

# EVALUATION THE ASSETS OF THE DEBTOR IN THE INSOLVENCY PROCEDURE

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## **Abstract**

*The present paperwork aims to approach some aspects related to the procedure of appointing the assessors and evaluating the assets of the debtor who is in insolvency, at the different stages of the procedure. The assessor in the insolvency proceedings is an independent assessor and must be definitive and compatible insolvency practitioner, on the list of the National Union of Insolvency Practitioners in Romania, with the right to carry out expertise in the insolvency proceedings and a member of the National Association of Romanian Assessors. The assessor must take into account the type of specific value in relation to the pursued purpose. Therefore, the valuation of the assets brought as guarantees, in order to prepare the definitive table of the debtor's claims, will have to take into account the market value, while the evaluation of goods for sale in order to obtain liquidity to cover the expenses for the procedure, including for the conservation of the wealth of the debtor, or in order to liquidate the bankruptcy liability, will have to consider their liquidation value.*

**Keywords:** *evaluation assets, debtor in the insolvency procedure, assessor, liquidation value, market value.*

**JEL Classification:** K22

## **1. Introductory aspects**

Aspects related to the procedure of appointing the assessors and evaluating the assets of the insolvent debtor, at the different stages of the procedure, constitute a challenge for the theorists and practitioners who approach and/or apply the insolvency procedure. The present article intends to address only a few issues related to the valuation of assets constituted as collateral [mortgages, pledges, privileges] in order to draw up debt tables [Article 103 of Law no. 85/2014<sup>2</sup>], the valuation of some goods for sale for the purpose of obtaining liquidity to cover the procedural expenses including for the conservation of the debtor's assets [art. 39 paragraph (6) and art. 153 paragraph (3) of Law no. 85/2014] and the evaluation of all the goods for sale, in order to cover the liabilities in bankruptcy [art. 154 paragraph (2) and (3) and art. 155 of Law no. 85/2014]. Thus, we try to offer solutions for the interpretation and practical application of some legal provisions.

These evaluations, by their intended purpose, are the most used. In the insolvency procedure, the evaluation may pursue other purposes such as the evaluation in order to substantiate a reorganization plan in comparison with a bankruptcy procedure, the business evaluation, the evaluation in order to establish the value of the assets that is assigned to the associates as a residual quota, etc. The rules for appointing evaluators and for evaluation are, in principle, the same in all cases.

## **2. Who does the insolvency assessment. Procedure for appointing the evaluator**

In a previous paper<sup>3</sup>, addressing the problem of the person who can evaluate the assets of the debtor in the insolvency procedure, we showed that the evaluator in the insolvency proceedings can even be the judicial administrator/legal liquidator in question to administer the procedure, if he has the necessary competences - he is a practitioner in definitive and compatible insolvency, on the list

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<sup>2</sup> Law no. 85/2014 on insolvency prevention and insolvency procedures was published in the Official Gazette, Part I, no. 466 of June 25, 2014 and has been amended by Law no. 312/2015 published in the Official Gazette, Part I, no. 920 of 11.12.2015, Law no. 62/2016 published in the Official Gazette, Part I, no. 295 of 19.04.2016, Law no. 1/2017 published in the Official Gazette, Part I, no. 15 of 6.01.2017 and the Government Emergency Ordinance no. 88/2018 published in the Official Gazette, Part I, no 840 of October 2, 2018.

<sup>3</sup> Nicoleta Țăndăreanu, *Codul insolvenței comentat. Vol. I – art. 1-182*, Ed. Universul Juridic, Bucharest, 2017, p. 549-552.

of the National Union of Insolvency Practitioners in Romania<sup>4</sup>, with the right to perform expertise in insolvency proceedings, according to art. 39 paragraph (2) of the Government Emergency Ordinance no. 86/2006 regarding the organization of the activity of insolvency practitioners<sup>5</sup>, and is a member of the National Association of Evaluators in Romania [ANEVAR], according to art. 154 paragraph (2) of Law no. 85/2014. We also showed that the evaluation can be done by the judicial administrator/judicial liquidator through his own evaluator, a person within the insolvency practitioner's organization form or by an independent evaluator appointed under the conditions of art. 61 of Law no. 85/2014, also if they met the same eligibility criteria.

