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FIELD OF STUDY: ACCOUNTING

"Not everything that can be analyzed counts and not everything
that counts can be analyzed." Albert Einstein

ASSESSMENT OF INSOLVENT COMPANIES. LEGAL
AND FINANCIAL APPROACH
- PHD Thesis Summary -

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We let you know that on **23rd. September 2015, 11:00 in Room R402** Mr. Andrei Tudor F.C. RĂDULESCU will hold the public lecture, the doctoral thesis titled ASSESSMENT OF INSOLVENT COMPANIES. LEGAL AND FINANCIAL APPROACH to obtain a PhD in ACCOUNTING.

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We invite you to attend the meeting and to support the thesis. The thesis can be found at the Library of the Faculty of Economics and Business Administration.

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Introduction

„Anything values as much as the buyer is willing to pay for it.” Publius, sec. I. î.Hr.

Development of market economy led to the adoption of specific mechanisms that facilitate the formation, change, transfer, merger or division of capital. In this context, one of the most important tasks is to evaluate its capital. The literature lists numerous examples demonstrating the complexity and multitude of factors influence to be considered in estimating the value of a business. In this regard, over time, they have been developed various methods of assessment, depending on the evolution trends of economic thought. Thus, a number of economists specialised in estimations considers financial methods, especially those based on available cash flows , as the most relevant in evaluating the company. Other authors consider that the valuation methods, whether of financial or patrimony origin, remained deeply empirical because some are more used than others, which gives them credibility. From this perspective, the most tangible shortcomings covers that often results from the assessments are contradictory, tackling the problem of the robustness regarding the theoretical underpinning methods. In our view, the measure of a company value is influenced by information in its financial statements, but also the interests of stakeholders, the reason for which the valuation is done etc .. Therefore, the value obtained from this process is the result of different value judgement.

One particular case assessment occurs to companies in difficulty. They are represented by those economic entities that can not provide for owners / shareholders in profit of the original objectives when setting up, which in time means the result of degradation of the financial situation. The causes of this degradation are varied, being determined,

overall by the structural difficulties related to the use of technologies, bad technical condition of property, tangible assets, poor management, internal potential relatively low utilization, lack of possibilities to adapt supply to market demand. To these reasons may be added cyclical cash difficulties caused by loss of markets, financial chain blockage, clients' bankruptcies etc.

Labeling the companies in difficulty is made based on two main criteria, namely:

- *Legal* criterion according to which the entity is or not part of legal proceedings involving certain conditions to resume business, partners in negotiation and decision to sell and choose an investor;

- *Economic*, whether an entity is in structural difficulty, lack of sufficient own funds to continue operations, or is subject to a treasury accident.

If the Company is facing structural difficulties, it can be *unrecoverable* and therefore falls into pay incapacity, imposing judicial liquidation, and in the case of treasury difficulties, the company can be *recovered* through a contribution of financial flows that can cover temporary treasury hole. Along this study we will consider the economic entities in difficulty according to the first criterion in which the insolvency proceedings were initiated. The selected approach is mixed, assessment of the specific problems of insolvent companies being regarded in dual perspective, financial- accounting and legal. The financial and accounting issues will have to clarify problems related to the analysis of financial accounting role in providing relevant information needed to assess or selecting the most appropriate valuation methods depending on the state in which the company is (eg bankruptcy reorganization), while through the legal point of view we analyze the context of assessing the various stages of insolvency proceedings with reference to the elements contained in the specific past and present regulations.

To achieve the proposed approach, the thesis was developed starting with the works identified in financial accounting and legal literature on insolvency and business evaluation. In general, it is noted that the experts' opinions differ depending on the area, with particular emphasis economists made on methods / methodology used in the evaluation of companies in insolvency, while lawyers focus on the relevance of assessments in insolvency proceedings.

