

Deontological Standards to be Respected when Drawing up Accounting Expertise Reports

Constantin Cucoșel

Technical University of Cluj-Napoca – the Northern Academic Center of Baia Mare

“Vasile Goldis” West University of Arad – Baia Mare subsidiary

E-mail: cucoselc@yahoo.com

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Abstract

The expertise goes beyond a control and verification procedure, since it expresses the expert's point of view with regards to the fact or facts that made the object of the expertise. So that the expertise is, by definition, a personal and critical document, which includes not only the result of fact examination with regards to their formal and material accuracy, but also the expert's opinion on the causes and effects related to the object submitted to his analysis.

Key Words: Judicial Accounting Expertise, Expertise Report, Jurisdictional Bodies, Local Office, Deontological Standards

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Introduction

The code of the ethic and professional behavior of the accounting experts and the authorized accountants from Romania defines the deontological standards that have to be respected by the accounting professionals; this code makes reference to integrity, impartiality, independence, professional discretion, professional competence, and deontological behavior.

When drawing up accounting reports the expert has to comply with specific deontological standards:

- The independence of the accounting expert;
- The competence of the accounting expert;
- The quality of the accounting reports;
- The professional secret and the confidentiality of the accounting reports;
- The principle of accepting accounting expertise requests;
- The responsibility of drawing up accounting reports.

1. The Principle of Independence of the Accounting Expert

Based on this principle, the accounting expert is compelled to be independent to all sides

involved in the expertise, avoiding any situation that would entail a lack of independence or any constraint that could affect his integrity and impartiality; if an accounting expert is in a conflicting situation, he must inform the legal body that appointed him and refrain or challenge the appointment. In the same time, the accounting expertise can be drawn up only by the accounting experts registered in one of the active parts of the Record:

- First section – self-employed accounting experts who act as individuals or self-employed persons;

- Second section - accounting experts acting as employees in companies, banking and insurance institutions, institutions of education and research and other local or central organizations;

- Third section – external physical persons who obtained a membership in the Record;

- Fourth section - accounting experts from corporations, companies or cabinets, members of the Record.

A. With foreign or joint capital;

B. With local capital.

The Record is organized in sections and after being approved by the Superior Board it is published annually in Romania's Official Gazette, Part 1.

The accounting expert cannot draw up judicial or extrajudicial accounting reports if he is in one of the following situations:

- He is financially directly or indirectly involved in the activity of one of the parties in process of litigation (for example: he accepts, even informally, any type of salary; he owns shares in the share capital; he receives or offers goods, services or money; he receives or offers pawns or gages).
- He is involved in the activity of one of the parties in process of litigation as a member of the Board of Directors, as an executive or as employee.
- Any of the business activities or waged jobs he manages in the same time with his accounting profession can end up in a conflict of interests or are by their nature incompatible or in contradiction with his position of independent, upright, objective and professional accountant.
- He has family and/or personal relations with one of the parties in litigation or with persons making part of the management board of one of the sides.
- He accepts and receives a remuneration he did not mention beforehand.

The accounting experts are also forbidden to draw up reports for the economic agents or the institutions where they are employed as waged workers, no matter the nature and the length of the labor contract, or with whom the employers of the accounting expert are in contractual relations or in competition, if they are relatives or in-laws up to the fourth degree including, or spouse of the administrators, as well as in case if there are elements that confirm a conflict of interests or any incompatibility between them.

In all cases when the accounting experts are requested to draw up judicial and extrajudicial accounting reports and they are in a status of incompatibility, they have the deontological obligation to refrain themselves from doing the requested expertise and inform the requesting party about the status of incompatibility they are in; if the accounting expert does not declare his refrain when it comes to judicial accounting expertise, he can be recused, this being a procedural method that can be requested by the parties involved in a trial in order to replace one or several experts based on the same reasons stipulated by procedural regulations that can be also applied to judges.

2. The Principle of Competence of the Accounting Expert

According to this principle, the position of accountant has to be attained by respecting the laws currently under effect. Presently, the access to the profession of accounting expert is done through an entry exam, the candidate has to obtain a grade not lower than 7 or at least 6 for each subject; this is followed by a 3 years practical stage, and finally concluded by a final exam. In order to sit for the entry exam, the candidates have to meet the following conditions:

- To have a full working capacity;
- To have a university degree, the diploma has to be recognized by the Ministry of Education and Research;
- Not to be convicted of any offense that, according to the law, denies the right to manage and administrate trading companies.