The legislative solution was changed by amending the insolvency law<sup>6</sup> through the Government Emergency Ordinance no. 88/2018<sup>7</sup>. Point 6 of the Government Emergency Ordinance no. 88/2018, with applicability in the insolvency proceedings opened following the admission of the applications to open the procedure filed with the court starting with 2.10.2018, introduces paragraph 2 in art. 61 with the following wording: "They cannot be designated on the basis of para. (1) those persons who are in a contractual relationship capable of creating a conflict of interest or are affiliated persons, as defined in the Tax Code, with the judicial administrator, with the judicial liquidator, with the debtor or with any of the creditors".

Although the provisions of the law stipulating that the insolvency practitioner "may" appeal to independent evaluators, which means that he has only one option, but also the provisions of the Government Emergency Ordinance no. 86/2006 regarding the organization of the activity of the insolvency practitioners and of the code of ethics of the profession have remained unchanged, compared to the new legal provision it appears that the evaluation of the goods in the insolvency proceedings opened after the entry into force of the ordinance can be done only by independent evaluators.

The evaluator must be a third person, an independent evaluator, who is designated by the judicial administrator/judicial liquidator, under the conditions of art. 61 of Law no. 85/2014. In order to appoint the independent evaluator, as a specialized person who contributes to the administration of the insolvency procedure, the agreement of the creditors committee is required. The provisions of art. 61 of Law no. 85/2014 provide that the appointment and the level of remuneration of the specialized persons will be subject to the approval of the creditors' committee. Also, according to art. 154 para. (2) of Law no. 85/2014, with the agreement of the creditors committee, the judicial liquidator may hire, on behalf of the debtor, an appraiser. Moreover, the provisions of art. 62 paragraph (6) of the same normative act allows the creditors' committee to appoint the evaluator himself at the second meeting, if he does not agree with the appointment made by the insolvency practitioner. If a creditors' committee has not been elected, the approval is made by the creditors' meeting [art. 50 paragraph (1) of Law no. 85/2014].

In order to be able to carry out the evaluation, the independent evaluator must have the status of definitive and compatible insolvency practitioner, on the UNPIR list with the right to carry out expertise in insolvency proceedings<sup>8</sup> and to be a member of the National Association of Romanian

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<sup>4</sup> Art. 26 paragraph (2) of the Government Emergency Ordinance no. 86/2006 stipulates that the practice of insolvency practitioner profession is compatible with: b) the quality of ... evaluator, ... who works within the profession. The natural and legal persons who have the status of insolvency practitioner can carry out the activities of accounting expertise, evaluation and financial audit only after acquiring, as provided by law, the quality of accounting expert, evaluator or financial auditor, as the case may be, and enrolling as members in organizations which coordinates the respective liberal professions.

<sup>5</sup> Emergency Ordinance no. 86/2006 regarding the organization of the activity of insolvency practitioners, republished in the Official Gazette, Part I no. 724 of October 13, 2011, as amended - Art. 39. -. (2) Expertise disposed by the criminal prosecution body or the court in the cases regarding the carrying out of activities such as those provided in art. 1, including those of judicial reorganization or liquidation, are carried out by definitive and compatible insolvency practitioners. (3) UNPIR will proceed with the preparation of the list with the definitive and compatible practitioners who have the right to draw up expertise according to par. (2). The list of practitioners with the right to perform the expertise will be communicated to the courts.

<sup>6</sup> The references in the present material to the insolvency law are considered to be made to Law no. 85/2014 regarding the insolvency prevention and insolvency procedures, as subsequently amended.

