

The precautionary control system in the insurance sector Under Algerian legislation and its Extent of Compatibility with the New European Directives (Solvency System 2)

النظام الرقابي الاحترازي في قطاع التأمين في ظل التشريع الجزائري
ومدى توافق مع التوجيهات الأوروبية الجديدة (نظام الملاءة 2)

Larit lamine

Faculty of Law and Political Science
University of Yahya Fares - Medea
Sovereignty and Globalization Laboratory
larit.lamine@univ-medea.dz

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Abstract :

This article aims to shed light on the issue of solvency of insurance companies, And the oversight imposed by the Algerian legislator in this field, in order to verify their ability to fulfil their financial obligations towards the people to whom they insured; thence, to look at the extent to which the Algerian legislator keeps up with the standards applied internationally by the European Union , known as the Solvency system 2. Accordingly, the mechanisms of this control and the precautionary rules that insurance companies must respect will be discussed, in addition to the means of activating this control By clarifying the role of the public bodies supervising this sector.

Keywords : insurance; control; Precautionary rule ; solvency; International standards.

ملخص:

يهدف هذا المقال إلى تسليط الضوء على مسألة الملاءة المالية لشركات التأمين، وعلى الرقابة التي يفرضها المشرع في هذا المجال، من أجل التحقق من قدرة شركات التأمين على الوفاء بالتزاماتها المالية تجاه المؤمن لهم، و النظر من ثمة إلى مدى مواكبة المشرع الجزائري للمعايير المعمول بها دوليا من طرف الاتحاد الأوروبي، أو ما يعرف بنظام الملاءة 2، وعليه سيتم التطرق إلى آليات هذه الرقابة والقواعد الاحترازية التي يجب على شركات التأمين الالتزام بها، وكذا وسائل تفعيل هذه الرقابة من خلال تبين دور الهيئات الرقابية المختصة في هذا الصدد.

الكلمات المفتاحية: تأمين؛ رقابة؛ قواعد احترازية؛ ملاءة مالية؛ معايير دولية

Auteur correspondant: Larit lamine

Introduction:

What undoubtedly drives individuals to contract with insurance companies, is guaranting the insurance costs in case that the insured risks occur. Therefore, the ability of insurance companies to fulfil their financial obligations to their customers at their specified times is considered one of their most important priorities in order to maintain the loyalty of their customers and their reputation in the market.

Because the relationship between insurance companies and the insured people is usually unequal in realizing and understanding the technical aspects of the insurance process, the insured people often have no role in the coverages and obligations issued by these companies. These latter are often the ones that dominate the insurance relationship and are aware of the inner and hidden matters in it. Therefore; it is necessary to have a supervisor with technical experience that would enable him to monitor the extent of the insurance companies' commitment to fulfilling their pledges to the insured people, especially in terms of the extent of their financial solvency. This is for the aim of preventing the abuse of those companies, to preserve the rights of their customers on the one hand, and to protect their financial stability on the other hand.

Hence, the importance of this topic appears in the idea of solvency, as we mentioned, and its relationship with the idea of supervision, especially in light of the new directives brought by the European Union countries, which are called the "Solvency system 2". This latter focused on the solvency of insurance companies due to their role in facing financial crises, which necessitated the Algerian insurance system to adapt to these directives, with the aim of benefiting from their advantages at a faster and more effective pace, by tightening the supervision process over insurance companies.

Accordingly, this article aims to study the role of the tight legal supervision over insurance companies in implementing the "Solvency 2" directives, also called the European Solvency system 2, in addition to the extent to which this affects ensuring the financial stability and the necessary financial solvency to these companies. This is what this study will deal with.

Based on the above, we raise the following question: What efforts has the Algerian legislator made in the field of supervising the solvency of insurance companies, compared to modern European standards of solvency?

In order to answer this question and achieve the above-mentioned goals, we will rely in this study on the descriptive and analytical approaches, by dividing it into four sections.

In the first section, we will discuss basic concepts in the legal supervision of the insurance companies' activity. In the second section, we will study the mechanisms of supervising the solvency of insurance companies in light of the new European standards, "Solvency System 2." While the third section will tackle the extent to which the Algerian legislator applies these European standards. As for the fourth section, we devote it to studying the means of activating this supervision by dealing with the regulatory bodies that the legislator used in this field thanks to their effective role in facilitating the application of these regulatory rules. Finally, we conclude with the most important results and suggestions in this field.

Section I: Basic concepts in the legal control of the activity of insurance companies:

Given the importance of the insurance sector and its effective role, especially in the field of mobilizing funds and financing investments, it was necessary to preserve the integrity of this sector and ensure its optimal functioning in light of the current challenges. This was through developing, boosting and strengthening the control and supervision systems in order to keep pace with the global trend towards establishing competitive markets capable of withstanding various financial crises.

In order to study the concept of legal control over the activity of insurance companies, we must first know what is meant by this activity by defining it and explaining its elements. Then we will discuss the objectives and types of legal control over it.

