanian society in the sense of progress.



The criminal investigative authority or the court, in order to dispose of an accounting expertise, sets a deadline for the parties to be called, as well as the appointed and recommended experts, as the case may be.

At the fixed deadline, the parties and the expert are informed about the subject of the expertise and the questions to be answered by the expert. At the same time, the parties and the expert are advised that they have the right to comment on the questions asked, that they may request their amendment and completion. After examining the objections and requests made by the parties and the experts, the experts shall take into consideration the term of the expertise, indicating if the parties can participate in the performance. On all activities carried out on this occasion, the criminal investigative authority filed a report, which is signed by all persons participating in the activity.

The criminal investigative authority orders to make the accounting expertise on the basis of an ordinance, and the court on the basis of the court order, documents that are handed over to each expert, in a copy.

It should be made clear that the accounting expertise is carried out by the accounting expert only after receiving the act of appointment, ordinance or court order from the judicial authority. Procedurally, performing the accounting expertise involves examining the documentary material found in the case file; the examination of documents (documents, records) held by parties or third parties (on the spot expertise); analyzing the explanations of the parties, including witnesses, reviewing past control and expertise documents in the same case; studying the findings of technical expertise, etc.

*The examination of the documentary material* in the case file in which the accounting expertise was ordered shall be made at the headquarters of the beneficiary authority of the expertise. In the course of the criminal investigation, the investigation of the case is made with the approval of the prosecution authority. The expert may ask the criminal investigative authority or the court for clarification of certain facts or circumstances of the case.

If the material in the case file is insufficient for the carrying out of the accounting expertise, the accounting expert may request, reasonably, the beneficiary authority, to fill it out. Completion of the file is required in situations such as:

- ✓ possession of acts by the defendant regarding the management in which he was operating;
- ✓ lack of inventory minutes, in case of lack of management;
- ✓ In the civil cases the lack of documents subject to expertise etc.

*The analysis of the explanations of the parties and the witnesses* is made on the basis of the data, establishing the concordance or inconsistency between explanations and data. When conducting expertise, the parties are obliged to give any explanations to the accountant expert in connection with the subject of expertise. The parties (the accused and the injured party) may give the expert accountant the necessary explanations only with the consent and under the conditions established by the criminal investigative authority or the court.

Written explanations given by the parties before or during the performance of the expertise may be the subject of the expert's analysis only after they have been brought by the parties to the attention of the authority that ordered the expertise and decided to accept and attach them to the case file.

*The contact of the expert with the parties* is aimed at avoiding their subsequent objections, as well as directing the work of expertise to the complete elucidation of the truth in the case investigated.



*The analysis of past control and expertise documents in the same case* is an important condition for ensuring the quality of the accounting expertise. The accounting expert analyzes the content of the control documents and any previous expertise in the same case in order to ascertain whether the legal norms in force were correctly complied with and whether the management periods and responsibilities of the persons involved were correctly delimited. The accounting expert presents the comparative data on each issue, showing the situation established by the control and possible previous expertise and the one established by the current accounting expertise.

*Consultation of control authorities and experts who have carried out prior work in the case being investigated* is a necessity to elucidate all aspects of complex accounting expertise. In this way, the accounting expert completely clarifies the different points of view and resolves the differences of opinion of the different authorities that have previously pronounced in the case. This consultation contributes to the quality of the expertise, but it is optional for the expert accountant's conclusions. Consultation of the control authority by the accounting expert is mandatory only if the expertise substantially reduces the damage established by control in order to avoid further observations or possible errors and to conclude firmly in the accounting expertise.

The accounting expert may be unable to make accounting expertise due to situations such as:

- ✓ the need for prior background management control, updating of records and other such tasks;
- ✓ the need to perform technical or graphical expertise beforehand; wrong formulation of the accounting expertise objectives; the insufficiency of the documents made available to the accounting expert;
- ✓ the need to know explanations given by witnesses; the excessive amount of documents under investigation.

In order to determine the impossibility of carrying out the expertise, the accounting expert has the obligation to analyze the material from the case file with responsibility, so that only in cases absolutely necessary to resort to such a measure leading to the extension of the term for solving the case. *The term for performing and submitting the expert's work* shall be fixed in writing, by ordinance, or by court order, by the authority that ordered the expertise.

## **Conclusion**

In the correct interpretation of some phenomena or financial-accounting disputes, which are the subject of criminal cases - criminal or civil - it is necessary to administer the evidence with the accounting expertise. In order to respond to this purpose, the accounting expertise must present a high quality level, effectively contribute to the resolution of the respective case, in order to ensure its high quality level, the accounting expertise report is not considered satisfactory *ex officio* but is subject to a critical opinion.

In the non-hierarchical evidence system, accounting expertise is not accepted as superior to other evidence, the scientific character and the accounting expertise report to the resolution of the case result from a thorough analysis of all the material in the file. As such, accounting expertise has no absolute probative force, its share being equal to any means of proof.

The beneficiary authority may dispose *ex officio* the completion of the accounting expertise report, to establish the truth, over the will of the parties, in order to highlight all the essential circumstances of the case. This addition *ex officio* contributes to preventing any error in knowing, proving and characterizing the



situations found. In this way the exact ratio between the conclusions and the objective reality is established. For parties, completing the accounting expertise is a procedural guarantee for finding the truth.

Forms of completion are additions to the basic work; they are an integral part of the accounting expertise report and have power of expertise.

If the prosecuting authority or the court is not cleared through the expertise, it is ordered by another expert accountant to have a new expertise.

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