At the National Conference that took place on the 31 of august 2008 the Superior Council of the Body of Expert and Licensed Accountants of Romania (CECCAR) advanced for approval several measures on the regulations concerning the access to the profession of accounting experts, especially when it comes to candidates who have a relevant master degree.

Starting with 2008 the candidates accepted at the entry exams for accounting experts are both the graduates with a relevant university degree and those who have a university and a master degree; a set of differentiating rules had to established concerning the conditions of access of the candidates, separating those who have a university degree and those who have a master degree in order to stimulate the educational development of the persons who want to become accounting experts.

After debating on these aspects, the Superior Council of CECCAR has approved them, the next step being for the Permanent Board of the Superior Council to elaborate the criteria, conditions and the working procedure for the graduates with a university diploma and those with a relevant master degree, in order to connect the entry exam for the practical stage that is required in order to become an accounting expert to several conditions, as following:

1. A protocol has to be signed between CECCAR and the appropriate higher institution of education;
2. The master program has to include all of the 7 subjects that, according to the law, form the objective of the entry exam for the position of accounting expert;
3. The content and the analytic program of the master courses has to match the program courses and the subjects studied at CECCAR;
4. The bibliography studied during the master, especially for the shared courses, has to match the one required for the entry exam;
5. The candidates passed successfully oral or written exams for the relevant courses and obtained a grade not lower than 7.

A special committee within CECCAR analyzes the documents sent by the profile universities in order to match the entry exam of the graduates with a profile master degree. This committee is formed by the general director of CECCAR, the profile director within CECCAR and other professors with a good reputation from universities around the country.

Up to this moment, 6 collaboration agreements were signed between CECCAR and different institutions of higher education that organize 12 master programs.

The professional competence is maintained through a continuous professional training carried out throughout the whole career. The competence of the expert is essential in order to protect the reputation and the independence of the Board, so that its works are conferred scientific and professional authority. The accounting expert has to have the following qualities:

- Knowledge, competence and conscience;
- He has to be spiritually independent and unprejudiced from a material point of view;
- Morality, integrity and dignity;

In order to develop these qualities, the expert has to do the following:

- To develop his professional and general literacy, because they consolidate his judgment;

- To dedicate his full attention to each situation under examination and allocate the time necessary in order to formulate a professional opinion, before making suggestions and expressing opinions;

- To express his opinion with no reserve no matter the preferences of the person he is consulting, to convey his opinion sincerely expressing the required reticence on the value of his hypothesis and conclusions;

- To not allow himself to be in the position when he cannot think freely or to be limited by his duty;

- To believe that the independence has to be fully manifested when carrying out his duty and when protecting his profession, by respecting all the laws and regulations stipulated by CECCAR.

In order to maintain and develop the professional competences of its members, CECCAR issued the Professional Standard no. 38 and elaborated a National program of continuous professional development held both at the central level and local branches. According to this program, each member of CECCAR must follow annually at least 40 hours of courses for one of the profiles below:

- International standards of financial report;
- Financial-accounting audit;
- Financial accounting, bookkeeping and audit;
- Taxation;
- Company valuation and market management;
- Law and European legislation;
- Professional policy and deontology;
- Accounting expertise.

The accounting experts who completed the practical stage of three years are not required taking continuous annual professional training courses two years after becoming accounting experts. If a member of CECCAR refuses to follow the annual professional training courses without justification, he will be suspended from the Record. Once suspended or excluded from the Record, the accountant can no longer act as an accounting expert, therefore he cannot accept and draw up accounting reports.

3. The Principle of Quality of the Accounting Report

The accounting expert has to be conscious, devoted, correct and impartial when drawing up the accounting reports he accepted. These reports have to be useful for those who requested them.

When elaborating and carrying out the accounting expertise, the accounting expert has to use methods specific to bookkeeping. The conclusions of the expert have to be based solely on documents that certify the events and the transactions subjected to the accounting admission, valuation, classification and presentation. Based on these conclusions, the expert concurs to the process of establishing the truth carried out by the legal bodies, therefore contributing to solving the cause under investigation.

