FISCAL AND ACCOUNTING PROCEDURES IN ESTABLISHING THE ASSETS AND LIABILITIES IN THE INSOLVENCY PROCEDURE

PROCEDURI CONTABILE ŞI FISCALE ÎN STABILIREA ACTIVULUI ŞI PASIVULUI PATRIMONIAL ÎN PROCEDURA INSOLVENŢEI

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Abstract: *The establishment of patrimonial assets and also liabilities, encountered in the literature as creditors mass, is the starting point in achieving a more effective administration and liquidation of the entity, which aims for creditors' sufficiency.*

Key words: *assets of the insolvency procedure, patrimonial assets, patrimonial liabilities, statement of claims*

INTRODUCTION

Establishing the mass of assets in the insolvency procedure consists of an ensemble of economic and legal operations carried out by the insolvency practitioner for identifying factual and scripting the patrimonial values existent in the debtor's patrimony, found in the insolvency procedure. Regarding the ***establishment of the patrimonial liabilities***, respectively the creditors mass, there is the coerciveness in submitting in legal terms the statements of claim in order to establish the patrimonial liability, i.e. debts that the entity has to third-parties, the State budget and the State social insurance budget.

MATERIAL AND METHOD

Although the notion of active mass isn't defined by the Law 85/2006 it is recognized and used in the specialized literature and practice, being defined as a set of values that must be carried out in order to establish patrimonial assets.

Often used in this stage of the insolvency procedure is the notion of **patrimony** "referring to, from a legal point of view, all rights and debts with economic content, belonging to a specific natural or legal person (moral)".[87]

The legal notion of patrimony is defined as follows:

- the rights and obligations forming the patrimony have economic value, being valued in money;
- these patrimonial rights and obligations form a legal universality;
- the patrimony is a personality attribute;[88]

Another important notion used in the insolvency procedure is that of **debtor's wealth**, notion defined by the legislator, thus in accordance with article 3, point 2 of Law no. 85/2006 the debtor's wealth will include all of the debtor's assets and patrimonial rights, including the ones acquired during the procedure, which may be subject to a levy of execution, in accordance with the Code of civil procedure.

In the insolvency procedure three stages identified in which such goods may be found:

1. goods emerged from the debtor's wealth, prior to the opening of the insolvency procedure by means of legal acts that the Court can cancel later;
2. the ones existent in the debtor's wealth at the date when the procedure was opened;
3. those who will enter by any means in the debtor's wealth.

[87] STOICA V, (2004) - Drept civil. Drepturile reale principale I, Editura Humanitas, pp.46-96, Bucureș ti.

[88] ZINVELIU I. FEKETE GH. (1969) - Drept civil. Drepturi reale, Editura Didactică ș i Pedagogică, pp. 5-7, Bucureș ti.

Procedural approach for determining the active mass is characterized by certain functions as follows:

1. monitoring function of the debtor's wealth;
2. guarantee function for satisfying creditor's interests, by paying his claims.

RESULTS AND DISCUSSIONS

"***From an economic perspective***, the assets side of the patrimony comprises the capital (productive or non-productive value and revenues (resources obtained from the exploitation of an asset in the sphere of the patrimony) and the liabilities side of the patrimony is given by the ensemble of debts, valued in money, which are presented in the form of obligations belonging to a subject of law".[89]

The rights and obligations that compose a person's patrimony determine its economic value, the ratio of the patrimony's assets and liabilities may indicate a positive or negative economic value of the patrimony.

The pecuniary value of rights and liabilities regardless of the nature of the goods enables their accounting, aspect that determines the appreciation of a persons' state of insolvency at a certain time.

In the opinion of some authors, patrimony consists of all goods that constitute the wealth of a person.[90]

So you can not equate wealth and patrimony, the patrimony includes the pecuniary rights and obligations on goods which constitute a person's wealth.

From a juridical point of view material assets, tangible as well as property and the rights on them form the debtor's wealth, and from ***an economic point*** of view, we consider the value of goods and any other pecuniary resources gained from exploitation.