Previous knowledge in the field

In terms of types of detection and measurement of financial instability that threatens the company, there are many studies. The first direction is given by practitioners and researchers in the field of economic, addressing insolvency issues, they contributed to the creation of new tools to detect the risk of bankruptcy. Among those Altman (1968), McTear (2004), Newton (2009), Wilson (2014), and local authors like Măneacă (1996), Băileșțianu (1998), Ivonciu (1998) Anghel (2002), Robu -Mironiuc (2012) and others. The opinions expressed by the authors mentioned are influenced by principles of financial accounting systems and jurisdictions that belong to socio-economic and cultural context of the subjects which they based their studies on.

In light of businesses, including those in difficulty / insolvency the literature includes works of such authors as Stan (2000, 2004), Ișfănescu et al. (2001), Deaconu (2002), Bănac (2005), Bîrcea (2005), Bătrâncea et al. (2007), Thomas (2007), Anghel et al. (2010), Maxim (2010), Onica & Domnițeanu (2011), Bucătaru (2011, 2012), Thauvron (2008,2010, 2013) and Petrescu (2010, 2012). Publications studied deal with the issue of assessment activities of the company, based on theories formulated over time and continuing with specific examples using information from

financial analysis to assess businesses. According to opinions expressed in literature, supported by different practice in the field, we can not deal with assessment without considering the role of financial information taken from analyses statements published by the company.

As far as insolvency and insolvency assessment is concerned, analysis state of knowledge in the field followed several directions:

- Studying the relevant regulations; from a short-overview on the evolution of concepts (Roman laws, Medieval and French laws) going through the brief analysis of the insolvency institution starting with Caragea and Calimachi Code Laws and moving on with laws 76/1992, 64/1995, 85/2006, 85/2014;
- Synthesizing opinions of some expert authors in the legal field such as Cătuneanu (1927), Pașcanu (1929), Fiñescu (1930), Firoiu (1976), and Rotaru (2001) Turcu (1996, 2003, 2015), Costin (2000) Adam & Savu (2006) Csaba (2009) and Moțiu (2009).

Motivation, purpose of research

The assessment of insolvent companies became a challenge for several reasons:

- Conflicting views expressed by economic and legal literature on this process in the sense that while economists focus on *how* to complete the evaluation process and *what* is the most suitable method, lawyers are concerned about *when* and *under what circumstances* evaluation results are relevant;
 - Inconsistencies between the specific provisions of insolvency, both in the normative acts repealed (Law 85/2006) and the regulations in force (Law85/2014);
 - The impossibility of unifying vision with the financial accounting legal because the two specific approaches.
- Given the issues raised, the motivation behind the choice of thesis "Evaluation of insolvent companies. Financial,

accounting and legal approach" is represented by the intention to provide an overview of assessments conducted under insolvent companies, both in terms of financial accounting and the legal perspective. In addition, this theme evolved amid a knowledge of the legal aspects of the experience gained in practice as a lawyer.

In this context, the contemporary and new scientific way of approaching the subject has the following innovative elements:

- Increase the awareness of the specific elements of insolvent companies using exact references to the relevant regulations;
- Determining the role of evaluation in insolvency proceedings (general and simplified) under Law 85/2014;
- analysing the incidence evaluation results on the participants in insolvency proceedings, especially creditors;
- Substantiate the extent to which the insolvency assessment is carried out in relation to the actual needs identified in the participants of the proceedings;
- Establish the incidence of assessing the efficiency of domestic insolvency.

Evaluation of insolvent companies require a number of features that differentiate it from the rest of the types of evaluations, which is why we believe they must be a knowledged by a range of professions (accountant, assessor, insolvency practitioner, lawyer, etc.) of particular importance. For these reasons, addressing the specific financial accounting and legal assessment procedure in insolvent companies acquires special value. The simple knowledge of insolvency proceedings or records that are made in these particular cases is not sufficient, imposing the need to determine the exact content of the assessment of an undertaking in the insolvency proceedings. In this context, the fundamental aim of the thesis entitled "*Assessment of insolvent companies. Legal and financial approach*" is to analyze the theoretical and practical perspectives, the role of evaluation in the insolvency proceedings initiated in the companies in Romania. To meet the stated goal, the research carried out in pursuit of operational

objectives, namely:

Operational objective 1: Theoretical analysis on the evaluation of companies by presenting specific concepts to be made, fundamental principles, standards, specific methods. This objective was achieved in the first chapter of the study "*Conceptual restraints on companies assessment*".