In case if the accounting reports are not based on enough evidence and aren't well based from a scientific point of view, the legal bodies who requested them can and should replace the accounting expert and require a new report. If the new accounting report reaches a different conclusion as compared to the previous one, due to using other criteria and methods of investigation, the legal representative can choose the report he considers to be better based from a scientific point of view, therefore of a better quality.

The quality of the judicial and extrajudicial accounting expertise can be noticed as a consequence of the professional competence and independence of the accounting expert, rather than as a separate deontological standard. The quality of the accounting reports does not necessarily derive from the professional competence of the expert (certified by law) or from his independence. According to the national Ethic Code of the accountants in Romania, the members of CECCAR have to carry out their work with consciousness and devotion. The legitimacy, impartiality and their aspiration has to be useful for their clients, they have to motivate their recommendations and guide the course of their work. The experts have to refrain themselves from carrying out any useless work based on their wish to earn more. This refrain has to be well based and can become operative only after obtaining the agreement from the requesting party. When stating his recommendations on the use of the accounting reports, the expert has to guide his clients towards formulating concrete objectives that are stated clearly, with no doubt.

In order to ensure the quality of the judicial and extrajudicial accounting reports, the accounting experts have to apply:

- a) The principles of bookkeeping;
- b) The professional standards elaborated by CECCAR on acting as an accounting expert and on drawing up accounting expertise reports.

This is the reason why the accounting expertise finishes with a written report that contains such aspects as the duration of the work, its findings, the documents that were consulted and constitute the base of the conclusions it reached for each separate objective.

The judicial and extrajudicial accounting reports are works with a scientific value. Consequently, their quality is implicit. Still, the scientific basis has its quality. In order to assess the quality of the accounting reports, a special quality audit is organized within the branches of CECCAR.

The quality audit of the accounting profession has a general, not a punctual character, as it analyses mainly the way professional standards are respected. This is why CECCAR elaborated the "Regulation on the quality audit in bookkeeping".

The main objectives of the quality control in accounting are the following:

- To offer the public a good perception on the quality of the services provided by the accounting experts;
- To synchronize the professional behavior of the members;
- To contribute to maintaining a good organization system of the accounting expertise cabinets and their methods of work;
- To assess the way professional rules and standards are applied;
- To increase the solidarity between members, the appreciation and respect of the professionals for the CECCAR institution.

The quality auditors of CECCAR can express their point of view on all the works elaborated by the accounting expertise cabinets under inspection. On an intermediate level, the quality audit in bookkeeping is formulated as a "General note" sent to the cabinet that was inspected; this cabinet is offered 30 days to supply the auditors with its observations. After the expiration

of this period, the quality auditors have to draw up an audit Report with the following annexes:

- A General note;
- Any observations the accounting expertise cabinet may have.

This report is forwarded to the president of the council of the CECCAR branch who decides how to verify and communicate the results of the quality audit on the accounting expertise; this may take one of the forms below as he may decide:

- To send a final letter with no observations;
- To send a final letter with simple observations, attaching a request with an appointment at the office of the president of the branch of CECCAR;
- To send a final letter with observations together with a decision to organize a new quality audit after a year in order to verify if the observations and the recommendations were taken into account.

The quality audit report and the final letters are confidential, they cannot be made public except:

- To the new quality auditor, if a new quality audit report is being drawn up after one year after the previous report;
- To the council of the branch if the president of CECCAR decides to do so.

The main consequence of the inappropriate quality of the judicial and extrajudicial accounting expertise reports is the fact that they are not taken into account by the requesting parties, with or without any reason. Subsequently though, some aspects of the quality of the judicial and extrajudicial accounting expertise reports may form the object of observations and conclusions of the quality auditor in bookkeeping. When the quality auditors detect repeated deviations, the president of the CECCAR branch will notify the Commission of discipline of that particular branch of CECCAR.

The inappropriate quality of the accounting reports can constitute the object of disciplinary sanctions, as stipulated in article 16, chapter 1 from O. G no. 65/1994 on the organization of the accounting expertise activity (with subsequent modifications) namely:

- Reprehension;
- Written warning;
- The suspension of the right to act as an accounting expert for a period of 3 months up to 1 year;
- Turning down the right to exercise the profession of accounting expert.