A) Definition of insurance and determining its components:

According to the French jurist “Himard,” insurance refers to the process by which one party (the insured), in exchange for paying a premium, obtains compensation from the other party; which is the insurer, in case of realization of the risk insured against. In other words, the insurer party takes upon itself the task of collecting a group of risks, and conducting a swap between them according to Statistics laws¹.

The Algerian legislator defined it in the Article 02 of the Order 95-07 dated on 01/25/1995 relating to insurances, which stipulates that “insurance², within the connotation of Article 619 of the Civil Code, is a contract whereby the insurer is obligated to pay to the insured or to the beneficiary party for whose benefit the insurance was stipulated, a sum of money, revenue, or any other financial performance, in the case that the risk stated in the contract occurs, in exchange for instalments or any other financial payments...”

Marine insurance is considered the oldest type of insurance due to its direct connection to maritime transport and maritime trade. It existed in the ancient decades, what is known as a maritime loan; also called the risk contract³, which is the contract under which the lender undertakes to pay a sum of money to the ship owner, in exchange for delivering the goods or the ship safely to where its owner wants. Under this loan, the ship owner is not obligated to return the loan in case of the ship’s destruction⁴.

It is said that this type of insurance was first used by the Babylonians and Phoenicians, who knew insurance through the maritime loan contract, which was stated in the Code of Hammurabi in the year 2250 BC as follows: “Sailors can agree among themselves that if one of them loses a ship, another ship will be built for him instead. However, if one of them loses his ship as a result of his fault, he does not have the right to request another one, and if a sailor loses his ship as a result of going to distances that the ship does not normally go to, he does not have the right to demand that another ship be built for him.” Thence, with the issuance of the English Insurance Act in 1601, insurance took the form that various legislations use today.⁵

After defining insurance as previously explained, we can deduce the basic elements of the insurance contract, which is summarized in the following sections:

1. The risk:

In general, there is no single definition of risk. Economists, behavioural scientists, theoretical researchers in risk management, statisticians, and actuaries each have their own concept of risk. Some have defined it as “a possible event whose realization is not due to the pure will of one of the parties, especially the insured.”⁶

The concept of risk varies according to the field and type of insurance. For example, some define the risk in the field of marine insurance as “that danger which may occur during the marine navigation.”⁷ While others define it as “the accident to which the insured objects may be exposed during the cruise.”⁸

In general, it can be said that the risk in marine insurance is the insured accident that may happen to the ship, the goods loaded on it, or the passengers, provided that it occurs during the sea voyage.

2. Insurance premium:

It is the amount of money that the insured pays to the insurer in exchange for taking charge of the consequences resulting from the risk. The insurance premium is generally determined on the basis of an agreement that includes two parts. The first is called the net premium, which is the premium corresponding to the cost of the risk. The second part refers to those general expenses borne by the insurance institution, which are collected from each premium at a specific and fixed rate in all the insurances related to similar risks⁹ and it is called the actual or commercial premium. The Algerian legislator names it the inventory premium in accordance with Article 80 of the Order 95-07 mentioned above. It includes the management expenses which the insurer is responsible for;

such as workers' wages, underwriting expenses, and other burdens, in addition to the profit margin that the insurance institution seeks to achieve.

3. Compensation:

The insurance institution is obligated under the insurance contract to pay the insured or the beneficiary people the insurance amount in case of the damage or accident insured against, in exchange for the premiums paid by the insured. This may include paying the loss and defending the insured in certain legal cases¹⁰.

The compensation element is considered one of the most important elements of insurance. The insured or whoever appoints it is considered a beneficiary of it, while the insurance institution (the insurer) is the one who is obligated to pay the insurance amount when the risk insured against occurs.

Accordingly, the insured in the insurance contract is the one exposed to the risk whether in his property, financial liability or himself personally. He is obligated to pay the premiums to the insurance company and usually benefits of the insurance amount¹¹. While the beneficiary may also be any other person determined by the insured. He is the person to whom the insurance benefit resulting from the contract devolves, that is, he is the person who owes the amount of compensation in case that the risk insured against happens.

As for the insurer, it is an institution or company that receives insurance premiums, and in return is obligated to pay the value of compensation when the risk necessitating it occurs. He is the legal person who owes compensation, as he is the one who provides insurance services and sells insurance policies that include insurance coverage¹².

B) Objectives and types of the legal supervision of insurance companies:

The legal supervision of insurance companies is imposed by the law on insurance companies in order to achieve certain objectives, regardless of its diverse forms. Therefore, we will first discuss the objectives of this supervision, then we will study its types.

1. Objectives of the legal supervision of insurance companies:

The legal supervision of insurance companies aims to achieve many goals, both for customers and for the insurance companies themselves.

For customers, this supervision aims to improve the level of insurance service in terms of controlling the price of this service, as insurance prices are not determined except after the approval of the competent regulatory bodies. This is for the price to be sufficient to cover the expected losses when the insured risk is realized. These prices vary according to the degree of the risk and, at the same time, should not be so exaggerated to the point that they exceed the capabilities of individuals. The supervision also aims to monitor the basis of calculating premiums and the conditions of documents, in order to prevent any arbitrary and unfair conditions imposed by insurance companies in this regard¹³.