Operational objective 2: Characterization institutional insolvency by analyzing relevant national regulations and highlighting their impact on companies which became insolvent, objective followed in the content of the second chapter of the thesis, "*Regulation framework for insolvency in Romania*".

Operational objective 3: Development of a quantitative study on development of insolvent companies in Romania and comparing the results with other research in the field, which was also discussed in the second chapter, "*Regulation framework for insolvency in Romania*".

Operational objective 4: Presentation of evaluation role in the insolvency proceedings by analyzing Law no. 85/2014 and highlighting articles that mention the assessor and / or assessment procedure for insolvent companies. Achieving this goal was made in the third chapter, "*The assessment in the insolvency proceedings*".

Operational objective 5: Reflecting the manner in which financial accounting analysis results are used in business valuation by creating a case study on the evaluation of a company in order to reorganize its business. Achieving this goal was achieved in the fourth chapter of the study. "*Study on evaluation RED SRL Company Iasi to reorganize its activity*".

Research methodology

From the methodological standpoint, the contents of this paper combined the qualitative research with quantitative studies. In the qualitative approach we presented the main characteristics and methods of evaluation targets of insolvency and evaluation role in this procedure. In view of the critical analysis of the literature in the field and presenting the main ideas learned from this study, we believe that these activities fall among qualitative research.

The quantitative approaches were used to consider the following issues: the situation of national insolvencies; evaluation reports conducted during 2012-2014 according to which there were drawn debt records of creditors, financial position and performance indicators within the company Red-Impex SRL Iasi.

The work involved literature review, presentation and discussion of the current state of knowledge to understand and explain theories, phenomena, existing concepts or to develop new ideas specific to the evaluation in insolvency.

Theories developed or formulated hypotheses were tested and verified in order to obtain answers or feedback from other researchers, practitioners and the general public, this being achieved by articles published in national or international conferences and journals. The qualitative research involved reviewing the theoretical basis of the researched topic, namely the study of the behaviour and practice in the assessment of existing methods of evaluation of insolvent companies from Romania.

After setting goals of the research topic, the next step of the scientific research involved identifying the type of research, qualitatively or quantitatively, which is best suited for this topic.

Qualitative research is to enable outlining the main aspects of the topic or theme and diagnosing the situation, identifying descriptive hypotheses for future descriptive research. Instead, quantitative surveys are designed to define, characterize and quantify relevant aspects identified using qualitative methods, which are used to

quantify certain phenomena, to establish statistical data and to verify and testing the existing or developed theories using specific methods.

The work combines both features of positivist research, characteristic of social sciences concerned with the development of knowledge and science to be checked in the research process itself, and constructivist traits, which involve development of new theories, own hypothesis and their their empirical validation.

Research methods used in this scientific endeavor are: document analysis, comparative method, participating and nonparticipating observation.

We can see that the research methods listed represent a the combination of longitudinal transversal methods, which are used to build a descriptive research, substantiating theoretically and conceptually issues regarding the evaluation of companies in insolvency.

Based on theories, concepts, models and existing methods and putting them into practice, the thesis can be classified as research that is based on the deductive approach, but then it moves to the inductive approach due to the transfer of the theoretical and conceptual identified practical aspects.

Informational resources used in formulating this research include specializes national and internationalbooks, articles published in reputable national or international magazines, laws, rules of professional national and international boards, studies and research conducted by different professional bodies.

In the research problem, for writing goals and objectives, we resorted to the use of *mixing between methods, techniques, rules, principles and specific instruments*. So we turned to experimental strategies, comparative, statistical, qualitative and quantitative.

The strategy assumed:

- a) search and data collection (scientific observation);
- b) treatment and processing the data;
- c) the construction, testing and checking the hypotheses qualitatively and quantitatively;
- d) theoretical generalization and construction (research findings and conclusions).