<sup>7</sup> Government Emergency Ordinance no. 88/2018 for the modification and completion of some normative acts in the field of insolvency and other normative acts was published in the Official Gazette, Part I, number 840 of October 2, 2018.

<sup>8</sup> Art. 39 paragraphs (2) and (3) of the Government Emergency Ordinance no. 86/2006.

Evaluators<sup>9</sup> - ANEVAR - and of also, it must not be incompatible<sup>10</sup>. The latter condition was introduced by point 6 of the Government Emergency Ordinance no. 88/2018, starting with 2.10.2018. Thus, they cannot be designated on the basis of para. (1) those persons who are in a contractual relationship capable of creating a conflict of interest or are affiliated persons, as defined in the Tax Code, with the judicial administrator, with the judicial liquidator, with the debtor or with any of the creditors.

The fee of the independent evaluator is negotiated by the judicial administrator/judicial liquidator and is approved by the creditors' committee if it is paid from the debtor's assets, according to the provisions of art. 61 of the insolvency law. If the independent evaluator's fee is paid from the liquidation fund, its level must take into account the cost standards established by UNPIR but the creditors' committee must not approve the fee.

As concrete steps in the designation of an independent evaluator, we consider that the judicial administrator/judicial liquidator must choose the independent evaluator [who fulfills the legal conditions], negotiate with him the fee, make the nominal proposal of the person of the independent evaluator and the level of his fee, with the proposal of support from the debtor's property, to the creditors' committee, to convene the committee of creditors in the meeting and to submit its proposal for approval, leading the meeting of the creditors' meeting.

The committee may approve the designation of the proposed evaluator and the level of his fee if the fee will be borne by the debtor's assets. But, according to the text, the appointment is made by the judicial administrator/judicial liquidator. The committee may reject the proposal and in this case, the judicial administrator/judicial liquidator will be required to convene a new meeting of the creditors' committee, within a maximum of 7 days, in which the committee will have to come with a proposal of another evaluator showing the fee it. In this case, the independent evaluator is appointed by the creditors' committee. If, at this meeting, the creditors' committee neither approves the evaluator proposed by the practitioner nor designates another, the judicial administrator/judicial liquidator will appoint, without the agreement of the committee, the specialist with the best technical and financial offer, among those submitted for the two meetings of the creditors' committee. Basically it is the hypothesis in which a member of the committee proposes an evaluator but the vote in the committee for designation is not met, according to art. 51 paragraph (4) [simple majority of the total number of members]. If no member or committee proposes another evaluator, the insolvency practitioner will designate the evaluator proposed by him. Of course, there is nothing to prevent the judicial administrator/judicial liquidator from proposing another evaluator at the second meeting. In this case it is not necessary to confirm the syndic judge under art. 45 paragraph (1) letter o), the text of art. 62 paragraph (6) of the insolvency law, text with special disposition value, not imposing this condition<sup>11</sup>. We appreciate that the approval of the syndic judge under the conditions of art. 45 paragraph (1) letter o) is necessary only in the event that at the two meetings the committee is not legally assembled due to the lack of quorum caused by the non-presentation.

### **3. Evaluation of the assets brought as guarantees, for the establishment of a cause of preference, in order to draw up the definitive table of claims**

The headquarters of the regulation is represented by the provisions of art. 61 and art. 103 of Law no. 85/2014.

According to the provisions of art. 103, "The claims receivable of a preference case are entered in the definitive table up to the market value of the guarantee established by evaluation, disposed by the judicial administrator or by the judicial liquidator, carried out by an evaluator designated according to the provisions of art. 61. If the recovery of the assets on which the cause of preference is carried out will be done at a price higher than the amount entered in the definitive table or in the consolidated definitive table, the favorable difference will be returned to the whole secured

<sup>9</sup> Art. 154 paragraph (2) of Law no. 85/2014 and art. 26 paragraph (2) of the Government Emergency Ordinance no. 86/2006.

<sup>10</sup> Article 61 paragraph (2) of Law no. 85/2014.