As for insurance companies, tightening their supervision will increase the public confidence in the insurance sector and ,thus, increases the demand in this field. Supervision also aims to regulate the investment operations carried out by these companies, as it works to provide the necessary liquidity for these operations. Additionally, it reviews the returns of these operations for the purpose of ensuring the extent to which they achieve the principle of profit, through supervising the financial accounts, on the one hand; and ensuring the soundness of the investment policy of these companies,¹⁴ on the other hand.

In general, the objectives of insurance supervision can be summarized in the following¹⁵ :

- Increasing the probability of the success of insurance companies to continue performing their work, so that they pay their obligations when the risk occurs or the deadline comes. An example of this is imposing the minimum capital required to establish an insurance institution, and providing certain conditions and characteristics for whoever establishes or manages it.

- Improving the functioning of the insurance sector and enhancing the stability of the insurance market. For example, controlling prices, examining financial centres to verify the continued profitability of insurance companies, monitoring investments to ensure that the insured's money is not risked, monitoring the soundness of practices and settling compensation, in addition to making a periodic examination to quickly detect any defect or deterioration in the financial center, which helps to treating it without exposing the rights of policyholders and beneficiaries to loss.
- Imposing restrictions related to the procedures followed in cases of business cessation, transfer of documents, bankruptcy, liquidation, and termination of the business of an insurance institution...etc.

2. Types of legal supervision over insurance companies:

Legal supervision of insurance companies varies to include several forms and can be classified into two main sections: pre-supervision and post-supervision.

2.1. The pre-supervision of insurance companies:

The Algerian legislator imposed strict administrative control on insurance companies, in terms of obtaining the necessary accreditation to practice their activities. According to Article 204 of the Order No. 95-07 mentioned above, we find that the Algerian legislator has obligated insurance companies, regardless of their forms, to obtain accreditation before practicing their activities.

Accreditation shall be granted by a decision of the Minister in charge of Finance, after the National Insurance Council expresses its opinion regarding the decision to grant it, as the Article 204 of Order 95-07 mentioned above states: "Insurance or reinsurance companies cannot carry out their activities except after obtaining accreditation from the Minister in charge of Finance..."

The legislator also stipulates, in accordance with Article 218 of the same order, the conditions that must be met to grant accreditation to insurance companies, which must include the insurance operations that the company was qualified to practice. Among these conditions is the availability of an estimated activity plan and the necessary financial means, in addition to the professional qualifications of the institution's managers and their integrity. If these conditions are not met, accreditation may be rejected, and this rejection shall be issued by a reasoned decision that has to be reported to the person concerned and can be subject to appeal in front of the Council of State.

2.2. The post-supervision of insurance companies:

In addition to the obligations of a technical nature that the legislator imposes on insurance companies, which will be explained later, we find in the field of post-supervision of insurance companies the issue of withdrawing accreditation. The Minister of Finance may withdraw the accreditation, if the reasons stipulated in Article 220 of the Order No. 95-07 mentioned above were realized; such as the non-compliance of the insurance company's management with the applicable legislation and regulation, the absence of one of the basic conditions for the accreditation, the insufficiency of the financial position of the insurance company to fulfil its obligations, deliberate application of increases or reductions not stipulated in the tariffs reported to the supervision department, the failure of the company to exercise insurance for its activity for a period of one year starting from the date of notification of the accreditation decision, and in the case that the company stops underwriting insurance contracts for a period of one year.

According to Articles 221 and 222 of the Order 95-07 mentioned above, the decision of withdrawing partially or completely is issued by the decision of the Minister in charge of Finance after expressing the opinion of the National Insurance Council. Additionally, the accreditation cannot be withdrawn in the previously mentioned cases except after notifying the insurance company of the proven shortcomings against it by means of a letter with a receipt that is guaranteed to be received. Otherwise, it would resort to appeal the withdrawn decision in front of the State Council. The insurance company can also submit its observations in a written form to the Supervision Department within a period of one month from the date of receiving the warning.

Post-supervision is also evident through monitoring some commercial books and records that the legislator has obligated insurance companies to keep, and through the necessity of providing the regulatory bodies with everything related to their activity¹⁶, which will be detailed later.

Section II: Mechanisms for monitoring the solvency of insurance companies in light of the new European standards “Solvency System 2”

The idea of monitoring the solvency of insurance companies has been subjected to a set of new European standards called “Solvency System 2”, on the basis that this supervision positively affects the extent of the financial solvency of these companies, and the extent of their ability to fulfil their financial obligations. Therefore, we will initially discuss what is meant by "Solvency System 2", then we discuss the content of the standards set by this system in the field of monitoring the financial solvency of insurance companies.

A) The definition of "Solvency System 2"

It is a large-scale project at the European Union level, which led to a new solvency system based on the real risks facing the insurance companies. It calls for a comprehensive review of the followed regulatory approach and a supervisory assessment of the general financial situation of the insurance industry¹⁷.