Thesis Summary

The thesis is structured over four chapters, preceded by introduction and followed by conclusions, suggestions, limits and research perspectives.

Chapter 1, *Conceptual restraints on companies assessment*, is dedicated to presenting the theoretical aspects related to the evaluation of companies. In this regard, we presented specific elements of the conceptual framework of evaluation (purpose, definitions, types of value). We also briefly presented fundamental principles taken into consideration when evaluating a business, the type, content and conduct of evaluation and assessment standards, including the existing valuation methods.

The second chapter, *Regulation framework for insolvency in Romania*, addresses legal issues regarding insolvency proceedings in Romania. The preamble of the chapter deals with a summary of concepts regarding the treatment of traders in difficulty since the ancient time until modern ages. Next, we considered the aspects of the new regulations of the insolvency institution - Law 85/2014 and its economic implications, while in the last part we carried out a study on the evolution of insolvencies in Romania based on information published by Coface.

The third chapter, *Assessment within the insolvency procedure*,

reflects the manner in which evaluation activities occur during insolvency procedure by analyzing the contents of Law 85/2014. In the end we conducted an exploratory study on the role of evaluation in the insolvency proceedings through a content analysis of the text of the law, considering the statistics published by the National Trade Register on the content of Insolvency Procedures Bulletin published between 2012-2014.

In its fourth chapter, "*Study on evaluation RED IMPEX SRL Company Iasi to reorganize its activity*" the thesis deals with analysis of financial position and performance of a company which became insolvent, Red-Impex SRL in Iasi, based on financial statements issued during the three years before the start of this procedure, namely, the period between 2012-2014. To determine the imminence of this fact, a risk analysis was made, the operational lever effect being taken into account leverage along with the financial lever effect and a number of models on risk prediction of bankruptcy: Altman, Conan and Holder and the Romanian Commercial Bank model. The chapter ends with conclusions and suggestions on the reorganization of the studied company.

Conclusions, own contributions, limits and perspectives of the research

In the thesis we intend to examine significant issues related to the insolvency proceedings evaluation of companies in Romania. In common terms, insolvency reflects the failure or the disaster of the entrepreneur and the insolvency proceedings shows how the law and the courts organize business failure. But things are not so simple. The importance of the theme appears from the very reason of insolvency legislation, namely the protection for the involved parties or, in other words, the so-called right of companies in difficulty, a term used by the French doctrine without exception.

The commercial activity is based both on promoting credit as well as on the security and speed of commercial operations, which are vital features of the economic environment that are severely affected by the economic onset of commercial insolvency. Defined as the inability of a debtor to meet its outstanding debt with the moneys available, the economic insolvency produces the same destructive effects that a serious illness causes on a human body human. Diseases should not be allowed to multiply, and, as a warning and treatment of the evil they depict for mankind is a concern for society, so prevention and settlement of commercial insolvency effects is an important area of action. Economic information related to companies in insolvency allows us to note that the transition to this state, in spite of maintaining its legal personality, has as consequence the end of normal economic activity. In this context,

the principle of continuing its activity is no longer possible, and this virtually affects all other accounting principles, including the evaluation process. The research on particular situations of economic entities liquidation of assets highlights the positive features of the financial information generated by the conduct of such operations. We can say, therefore, that the insolvency generates operations with particular tax and accounting influences, specific to each entities involved. Placing a company on durable and solid ground from the economic point of view, requires the establishment and continuous improvement of procedures and mechanisms available to those involved in the trading activities.

In this regard, a fair assessment of the company that became insolvent reflects the actual capacity of the borrower to reorganize or, on the contrary, to enter bankruptcy proceedings. As noted during the thesis, in literature there are conflicting views on the role and effectiveness of the evaluation process for the insolvent companies in the sense that economists focus in particular on the methodology and effective manner of achieving specific activities for evaluation and the results are not correlated with the provisions of the legislation. The situation is somewhat justified by the lack of an analysis of relevant legal regulations and insufficient knowledge. In contrast, lawyers focus on legal aspects of insolvency institution, ignoring the economic substance underlying them.