<sup>11</sup> For a contrary opinion see the work Radu Bufan (coord.), *Tratat practic de insolvență*, Ed. Hamangiu, Bucharest, 2014, p. 159.

creditor, even if part of his debt had been entered as a debtor's debt, up to the cover of the principal debt and of the accessories to be calculated according to the documents from which the debt results, until the date of the asset's valuation (.....)".

The purpose of this evaluation is to establish the extent to which a claim entered in the credible mass is a claim with cause of preference, within the meaning given by art. 5 point 15 of Law no. 85/2014 and art. 2327 of the Civil Code, and will be paid with priority from the sums obtained from the sale of the asset from the debtor's assets with which it was guaranteed but also from the extent to which, after the date of opening the procedure, accessories can be added to the claim itself, given that according to the provisions of art. 80, referred to in art. 103 of Law no. 85/2014, after the date of the opening of the procedure, the accessories of the debts [interest, increases, penalties] for the debts born before the opening of the procedure will no longer be calculated and added to the claim, except for the claims for which there is a cause of preference by establishing a mortgage or a pledge. or privilege, over a good of the assets of the debtor.

The object of the evaluation in the stage of determining the debtor's passive mass, during the observation period or in the bankruptcy procedure in the simplified form is limited to the goods for which the debtor, prior to the opening of the insolvency procedure, constituted mortgages or pledges or there are real privileges born all prior to the opening of the insolvency procedure<sup>12</sup>.

The assessment will be ordered by the judicial administrator or the judicial liquidator when the preliminary table of claims is drawn up and must be carried out by the date established by the sentence of opening the procedure for drawing up and displaying the definitive table of claims. The drawing up of the definitive table of claims is conditional, inter alia, on the submission of the guarantee assessment report to the file.

In the preliminary table of claims, the claims affected by a cause of preference fall into the category of secured debts, with the full amount requested by the creditor in the debt declaration, mentioning the cause of preference and its rank according to the provisions of the civil code, the title from which the right arises. preferably (contract, law, etc.) as well as the good on which the cause of preference bears, with the mention that, after evaluation and in relation to the market value established by the evaluator, the registration will be made in the definitive table according to art. 103, with his own debt said her accessories. If the insolvency practitioner rejects a claim or considers that it must partially admit it, or without the preference rank requested by the creditor, he must also mention the reasons why the claim was partially passed in the table or was withdrawn. As we showed in another paper<sup>13</sup>, an idea supported also by part of the jurisprudence<sup>14</sup>, in a broad sense, is a provisional registration of the secured debt, until the evaluation of the good and the drawing up of the definitive table<sup>15</sup>. The jurisprudence has also ruled that the provisional registration is also justified by the need to verify the real existence of the good in the debtor's assets by the expert, when evaluating<sup>16</sup>.

After the entry of the claim in the preliminary table, until the moment the final table is drawn up, the judicial administrator/judicial liquidator has the obligation to evaluate, through independent evaluators, the assets of the debtor's property on which the real guarantees are constituted.

We appreciate that the valuation will have to be done at the market value<sup>17</sup> as it aims to establish the extent of the cause of preference of the debt and the valuation of the guarantees is

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<sup>12</sup> An extremely complex problem is the assessment of the guarantee on the debts of the debtor company - Flavius Moțu, *Garanițiile atipice în cadrul procedurii de insolvență. Garanițiile constituite anterior deschiderii procedurii*, [www.unpir.ro/garantiile-atipice-cadrul-procedurii-de-insolventa-garantiile-constituite-anterior-deschiderii](http://www.unpir.ro/garantiile-atipice-cadrul-procedurii-de-insolventa-garantiile-constituite-anterior-deschiderii), consulted on 25.10.2019, and Simona Maria Miloș, Andreea Delî Diaconescu, *Despre ipoteca mobiliara asupra veniturilor viitoare din contractele in derulare sau cat de „corespunzatoare” poate fi „protectia” acordata creditorului garantat în insolvență*, „Revista Romană de Drept Comercial” no. 1/2019.