4. The Principle of Professional Secret and the Confidentiality of the Accounting Reports

The expert has to respect the secrecy and the confidentiality of the information he had access to and took notice of while drawing up the accounting expertise, he has to refrain himself from disclosing this information to a third party, unless he was authorized to do so or if he has the legal or professional obligation to make such a disclosure.

This principle is an essential characteristic of an independent, organized and responsible profession, placing the accounting expert and the authorized accountant among other confidants in our society, such as: lawyers, doctors and the public notaries. The facts included in the professional secret (of the professional accountant) consist of a large variety of aspects, including not only the facts confided by the clients, but also those found out during the expertise. The professional accountant has neither to confirm, nor to disaffirm the facts regarding his client, even if this information is known to the public.

The professional accountants must not disclose unconditionally what they found out during

the expertise, not even to the organs of law enforcement – Police or Prosecutor’s Office – or the court (besides the cases stipulated by the law). They will disclose information only by request. Even if the professional accountant can and must be able to answer all the questions on financial, accounting or fiscal techniques, he is still tied by a professional secret in front of the prosecuting organs or the court regarding all the confidential information he was entrusted by his client. It is also important to specify that this confidential information cannot be used at his advantage or the advantage of any third party.

When it comes to judicial and extrajudicial accounting expertise, the professional secret and confidentiality can have specific forms such as:

a) In the case of judicial accounting expertise, the accounting expert has to comply unconditionally with all the civil and criminal procedural regulations.

Art. No. 201 from the civil procedure Code stipulates that “the court will name one or three experts if it considers appropriate to know the opinion of some specialists in order to elucidate certain circumstances and it will establish specific questions these specialists will be required to answer”. Art. No. 121 from the civil procedure Code stipulates that: “the expert (including the accounting expert) has the right to become up to date with the nature of the documents required to carry out the expertise. During the criminal investigation, these documents are analyzed with the approval of the investigation body. The expert can ask for explanations from the body of criminal investigation or from the court concerning some of the facts and circumstances under discussion. The parties can provide the expert with the required information after they were allowed to do so and according to the conditions set by the body of criminal investigation; in the case of criminal investigations, the judicial body can limit the access of the named accounting expert even to some of the materials under investigation”.

In order to follow exactly the procedural provisions, in such cases the accounting expert has to inform the judicial body that requested the expertise about the necessity to supplement the materials from the file on the facts under investigation. If the judicial body does not require that the file is supplemented with the materials suggested by the accounting expert, it is recommended for the accounting expert to submit a written request motivating his claim.

b) In the case of extrajudicial accounting expertise, the accounting expert has to comply only with the professional standards of CECCAR on the secrecy and confidentiality of the accounting expertise. The procedure on the access to accounting information for amiable accounting expertise reports is neither restricted, nor official.

Still one would recommend that some essential aspects regarding the documentation and the presentation of the conclusions for the extrajudicial accounting expertise reports are established through the “contract” that is usually signed in such cases.

The method through which the content and the conclusions of the accounting expertise are communicated is also confidential.

a) In the case of judicial accounting expertise, both the accounting experts named *ex officio* and those recommended by the sides must submit the accounting expertise report to the legal body that requested the accounting expertise, all the persons interested, including the sides involved in the trial, have the right to consult it. This is specified in the regulations of the art. No. 122, chapter 3 from the criminal procedure Code that stipulates the following: “The expertise report has to be submitted to the criminal prosecution body or to the institution that requested it”. The civil procedure Code (art. 109, chap. 1) specifies that: “the expert must submit the report at least 5 days before the day of the trial”.

b) Therefore, one may conclude that the accounting report has to be submitted to the

legal body that requested it, in the same place with the file of the process. This procedure avoids any preferential communication (information) of the content and conclusions of the judicial accounting expertise towards specific users.

c) In the case of extrajudicial accounting expertise, the place and the date when the report has to be submitted has to be specified in the contract concluded between the requesting party and the expert. If the place where the extrajudicial accounting expertise has to be submitted is not clearly specified in the contract, that place should be the place of registry (the headquarters of the requesting party).

Failure to respect the communication procedure of the content and the conclusions of the accounting expertise is considered to be an infringement in the obligations of the accounting expert concerning the secrecy and the confidentiality of the accounting expertise, consequently the clients can request for a disciplinary, civil and/or criminal investigation against the accounting expert, according to characteristics of the case.