So, the gap between economic and legal side is one of the reasons that have positioned Romania on the 3rd place in the European Union in terms of the complexity of insolvency proceedings. The results of the study conducted on the manner in which the insolvencies have evolved in our country between 2012-2014 indicates a significant decrease

in the number of insolvencies compared to previous years, which supports the expressed opinion. In fact, the accusations brought onto the insolvency proceedings governed by Law 85/2006 have determined the adoption of a new law on 28 June 2014, whose provisions aim to streamline the procedure and protect the interests of certain categories of people involved, especially lenders. Of course, the effectiveness of the new law can not be assessed statistically because of insufficient number of cases prosecuted so far according to it (the law is in force for about one year).

Given the novelty of the application of Law 85/2014, we compared the existing provisions in the old and new regulations, especially in the exploratory study conducted in the third chapter. We appreciate that it gives substance to the thesis topic as it suggests a unified approach to the accounting and legal perspectives. The results obtained from the analysis of content, reflect a need to carry out evaluations not only at the beginning of the procedures, to determine the arbitrary value of the baiul, but whenever circumstances require. The flaws related to the moment of valuation are present on both the contents of Law 85/2006 and the Law 85/2014. In our opinion, the responsibility for a concise formulation of all situations that require conducting evaluations, including the manner of assessment of achieved results compared to the needed information of stakeholders lies with the law makers who has failed the necessary additional clarifications raised by doctrine. According to the results obtained in the quantitative analysis, the evaluation report is an essential information to start the insolvency proceedings, generally, and setting the table of claims in particular. According to the published statistics on insolvency proceedings, the number of evaluation reports

submitted to insolvency cases is increasing in the period 2012-2014. Simultaneously, the complaints against the results of the evaluation have evolved proportionally, creditors who have objected being significantly higher than that of debtors, insolvency practitioners, etc. This reflects a number of discrepancies between the assessments in the manner of achieving the set objectives and relevant methods used by appraisers .

Considering these aspects, we believe that the assessment should be based on data derived from the analysis of financial accounting, a detailed study on the financial position and performance of the companies prior to the onset of insolvency proceedings by providing relevant information on the causes of insolvency and then enabling the selection of the most appropriate methods to assess the company. The opinion expressed is supported by the results of the study conducted in the fourth chapter. Thus, after analyzing the financial position, performance and profitability, financial equilibrium and risks in the company Red-Impex SRL Iași, we found that although the company has opted to reorganize itself, it is not able to support the operationalization of such a plan, so the initiation of bankruptcy proceedings were recommended. In those circumstances, the method selected for evaluation is the net asset liquidation since the company will cease activity.

In general, based on information presented in the thesis, we consider that an efficient assessment activity of the insolvent companies is not just about the skills of the evaluator in achieving the set goals, but the good collaboration between participants involved in the procedure and between representatives of some professions.

Finally, I consider that the most important role in making evaluation activities efficient in its insolvency proceedings

belongs to those who make the laws. They should make the necessary changes for assessing the situation of the institution of insolvency according to actual needs, eliminating the flaws in the Law 85/2014.

In addition to these, the foundation of evaluations performed on the results obtained in the economic-financial analysis carried out on the financial statements of company insolvencies over at least three years before the onset of the procedure is indicated for a relevant selection of assessment methods and justification appropriate to opinions formulated on the results.

Own contributions brought along the doctoral thesis are found through the following:

In terms of level of knowledge in the field, the work includes information specific to several areas, namely: *diagnostic analysis and accounting* - based on rates and calculated indicators of businesses evaluation; *evaluation* - the theoretical and practical aspects dealt with in the thesis, *insolvency* - by addressing specific elements of insolvency proceedings under local economic entities. Added value is justified by the following contributions:

1. Creating the general framework for companies assessment by synthesizing the views of national and international literature and summarizing the most representative elements relating to: the purpose of the assessment, the concepts used in evaluation activities, the identified main types of assessment, fundamental principles under which the valuation takes place, content and conduct of specific operations, including items related to the most commonly used assessment methods, by revenue, respectively comparative methods.