<sup>13</sup> Nicoleta Țândăreanu, *op. cit.*, p. 380.

<sup>14</sup> Gorj Court. Conclusion no. 105/2016 of February 23, 2016. Regarding the creditor ... was entered in the preliminary table, ... provisionally, according to art. 103 of Law no. 85/2014, until the evaluation of the goods that are the subject of the cause of preference, [www.rolii.ro](http://www.rolii.ro), consulted on 25.10.2019.

<sup>15</sup> In the sense that it is not a provisional registration, the Oradea Court of Appeal ruled, Decision no. 184 of June 9, 2016.

<sup>16</sup> Court of Appeal Bucharest., Civil Decision no. 98 of January 21, 2016 [www.rolii.ro](http://www.rolii.ro), consulted on 25.10.2019.

<sup>17</sup> The same opinion in the paper Gheorghe Piperea (coord.), *Codul insolvenței – note, corelații, explicații, art. 1-203*, Ed. C.H.Beck, Bucharest, 2017, p. 564.

different from the valuation of the assets in order to use them for the purpose of extinguishing the liabilities in bankruptcy [when the valuation method must be applied liquidation]. At the stage of establishing the passive mass, only the assets of the debtor's property on which the preferential causes are carried will be evaluated at market value. The other assets will be evaluated after the bankruptcy commencement and, as the case may be, punctual assets will be evaluated for sale to cover some procedural expenses. But, since it is possible for the secured creditor to request the lifting of the suspension and immediate recovery in the procedure from the observation period, under the conditions of art. 78 of Law no. 85/2014, of the asset affected by the guarantee for the payment of the debt, or it is possible to go bankrupt, which means the liquidation of all the assets, it would be useful for the evaluator, if he also has the consent of the insolvency practitioner, to determine the value and according to other types of value, and in particular the liquidation value, following which the insolvency practitioner chooses the type of assessment that corresponds to the objective pursued, in order not to have to carry out a new evaluation later.

#### **4. Evaluation of goods for sale for the purpose of obtaining liquidity to cover the procedural expenses including for the conservation of the debtor's assets**

The basis of the regulation is represented by the provisions of art. 39 paragraph (6) and art. 153 paragraph (3) of Law no. 85/2014.

The provisions of art. 153 paragraph (3), which refers to the expenses of conservation of the patrimony are not correlated with the provisions of art. 39 paragraph (6), which refers to the procurement of liquidity for procedural expenses, as regards the approval of the creditors/committee of creditors. Does "the conservation expenses of the patrimony" fall into the category of "procedural expenses"? No doubt, yes and that is why the two texts must be interpreted and applied in conjunction. As art. 153 provides for the recovery "without the approval of the creditors", corroborating the texts we consider that, after the appointment of the committee of creditors, it is necessary the agreement of the committee of creditors, and not of all the creditors, neither individually nor constituted in the creditors' meeting. Until the appointment of the creditors' committee, the decision of recovery belongs to the judicial administrator/judicial liquidator, but the proposal for recovery, included in a report, can be challenged, in all cases, by any interested party, so by any of the creditors entitled to participate in the procedure, within 3 days from the publication of the report extract in the Insolvency Procedures Bulletin.

If there is not sufficient liquidity in the debtor's assets to cover the procedural expenses, including for the conservation of the debtor's assets, the judicial administrator/judicial liquidator will be able to urgently use the debtor's assets:

- with priority to those over which there are no causes of preference [art. 39 paragraph (6)];
- goods that are not essential for reorganization [art. 39 paragraph (6)];
- perishable or rapidly deteriorating goods, although the text makes no express reference to them.

However, the sale in this case must be justified by the lack of liquidity in the debtor's assets.