The concept of goods is represented by the asset items in the balance sheet in accordance with the accounting rules, with the exception of rights to claims as following:

[89] ADAM I. (2002) - Drept civil. Drepturi reale, Editura ALL Beck, pp. 14 Bucureș ti.
[90] HAMANGIU C., ROSETTI BĂLĂNESCU I., BĂICOIANU AL., (1928) - Tratat de drept civil român, volumul I, Editura Na ională, pp. 844, Bucureș ti.

- tangible assets (lands, buildings, constructions, machines and equipments);
- intangible assets (patents, licenses, etc.);
- equity securities (shares, social parties, etc.) which are in accordance with the legal provisions of movable goods;
- circulating assets or stocks; regardless the manufacturing process' stages;
- funds availability.

From an accounting perspective in **the patrimonial assets** category includes: investment goods that participate in the development of several manufacturing economic cycles and which not replaced after the first use, remain in the debtor's use and are not for sale, current assets constituted from the economic values held by the debtor in the form of stocks, claims, financial investments and funds availability.

The legislator also achieves another distinction, so that he considers only certain categories of goods, i.e. those which may be subject to a levy of execution, in accordance with the Code of civil procedure, and only certain categories of rights, i.e. the claim, since the real rights are subsumed to the category of goods.[91]

Thus, the debtor's wealth is not identified with the debtor's patrimony.

In conclusion by active mass we understand the result of the implementation process of the operations prescribed by the legislator on the debtor's wealth, starting from the significance amended in Law 85/2006 on insolvency procedure.

The operational approach for determining the active mass has its own specific characters as follows:

- **coerciveness**, the establishment of the active mass is not permitted by the legislator at the free discretion of the participants in the procedure, because there are parties responsible for the implementation of legal measures, in order to identify the debtor's wealth.

[91] BUFAN R. (2001) - Reorganizarea judiciară ș i falimentul, Editura Lumina Lex, pp. 249, Bucureș ti.

- **uniqueness**, the establishment process of the active mass is derived from the fact that in any insolvency procedure regardless of the debtor the same steps are followed.
- **complexity**, setting the active mass is related not only to the quantitative aspect but also to interaction and interdependence between the contained operations.
- **unitary character**, the acts and operations referred to in setting the active mass are designed by the legislator as an ensemble, integrated in structural and functional manner into the procedure.
- **priority character**, arising from the fact that chronologically, this process takes place immediately after the initiation of the procedure by the bankruptcy judge, being the starting point for the insolvency procedure.

In specialized practice, the establishment of patrimonial assets may be more accurate than the **patrimonial liabilities**, because the debtor's obligations against the consolidated state budget may be different from those shown in the accounting records because the budgetary creditor requires increases, interest and penalties on late payments for unpaid debts, which is not found in the accounting records, unless the debtor was subject to a substantive fiscal control, and this corresponds to the date of entry in the insolvency procedure, situation encountered extremely rarely in practice.

Therefore, patrimonial liabilities are often unclear for the debtor, changing according to the statements of claim filed by third parties.

In addition to the *accounting procedures* that are performed in the establishing the patrimonial assets and liabilities, the insolvent debtor endeavors for the application of *fiscal procedures* applicable in certain insolvency states.

If during the period of observation, the debtor continues his activity, he has to submit the declarations provided by law, his fiscal obligations being constantly changing, and in the situation where he benefited from fiscal incentives he has to recalculate his obligations towards the State budget and by default to declare them.

CONCLUSIONS

The correct determination of patrimonial assets and liabilities for companies in insolvency procedure has a major importance, because if the

patrimonial assets are greater than the patrimonial liabilities, leads to the conclusion that the entity may come out of the insolvency state, therefore it creates the clear premises of the possibility of recovering economically, thus the application of judicial reorganization being possible and relevant.

If the patrimonial liabilities are greater than the patrimonial assets, than the company cannot be financially rescued, the judicial manager requesting the opening of the simplified procedure of bankruptcy.

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7. ***Legea 571/2003 privind codul fiscal cu modificările şi completările la zi.

8. ***Legea 85/2006 privind procedura insolvenţei.