This project was approved by the European Parliament on 04/22/2009 and was published in the Official Journal of the European Union on 11/25/2009¹⁸, to start to be implemented in 2012. However, for several reasons, its implementation process was completely postponed, even though some European Union countries had begun implementing some of its requirements since 2013. Thence, after there have been pressure within the European Union, its full implementation was set to begin on 01/01/2016¹⁹.

In fact, the Solvency system 2 is the result of the weakness recorded in the previous system (Solvency system 1). This latter was intended to be created since the beginning of the seventies, until it was issued in 2002. However, after the changes that occurred at the international level, the Solvency system1 became outdated and not compatible with the modern requirements for risk management, which have been multiple and more complex, leading to the necessity of reforming this system to make it consistent with the changes taking place. This is how the Solvency system 2 appeared.

The Solvency system 2 works to allow a better absorption of the risks faced by various actors in society, and the level of capital requirements in insurance companies in case of its increasement, in order to confront the limitation of supply for consumers, or the augmentation of insurance prices or exclusion of some consumers. The purpose of this reform is to create greater integration between European insurance markets, to allow each European insurance company to benefit from the advantages of the unified market and reduce hedging costs.²⁰

This system is based on three main axes, which are the following²¹:

- Allocating funds must correspond to the size of the actual risk.
- The solvency margin should be used to absorb crises.
- Focus should be put on procedures of using internal control, rather than on operations.

Based on the above, we conclude that the goal of the “Solvency System 2” directives is to save the financial solvency of insurance companies from the risks that threaten them. In this regard, financial solvency is defined as sufficient assets to meet the financial obligations of these companies on their due dates²². The solvency of insurance companies can also be defined as the availability of permanent financial capacity to cover risks and disasters, which means that these companies are able to meet their obligations towards insurance policyholders within their specified deadlines.²³

In the sense of violation, the risk of financial solvency is to stop the payment of compensation and expenses in insurance companies when their due date arrives, which represents

the inability to cover the losses resulting from all types of risks that threaten the financial companies. These risks can take several forms as follows²⁴:

- The risk associated with the underwriting process, which occurs when the average value of actual claims differs from the expected value when selling insurance policies. To avoid this, insurance companies seek to reduce the risk of underwriting by selling a very large number of insurance policies and providing different types of insurance coverages in different geographical areas.
- The risk associated with investment, which is also called asset risk as it is believed that it reflects the folder of investments in the insurance company. The principles that must be present in the insurance company's investments should be taken into account. These latter are represented in the guarantee, profitability, liquidity and diversification, when determining the various investment policies. Analysis and measurement of investment risks must also be taken into account when drawing up the investment policy for the company's funds.
- Liquidity-related risk, which is a type of risk linked to the company's inability to pay its obligations immediately and without delays, in addition to the risks related to the loss resulting from the liquidation of assets, as well as the failure of debtor parties to pay their obligations to the company on time.
- The risk associated with the issue of governance of companies, as it is linked to the relationships within the company's management and the distribution of responsibilities and tasks between the various concerned parties in the company. Moreover, the governance risks are related to the risks of non-compliance, which result from the lack of commitment to the legislations and regulatory decisions related to the field of insurance, in addition to disobeying the company's regulations and its internal rules.
- The risk related to reputation, as it threatens the company's ability to establish and consolidate its relationships with the insured and other relevant parties. It can, also, threaten its ability to provide new services as a result of the lack of thoughtful marketing for the company's products, the absence of an appropriate advertising and media plan, or directing criticism and publishing negative news against the company by competitors in the media.
- The risk related to cancelling the contract, by which we mean ending the contract before its due date, pursuant to a lawsuit prosecuted by the costumer, so that the insurer is forced to pay a certain amount of money to the him as compensation for the cancellation. This risk is not important in the insurance of damage due to its short duration, but it is of a great importance in life insurance.

B) The content of the new European standards according to the "Solvency System 2"

It should be initially noted that the precautionary regulatory rules for insurance companies, on which the Solvency system 2 is based, were taken from other international directives and standards within the framework of the committee of the so-called "Basel 2" agreement related to the banking sector. This committee was formed for the first time in 1974 in Basel, Switzerland, by the Group of Ten Major Industrialized Countries, or what is known as the G10, under the supervision of the Bank for International Settlements for Banking Supervision. The Capital Adequacy Agreement (Basel 1) was initially issued in 1988. Then, "Basel 2" was issued in 2006 and began to be implemented in 2007²⁵.

Accordingly, the precautionary rules according to the Solvency system 2 are based on three basic pillars, which we can discuss as follows²⁶:

The first pillar refers to the need to determine the quantitative requirements for the capital that insurance companies must respect. The most important of them is the solvency margin, which refers to a number of additional resources, free of any obligations, that allows the insurance company to ensure its solvency to protect the interests of the insured²⁷. The importance of the solvency margin usually appears in some unexpected cases, such as the lack of correct evaluation or good representation of technology allocations, as well as in the case of random fluctuations in the

size of realized disasters and a decrease in the asset values and its returns as a result of crises in the financial market, etc²⁸.