But in all cases, in order to be put up for sale it is necessary to pre-evaluate the goods. Unlike the previous hypothesis, treated in letter B, the texts expressly specify that the evaluation will take into account the value of liquidation of the goods. We consider, in relation to the purpose of the evaluation, that the most appropriate type of evaluation is the value of forced sale with a limited period for the marketing activity, as defined by the EVS 104 point 80.1 .. (b)<sup>18</sup>.

An aspect of clarity is also if the approval of the committee of creditors has as object only the proposal of valorisation of some goods, with the justification of the necessity and with the nomination of the goods or also the value of capitalization. The two texts are also relatively uncorrelated. Being a decision of opportunity, through reporting and the provisions of art. 45 paragraph (2) of the

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<sup>18</sup> The mandatory evaluation standards for the evaluation activity [EVS] edition 2018, entered into force on January 1, 2018, being approved by the Decision of the National Conference no. 3/2017 of ANEVAR, published in the Official Gazette of Romania no. 986/12.12.2017, <http://site2.anevar.ro/pagini/standarde>, consulted on 25.10.2019.

insolvency law, we consider that the approval of the committee of creditors will have to consider the proposal for the valorisation of some goods from the point of view of justifying the necessity and the nominated goods but also the value from which the valuation will be made. However, the approval procedure does not imply the challenge of the evaluation report which has a separate procedure, regulated by the provisions of art. 62 of Law no. 85/2014, but only the approval of the value from which or under which the assets cannot be used, in relation to the liquidation value established by the appraiser.

### **5. Valuation of all goods for sale, in order to cover the liabilities in bankruptcy**

The headquarters of the regulation is represented by the provisions of art. 154 para. (2) and (3) and art. 155, referred to in art. 61 and art. 62 of Law no. 85/2014.

Assessing the assets of the debtor's property is a mandatory operation, without which it cannot be liquidated. It has as its object all the assets of the debtor's property - the tangible assets, over which the debtor has a property right, other rights that have an economic value - licenses for the exercise of certain activities, intellectual property rights, debts, etc.

The valuation for liquidation to cover the liability is different from the operation of valuing the goods affected by preferential causes, which is done in order to draw up the definitive table. But, the question that arises is: if valuations of goods have been made for the final table, will these goods be re-evaluated [individually]? The answer depends on the type of evaluation used by the evaluator. As a matter of principle, we appreciate that not if the initial report contains, besides the market value, necessary for the preparation of the definitive table of receivables and the liquidation value, necessary for sale for the purpose of covering the liabilities in bankruptcy, as it would be an unnecessary expense. However, they will be re-evaluated as elements of a block or functional assembly. Also, if a very long time has elapsed since the evaluation, a new evaluation is likely to be required.

### **6. The actual evaluation and the evaluation report**

ANEVAR adopted within the National Conference, through Decision no. 3/2017, the mandatory evaluation standards for the evaluation activity [EVS]. These have defined several types of value [EVS 104 - Types of value]. According to the EVS, "the evaluators must choose the relevant type of value, according to the terms of reference and the purpose of the evaluation. Regardless of the instructions and information provided by the client to the evaluator, he must not use a type of value that is inappropriate for the purpose of the evaluation"<sup>19</sup>.

According to EVS104, section 30.1. "The market value is the estimated amount for which an asset or liability could be changed at the date of valuation, between a determined buyer and a determined seller, in an unbiased transaction, after proper marketing and where the parties have acted. knowledgeable, cautious and without constraint".

According to EVS104, section 80.1. "The liquidation value represents the amount that would be realized by selling an asset or group of assets individually (item by item). The liquidation value must take into account the costs required to bring the assets into the marketable state, as well as the costs generated by their disposal. The liquidation value can be determined in two different evaluation hypotheses: (a) the ordered sale, following an appropriate marketing activity<sup>20</sup> or (b) the forced sale with a limited period for the marketing activity"<sup>21</sup>.