5. The Principle of Accepting Accounting Expertise Request

The requests addressed to the accounting experts for accounting expertise reports cannot be refused except based on solid reasons. Before accepting to draw up the accounting expertise, the expert has to analyze his ability to fulfill the task according to the special rules of interrelation, competence and incompatibility.

The accounting expert is a professional of the society. Accepting to draw up accounting expertise reports has to have a universal character. Anyone has the right to request an accounting expertise, whereas the accounting expert must provide this service without selecting his clients based on ethnic, religious, political or any other reasons.

The principle of accepting accounting expertise requests has to be analyzed, understood and especially applied by respecting strictly the rules of interrelation, competence and incompatibility of the accounting expert. Other valid reasons for refusing to draw up expertise reports are such circumstances when the accounting expert cannot carry out his task: illness, leave, civic tasks, and special professional tasks. It is very important that the reason put forth by the accounting expert is valid, so that the requesting party or body understands that the expert simply cannot provide the service he is required to at that time.

In such cases, when the accounting expert cannot accept to draw up the requested accounting expertise, it is highly recommendable that this is presented in writing, specifying clearly the motif put forth by the expert. When the only valid reason presented by the expert is the overload of work relative to the submission deadline of the reports, the requesting party should be guided towards other accounting experts. This would be the best choice in the name of the solidarity between the members of CECCAR.

The accounting expertise has to be drawn up by the accepting party. The accounting expert has to draw up the expertise himself. If there is any valid reason that doesn't allow him to conclude the expertise after he accepted the request, he must notify the requesting party and provide proofs for the situation he is in, such as: records, illness certificates etc. The consequence of presenting solid reasons is the replacement of the accounting expert. If the accounting expert was recommended by one of the sides or by another expert requested to draw up an extrajudicial accounting expertise, it is recommendable that the requesting party is guided towards other accounting experts.

6. The Principle of Responsibility when Drawing up Accounting Expertise Reports

The accounting expertise reports have to be drawn up with responsibility. The liability of judicial accounting reports is supported by oath, in the case of extrajudicial reports the liability is supported by a contract. The oath made by the expert has a deontological, and professional

character, he must take into account these aspects throughout all his work. The oath is compulsory both for the judicial and the extrajudicial accounting expertise

The oath of good faith is governed by the civil procedural code. If there is no oath of good faith, the deontological and professional oath is applied. The criminal procedure code does not require the oath of good faith in the case of the accounting expertise reports requested for criminal trials, neither do the self regulating norms of CECCAR when it comes to extrajudicial accounting expertise reports. In this case, the accounting expert complies with the deontological and professional oath.

The responsibility of drawing up judicial and extrajudicial accounting reports is relative. The responsibility of the expert who drew up the accounting expertise can be evaluated differently by:

- The free will (conscience) of the accounting expert and the professional or the oath of faith, according to the case;
- The users of the accounting expertise reports are influenced by individual interests and the purpose they want to use the reports for.

If the accounting expert complied with his free will (conscience), the deontological oath and, if the case, the oath of faith (the oath appropriate to his confession), he can be reproached nothing. If the users of the accounting reports have doubts on the responsibility of the expert when carrying out the requested expertise, they have their own ways of attack, namely:

a) In the case of judicial accounting expertise reports – the parties will state their objections at the first term after the report was submitted, the court can request ex officio that the expertise is completed, or even request a new expertise. The opposing expertise has to be requested at the first term after the report was submitted.

b) In the case of extrajudicial accounting expertise reports – drawing up reports with no sense of responsibility results in a drop off in his reputation regarding the potential clients who may request accounting reports in the future.

Conclusions

The status of the accounting expert who is an active CECCAR member can be proved with his identification card or his member book, with the annual visa on. In order to be included in the appropriate part of the Register, the candidate has to submit a request at the closest branch of CECCAR to his registered office.

The publishing of the list containing all the accounting experts and companies of accounting expertise that have the right to draw up judicial and extrajudicial accounting expertise reports is the responsibility of the General Office of CECCAR that organizes and manages a centralized record that contains all the accounting experts and companies of accounting expertise listed in the Register of CECCAR for each branch, the General Office publishes the Record annually in the Official Gazette of Romania; when it comes to the local level of CECCAR branches, the executive directors are the ones who manage the record of the all the accounting experts and companies of accounting expertise listed in their CECCAR Record.

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