In addition to the solvency margin, we find among the requirements technical allocations, as well as an assessment of assets and private funds, where the insurance company's solvency needs are determined on the basis of the capital requirement that is necessary for solvency and the minimum capital requirement. This means that the insurance company must comprehensively evaluate the extent of the capital adequacy regarding the form of its risks, as well as maintaining its levels. The goal is to cover three types of risks: credit risk, market risk, and operational risk. It must be pointed out that underwriting the risk is considered part of operational risk.

The second pillar is internal control and risk management. It represents the basis for the supervision processes performed by regulatory bodies. It is a qualitative requirement, unlike the previous one, as it is based on verifying whether insurance companies are carrying out their activities correctly. This occurs through reviewing the processes specialized in determining capital adequacy, determining the extent of its consistency with the overall risks to which insurance companies are exposed, and taking appropriate decisions in this regard, including intervening at an early stage to prevent the capital from falling below what is predetermined.

As for the third pillar, it aims to publish the information that includes general information directed to insurance policyholders, as well as the precautionary information stipulated under the first and second pillars. Insurance companies must issue a special annual report to regulators, and a report to the public about solvency and financial position. This pillar is based on the principle of Transparency, information, reporting requirements and the focus on financial communication.

Section III: The extent to which the Algerian legislator applies the new European standards of solvency

The Algerian legislation, like any other legislation, for the purpose of keeping pace with the European directives related to the Solvency system 2, we find that it has included some texts related to the supervision of the insurance sector that enhance the financial solvency of the insurance companies in Algeria. A number of precautionary supervisory rules have been stipulated in order to identify the extent to which its financial comfort allows it to fulfil its obligations. From this standpoint, the presence of precautionary rules applied to such institutions in the Algerian legislation would ensure their rapid adaptation to these directives, which helps to achieve the pillars of the Solvency system 2 and makes them immune to the potential risks and financial crises.

Accordingly, in this section, we will address the extent to which the Algerian legislator applies the standards brought by this system by studying the most important mechanisms and precautionary rules that the Algerian legislator came up with in this regard, in terms of imposing codified obligations on insurance companies, determining the minimum capital, determining the solvency margin, and finally imposing transparency through media and disclosure.

A) Imposing codified (regulatory) obligations on insurance companies:

The Algerian legislator stipulated these obligations, in accordance with both Article 224 of the Order 95-07 mentioned above, and the Executive Decree No. 13-114 of 03/28/2013²⁹, which aim to clarify the conditions and methods for forming and determining these obligations, as well as to represent them in the balance assets of insurance and/or reinsurance companies and branches of foreign insurance companies accredited in Algeria. It, also, abolished the Executive Decree 95-342 of 10/30/1995³⁰.

Article 224 of the aforementioned Order No. 95-07 obligated insurance companies to be able at any time to justify the estimations related to the legal obligations that they must establish, which are represented by both legal (codified) balances and technical balances, with the need for these obligations to be matched by equivalent assets. This later is represented in files, deposits of movable values, similar files, real estate assets, and other assets.

Then the Executive Decree 13-114, mentioned above, was issued to regulate these balances, as follows:

- The codified balances are represented by deductible and non-deductible balances. The first refers to the guarantee balance, the mandatory supplementary balance for the loss balances required to be paid, the natural disaster risks balance, in addition to the balance allocated to meet the regulated obligations. It is worth mentioning that this requires to specify how these balances will be supplied and formed. As for non-deductible balances, they refer to any other balance recorded in the insurance companies' budget of liabilities, which is formed at the initiative of their qualified bodies in accordance with the applicable regulation.³¹
- Technical balances represent capital allocated for the total payment of the obligations regarded, according to each case, towards the insured, the beneficiaries of insurance contracts, and the ceding insurance companies, i.e., those that have ceded shares in reinsurance. It has been stipulated how to determine and compose these balances, depending on whether they are in the field of personal insurance or in the field of damage insurance, which are generally represented in adjustment balances, unearned premium losses, and contribution to profits, in addition to account balances (related to life and death insurance, marriage, birth, and capitalization), as well as the balance funds (related to loan insurance and guarantee insurance).³²

In order to activate this supervision by the Algerian legislator, this later has imposed several penalties in the case of violating the provisions established in this regard. For example punishing insurance companies with a fine of one million dinars, in case that they violate the provisions related to the creation and representation of technical debts, technical stocks, reserves, and the employment of assets stipulated in Article 224 that is mentioned above³³.

However, the Algerian legislator is criticized in this regard for focusing on the risks of liabilities and caring more about underwriting risks. While, the asset risks are neglected despite their effect on the financial well-being of the insurance company, as it is still believed that employment in the values of the state has a guarantee. Therefore, these texts differ from the Solvency system 2 directives, which focus on all risks including market risks, credit risks, and employment risks; such as underwriting risks.