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<sup>19</sup> It was claimed that understanding the procedural stage in which the company is located is essential and that after identifying the stage in the procedure, following discussions with the insolvency practitioner, the evaluator establishes the type of value used, Anuța Stan, *Locul și rolul evaluării în procedura insolvenței*, „Revista de insolvență Phoenix”, no. 65/July - September 2018, p. 17.

<sup>20</sup> We consider that it is suitable for the valuation of goods for sale, in order to cover the bankruptcy liability.

<sup>21</sup> We consider that it is suitable for the valuation of some goods for sale in order to obtain liquidity to cover the procedural expenses, including for the conservation of the debtor's assets.

The actual evaluation is done in accordance with international evaluation standards<sup>22</sup>. The goods will be evaluated in two ways, both in block and individually. The block assessment considers either the evaluation of the entire assets of the debtor's assets or the evaluation of the functional subassemblies. This must be agreed by the judicial liquidator and evaluator. We consider that it is compulsory to evaluate in both ways, as an expression of the principle of maximizing the debtor's assets.

The evaluation report drawn up by the evaluator will be submitted to the case file, to the court, and may be consulted at the location indicated in the notice, which may be the seat of the court, the professional seat of the insolvency practitioner or the debtor's office, where a copy of the report can be obtained, at the expense of the applicant.

Regarding the publicity of the evaluation report, does the non-correlation of legal provisions give rise to the question that is published in the BPI? An announcement regarding the submission of the evaluation report to the file or an announcement and an extract of the report? Article 155 provides that the evaluation report will be submitted to the case file, and an announcement regarding its submission and an extract containing a summary of it will be published in the BPI. Article 58 letter q) provides for the transmission for publication of an announcement regarding the submission to the file of the evaluation report and art. 62 stipulates that the objections shall be formulated within a maximum of 5 days from the publication in the BPI of an announcement regarding the submission of the evaluation report to the case file.

As we showed in a previous work<sup>23</sup>, we consider that advertising must be done in the form that results from the corroborated interpretation of the provisions of art. 58 paragraph (1) letter q), art. 155 and art. 62 paragraph (2) that an Insolvency Procedures Bulletin is published which notifies the creditors of the submission of the evaluation report to the case file and the location where it can be consulted, as well as an extract of the evaluation report [summary]. The creditors will be able to consult the report [in full] in the location indicated by the announcement by the insolvency practitioner.

Objections may be raised against the evaluation report. The right to raise objections against the evaluation report belongs to the judicial administrator/judicial liquidator and to the creditors registered at the passive table/creditors entitled to participate in the procedure within the meaning of art. 5 point 19 [art. 62 of Law no. 85/2014]. It should be noted that, according to the provisions of art. 62, the debtor, through the special administrator, cannot object to the valuation report of the assets, which may be a violation of his rights.

The term of formulation of the objections is of 5 days, and regarding its nature, we consider that it is a term of decay, by which the procedural subjective right is extinguished. The term runs from the publication of the announcement regarding the submission of the report in the BPI and the objections are solved by the syndic judge in 15 days<sup>24</sup> with the quotation of the one who made the objections, of the judicial administrator/judicial liquidator and of the members of the creditors committee [art. 62 paragraph 3]. The legitimate question arises why the solution of the objections is made by the appointment of the members of the creditors' committee and not with the creditors' committee as a collegial body, represented by the president, according to the provisions of art. 50 paragraph (3). We consider that it is a matter of lack of legislative coherence and that the legislator's will was that the summons should refer to the creditors' committee, as a collegial body, which represents in the procedure the interests of all creditors. The text does not even provide for the citation of the evaluator.

Within the objections, the syndic judge will check only aspects of legality [art. 45 paragraph (2) - the duties of the syndic judge are limited to the judicial control of the activity of the judicial

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<sup>22</sup> Radu Bufan, Florentina Folea, *Unele considerații privind vâzarea bunurilor în cadrul procedurii de faliment*, „Revista de insolvență Phoenix”, no. 61/July - September 2017, p. 36. It was stated that the application of the evaluation standards is not a "surgical precision" operation because it depends on the data and the subjectivism of the evaluator, through subjectivism understanding his basic experience and training, but that the evaluation report is only a starting point for organizing the valuation of the good.