2. Development of key aspects of regulations related to insolvency in Romania in terms of content and

procedures performed and reflecting the economic implications of the new regulations on future insolvencies.

3. The quantitative approach to insolvency among Romanian companies by conducting a case study on the manner in which insolvent firms have evolved in Romania during 2012-2014.

4. Analysis of the relationship assessment - insolvency based on the provisions of the Insolvency Laws 85/2006 and 85/2014 and highlighting the most significant items in terms of thesis topics of the relevant comments and views on the limits of the evaluation work according to regulations.

5. Study the effectiveness of valuations in accordance with the provisions of specific regulations and published statistics on insolvency bulletins during 2012-2014.

6. Addressing a practical use case of the financial accounting analysis to support the assessment taking into account the published financial statements in the period 2012-2014 by the company Red-Impex SRL Iași which entered insolvency proceedings at the beginning of 2015.

Research limitations were imposed by:

- the analysis, synthesis and presentation of the most relevant theoretical aspects in assessing insolvency were limited by the vast literature in the field that allowed us to study only the most significant works in the field concerned. We mostly tried to limit ourselves only to those works and studies that have brought added value to the topic, skipping other adjacent publications;

- referring to methods of valuing companies, we have summed up their presence on the most relevant ones for the topic of the thesis, an efficient and pertinent systematization which was possible due to the information learned from Anghel (2010), Bîrcea (2005), Bătrâncea (2007), Bologa (2007), Petrescu (2010, 2012);

- analyzing specific regulations of insolvency we had a brief summary of this methodological and procedural aspects, showing them in full didn't bring any value to the thesis. Instead, we focused on presenting situations involving the use of evaluation in different stages and types of procedures (general, simplified) of insolvency.

- In this diagnosis on the company RedImpex SRL Iasi we focused on those indicators calculated according to the balance sheet and profit and loss account, omitting those calculated on the basis of other information contained in the annual financial statements (for example, statement of cash flows);

- in our approach we paid particular attention to the practical part, the theory being considered of limited relevance in light of the thesis. Like any scientific approach, the limits highlighted throughout this sections turn into prospects for further research, which is why, still, we state a series of opinions related to them.

Due to the importance of the topic addressed in the current economic situation, evaluation activities of firms in difficulty or already in insolvency proceedings are important for several reasons already specified in the paper. During the doctoral research, we noticed a number of deficiencies in the economic literature, as well as the legal one, regarding the approach to assessing insolvency as a whole, through a convergence of views of specialists in the two areas mentioned above.

Given the place of evaluation in the insolvency proceedings, we believe that the publishing of some scientific papers that deals with the topic from two economical-legal perspectives would not only clarify both "groups", but would contribute to a better development of regulations in this field in the future.

Although a common domain, insolvency is treated differently by economists and lawyers: first focus on the need to "save" the economic entity in difficulty, while the second group is interested in the recovery of debts by creditors, situations in which the reorganization procedure of this kind of companies is much less frequent as opposed to cases where such entities have gone bankrupt. For these reasons, achieving a convergence of views between the two types of specialists: economists and lawyers is even more important as we consider the need to recover this business. In this regard, we remind Law 85/2014 in which the reorganization plan and attention to entities that apply for reorganization are considered more deeply opposed to the previous regulations of insolvency.

Also, through articles and publications written during the doctoral internship I found another line of research that could be a future concern for the insolvency evaluation. We refer here to the insolvency proceedings and the need for transparency when talking about the independent public institutions, for which, in 2014, insolvency was approved only by special law (Government Emergency Ordinance). Looking towards the relevant legislation and, especially, the economic effects of the law, I found that thoroughness of the subject would bring relevant clarifications on faulty functioning of these entities, namely decision-makers that are responsible for keeping on the activity of some organizations that were no longer profitable for years.

In light of these last raised issues, we consider that the assessment of insolvency should not be restricted only to companies with wholly or partly private capital but should also cover those companies and independent state companies, whose activity reflects negatively on the entire national economy.

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