B) Determining the minimum of a capital:

Article 216 of the Order 95-07 stipulates the necessity of determining the minimum capital or establishment funds required to establish insurance companies, according to the branches of insurance concerned with the application for accreditation, so that it is paid completely and in cash upon subscription. Within the framework of implementing this article, the Executive Decree No. 95-344 of 10/30/1995³⁴ was issued, amended and supplemented by Executive Decree No. 09-375 of 11/16/2009³⁵, whose second Article stipulates determining the minimum capital for insurance companies as follows:

- The minimum capital for insurance companies in the form of a joint-stock company, which only carries out insurance operations for persons and capitalization, estimated at one billion dinars.
- The minimum capital for insurance companies in the form of a joint-stock company, which carries out damage insurance, estimated at 2 billion dinars.
- The minimum capital for insurance companies in the form of joint-stock companies, which exclusively practice reinsurance, estimated at 5 billion dinars.
- The minimum capital for insurance companies in the form of a cooperative company, which only carries out insurance operations for persons and capitalization, estimated at 600 million dinars.
- The minimum capital for insurance companies in the form of a cooperative company, which carries out all damage insurance operations, estimated at 1 billion dinars.

We note from this that the legislator's strategy depends mainly on the minimum capital. Thus, it is characterized by rigidity, in contrast to the Solvency system 2, which relies on a risk-based capital strategy, so that it changes according to the type of the risk.

C) Determining the limit of fulfilment capacity (solvency margin)

In line with what the “Solvency System 2” directives impose in the field of monitoring the solvency of insurance companies, and by extrapolating the legal texts related to this field, we find that the Algerian legislator imposes on insurance companies the necessity of possessing additional resources, which we discussed previously under the title of solvency margin.

Whereas, according to the second Clause of Article 210 of the Order 95-07, which stipulates “... [it must] be ensured that insurance companies fulfilled the obligations for which they have contracted towards the insured, and are still able to fulfil them. ”, Pursuant to the provisions of this text, the Executive Decree No. 95-343 of 10/30/1995³⁶ was issued. This later was amended by the Executive Decree No. 13-115 of 03/28/2013³⁷, which embodies the ability of insurance companies to fulfil their obligations in the presence of an additional amount for technical balances, which the legislator calls the limit of solvency. It consists of the released capital; regulated and non-regulated precautions; regulated balances to postpone by the creditor or debtor.

The limit of the fulfilment capacity of insurance companies for damage insurance and/or reinsurance is calculated so that it must equal at least 15 percent of the technical balances and must not be less than 20 percent of the premiums issued and/or accepted without fees and cancellations in any period of the year. As for personal insurance companies, the limit of the fulfilment capacity must equal at least³⁸:

- With regard to the branches of life insurance; death - marriage - birth, the capitalization equals 04 percent of the account balances and 0.3 percent of the capital under non-negative risk. The latter refers to the difference between the amount of insured capital and the amount of account balances.

- With regard to other branches, it is equal to 15 percent of the technical balances. While the limit of the fulfilment capacity of insurance companies must not be less than 20 percent of the premiums issued and/or accepted without fees and cancellations, in any period of the year.

However, if it is less than the minimum required, the insurance and/or reinsurance institution must either raise its capital or establishment funds, or deposit a guarantee to the public treasury within a maximum period of 6 months from the date of its notification of the fulfilment inability by the Supervision Department³⁹.

Despite this, it can be said that the supervision of the financial position of insurance companies still relies on simple and traditional standards that do not match the real risks to which these companies are exposed.

D) Enforcing transparency through media and disclosure

In the field of media and disclosure, the Article 227 of the Order 95-07 stipulates that every commercial document addressed to the public must be presented to the Supervision Department, and the latter can request its amendment at any time.

Article 226 of the above-mentioned Order also stipulates that insurance and/or reinsurance companies must publish their budgets and results’ calculations in at least two national daily newspapers, one of which must be in Arabic, within a maximum period of 60 days after their approval by the company's management bodies. It is also obligated, on June 30 of each year as the last deadline, to send to the Insurance Supervision Committee a set of documents represented in the following⁴⁰:

- The budget, results calculations and attached tables.
- Auditors’ report.
- Financial investments table (quarterly), and solvency margin table (quarterly).
- Reinsurance scheme, and information of a general nature.

However, despite the efforts of the legislator in this field, we note that there is a difficulty in obtaining information related to insurance companies, and if it exists, it often does not reflect the true financial position of these companies. Moreover, we wonder why the latter do not publish their

annual report on their official websites on the internet, so that the largest number of audiences can see it, or is this information directed to regulatory bodies only?

Section III : The means of activating the supervision of the insurance companies' solvency in Algeria

Supervising insurance companies has become more effective after the Algerian legislator created governmental bodies specialized in this process. These latter work alongside the Minister of finance because the overall texts related to supervision would not have any effectiveness without the presence of devices and bodies that ensure their strict implementation in accordance with what is stipulated by law. This confirms the Algerian legislator's care for the issue of supervising the insurance companies, which may contribute to facilitating the adaptation of these companies to the new European directives of "Solvency System 2."