<sup>23</sup> Nicoleta Țândăreanu, *op. cit.*, p. 248.

<sup>24</sup> We consider it a term of recommendation.

administrator/judicial liquidator and to the judicial requests related to the procedure, the managerial decisions being controlled by the creditors in terms of opportunity]: if the evaluator was correctly appointed, if the report of evaluation includes the individual and block evaluation in the event that the evaluation is done for the purpose of liquidating the bankrupt assets, if the international evaluation standards are respected<sup>25</sup>, if the type of evaluation has been correctly established and if all the goods have been evaluated. Objections can only be admitted for sound, unlawful reasons<sup>26</sup>.

The syndic judge will be able to order the restoration or completion of the evaluation expertise by the same evaluator or a new evaluation by another evaluator<sup>27</sup>, appointed by him, after consulting the creditors committee, who is quoted in resolving the objections, fixing his fee.

In order to resolve the objections, the syndic judge will also have to approve the valuation report of the goods, according to the provisions of art. 62 paragraph (5). He can approve the evaluation report in the form originally submitted, in the form rebuilt by the same evaluator, or he will approve one of the two reports, in case he has ordered a new evaluation. The approved evaluation report will be the basis of the subsequent operations of selling the goods, regardless of the purpose pursued. We consider that if no objections were made to the evaluation report, the judicial administrator/judicial liquidator should not ask the syndic judge to approve the evaluation report, the legality control being exercised only in case of contestation.

## 7. Conclusions

The insurer in the insolvency proceedings is an independent evaluator and must have the status of definitive and compatible insolvency practitioner, on the UNPIR list, with the right to carry out expertise in insolvency proceedings and as a member of the National Association of Romanian Appraisers [ANEVAR].

The valuation of the assets brought as guarantees, for the establishment of a cause of preference, is compulsory in the stage of establishing the passive mass, in order to draw up the definitive table of claims, and will have to take into account the market value as it aims to determine the extent of the case of preference of the debt.

The evaluation of some assets for sale for the purpose of obtaining liquidity to cover the procedural expenses, including for the conservation of the debtor's assets, and the evaluation of all the assets of the debtor's property for the purpose of liquidation in order to extinguish the bankruptcy liability is mandatory so that the assets can be sold. and will have to consider their liquidation value.

The evaluation is carried out in accordance with international evaluation standards, and the evaluation report can be challenged with objections to the syndic judge.

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<sup>25</sup> The internal goods valuation standards, the 2018 edition, approved by ANEVAR, are in line with the International Valuation Standards (IVS), the 2013 edition, including four European Evaluation Standards (EVS), 2012. The evaluation guides (GEV), developed of working groups within the association, completes and details the application of international and European standards to the conditions of the Romanian economy - Dana Ababei, President ANEVAR, *Cuvânt înainte la Standardele de evaluare a bunurilor 2018*, p. v., <http://site2.anevar.ro/pagini/standarde>, consulted on 26.10.2019.

<sup>26</sup> It is claimed that in practice it has been shown that, in general, the objections were caused by dissatisfaction with the level of value resulting from the evaluation report, although an unsatisfactory value level for the parties does not automatically mean that the evaluation reports contain non-conformities that would have influenced the result of evaluation - Adrian Vascu, *Evaluarea bunurilor și Codul insolvenței*, „Revista de insolvență Phoenix”, no. 53, July-September 2015, p. 29.

<sup>27</sup> Bucharest Court of Appeal, VI Civil Division, Decision no. 1077/A of June 13, 2016 - a new evaluation report necessarily involves a new evaluator expressing an impartial opinion. The evaluator who has already expressed a professional opinion cannot draw up a new impartial report, www. [portal.just.ro](http://portal.just.ro), consulted on 26.10.2019.



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