Accordingly, we will devote this section to studying the bodies and authorities specialized in the legal supervision of insurance companies, which are represented in: the Insurance Supervision Committee, the Insurance Directorate, and the Insurance Inspectors, in addition to some other bodies that have only an auxiliary role in the field of supervising insurance companies.

A) Insurance Supervision Committee

The Insurance Supervision Committee is the body directly responsible for the process of supervision and control of insurance due to the major tasks assigned to it by the Algerian legislator in this field, considering it the specialized body for supervising insurance activity in Algeria⁴¹. We will discuss below the circumstances of its establishment and the supervisory tasks that were assigned for it by the Algerian legislator through the following branches:

1. Establishment and organization of the Insurance Supervision Committee

The Insurance Supervision Committee was established in accordance to the Law No. 06-04 of 02/20/2006⁴², which amended and supplemented the Order No. 75-09 mentioned above. This committee is considered the managing authority of the body in charge of insurance at the Ministry of Finance. The goal behind its establishment is to protect the interests of the insured, ensure the legitimacy of insurance operations, and promote and develop the national insurance market.

The Supervisory Committee consists of five members, including the Chairman of the Committee. They are chosen for their competence, especially in the field of insurance, law, and finance. These members are appointed by a presidential decree on the proposal of the Minister of Finance⁴³. While, the expenses of running this committee are covered by the state budget.⁴⁴

2. The tasks of the Insurance Supervision Committee

In accordance with the Article 210 of Order 95-07, the tasks of this committee are as follows:

- Ensuring that accredited insurance companies and brokers respect the legislative and regulatory provisions related to insurance and reinsurance.
- Ensuring that these companies fulfil their obligations towards the insured, and are still able to fulfil them.
- Verifying the sources of funds used to establish or increase the capital of the insurance and/or reinsurance institution.

In addition, the Article 212 bis 2 of the same order gave the Insurance Supervisory Committee the right to ask the bookkeepers to inform it in case of any potential deficiencies that could be recorded at the level of insurance and/or reinsurance companies during the exercise of their mandate. Also, the Article 238 of the same order granted it the right to appoint assistant inspectors to the prefectural judge, and to request the appointment of the prefectural judge and judicial acting agents, who are appointed by order of the president of the competent court.

If this committee sees that the management of an insurance institution would expose the interests of customers to danger; then, in accordance with the Article 213 of the same order, the

supervisory committee may reduce the activity of insurance companies in one or more branches, reduce or prevent the freedom of action in all or part of the institution's assets until the situation is corrected, as well as appointing a temporary administrator to replace the institution's management bodies, with the aim of preserving its property and correcting its situation.

Moreover, the Supervisory Committee is charged with applying penalties to insurance and reinsurance companies and sections of foreign companies. The penalties stipulated by the Algerian legislator are represented in the following⁴⁵:

- Financial penalties.
- Warning.
- Reprimand.
- Temporary suspension of one or more managers, with or without appointing a temporary managing agent.
- It is proposed to the Minister of Finance to determine the penalties for total or partial withdrawal of approval and automatic transfer of all or part of the insurance contract file.

B) Insurance Directorate

The Insurance Directorate is considered the accountable body for insurance at the Ministry of Finance. It is one of the directorates affiliated with the General Directorate of the Treasury, according to the Executive Decree No. 07-364 of November 28, 2007⁴⁶, as it is considered the implementing body of the supervision process managed by the Supervisory Committee, through its affiliated departments and tasks which the Algerian legislator has assigned for it.

1. Insurance Directorate departments

It consists of sub-directories, each of which is divided into several offices, which are as follows:

1.1. Sub-Directorate of Organization

- Organization and Disputes Office.
- Accreditation Licenses Office.
- Two offices in charge of studies

1.2. Sub-Directorate for Follow-up and Analysis

- Office for summarizing the accounting and financial operations.
- Office of Statistics and Definitions.
- Two offices for studies.

1.3. Sub-Directorate of Supervision

- Office for supervising the insurance companies and synergies.
- Office for supervising insurance brokers.
- Two offices for studies.

2. The tasks of the Insurance Directorate

The tasks of the Insurance Directorate in the field of insurance supervision are the following⁴⁷:

- Studying and proposing the necessary measures for appropriate coverage in the field of national property insurance, whether economic or social.
- Studying and proposing measures directed to controlling and promoting the savings of insurance and reinsurance bodies.
- Studying and implementing measures that would encourage the development of insurance in all its forms.
- Supervising the management of the bodies charged with tasks related to insurance activity under the authority of the Minister of Finance.
- Ensuring the repayment of the debts of insurance and reinsurance companies and cooperatives.
- Studying the files of accreditation applications for insurance and reinsurance companies and cooperatives and insurance brokers.

Based on the tasks assigned to the Insurance Directorate, it is clear that the latter implements the monitoring process at several levels, whether at the legal or regulatory level, or at the accounting

and financial level. In general, it prepares analysis and pursuance studies. While, as we have previously mentioned, decision-making is in the hands of the Supervisory body, either directly or upon a proposal from the Minister of Finance.

C) Insurance inspectors

Due to the increasing number of insurance companies, their subsidiaries, and brokers, it has been difficult for the central supervisory body, represented by the Minister of Finance, the Supervisory Committee, or the Insurance Directorate, to carry out supervision in the required manner. Therefore, in order to cover all parties that must be monitored, it was necessary to assign this task to a specialized human team represented in insurance inspectors, which requires us to introduce them and explain their tasks.

1. Definition of insurance inspectors

The insurance inspectors are one of the supervision bodies for insurance and/or reinsurance companies, branches of foreign insurance companies, and accredited insurance brokers.

Insurance inspectors are considered sworn and subject to a basic law determined by regulation⁴⁸ and represented by the Executive Decree No. 90-334 of 10/27/1990⁴⁹, which states that insurance inspectors are employees affiliated with the administration in charge of finance, and are supervised by the General Inspectorate of Finance.⁵⁰

The field of insurance inspectors include the following ranks: inspector, principal inspectors, central inspectors, and general inspectors.⁵¹

2. Tasks of insurance inspectors

Insurance inspectors are qualified to investigate at any time, based on documents and/or on the spot, in all operations affiliated with the insurance activity. Violations caught during the practice of insurance activity are proven and recorded in a report signed by at least two insurance inspectors. This report includes all the observations and reservations that may be made by the violator or his legally authorized representative, who attends the preparation of the report and signs it, as this report is considered evidence until proven the opposite.⁵²

Finally, these reports are sent by the Insurance Supervision Committee to the Public Prosecutor, if the nature of the facts contained therein justify the criminal prosecution.⁵³

D) The assistant bodies in the supervision operations of insurance companies

In addition to the previous supervisory bodies, there are a number of institutions and authorities that have an auxiliary role in the process of monitoring insurance activity in general, among which we can mention the National Council for Insurances, the Central Risks Authority, in addition to the Insureds' Guarantee Fund.

1. National Insurances Council

The National Insurance Council was established in accordance with the Article 274 of the Order 95-07. It is an advisory body presided over by the Minister in charge of Finance. This Council is consulted on matters related to the status of activity, organization and development of insurance and reinsurance⁵⁴.

This council is composed of representatives of the state, representatives of insurers and intermediaries, representatives of the insured, representatives of sector users, and representatives of experts in insurance and actuaries⁵⁵, which according to Article 270 of the previously mentioned Order refer to those persons who conduct economic, financial and statistical studies; with the aim of preparing or changing insurance contracts. They, also, evaluate the damages and costs of the insurer and the insured, determine the subscription prices by monitoring the company's profitability, supervise the results of exploitation and monitor the company's financial reserves.

The National Insurance Council exercises its powers through its notification of the issues related to its activity by the Minister of Finance or at the request of its members. The Council can submit to the Minister of Finance all proposals aimed at rationalizing and promoting insurance activity. It can also propose all measures related to the technical and financial rules that ensure the

improvement of general conditions, the work of insurance and reinsurance companies, and those related to the general conditions of insurance contracts and tariffs, as well as the regulation of risk prevention⁵⁶.

2. Risks Centralization Authority

As for the Risks Centralization Authority, it is affiliated with the Insurance Directorate of the Ministry of Finance and is responsible for collecting information related to damage insurance contracts underwritten to insurance companies and branches of accredited foreign insurance companies. These latter are also obligated to report the contracts that they issue, as the form and periodicity of these pronouncements is determined by a decision from the Minister in charge of Finance. In return, the Risk Centralization informs the concerned insurance companies of every case of insurance multiplicity concluded by the insured, which is of the same nature and subject to the same risk⁵⁷.

3. Insured's guarantee fund

This fund, affiliated with the Ministry of Finance, was established in accordance with Article 32 of Law 06-04, after it was introduced in Article 213 of the Order 95-07. It is charged with all or part of the debts of the insured or beneficiaries of insurance contracts, within the limits of available funds. Furthermore, in case of the insolvency of insurance companies, i.e. if the latter's assets become insufficient, it is worth mentioning that the Fund's resources consist of annual subscriptions to insurance and/or reinsurance companies and branches of approved foreign insurance companies within the limit of 01 percent of the exported premiums that are net of cancellations and proceeds of the investment of money⁵⁸.

Conclusion

We conclude from the above that there are important and undeniable efforts made by the Algerian legislator in the field of monitoring the solvency of insurance companies, in order to cope with global requirements in the field of the solvency of insurance companies, through the various amendments that were introduced to the legislative system of the insurance sector. Despite all of this, the reality of the legal supervision of insurance companies in Algeria is still facing many problems that make it not compatible enough with the developments of the new international directives known as the Solvency system 2, which makes it in need of further reforms in this regard.

This is confirmed by the results obtained through this study, which we summarize as follows:

- The Algerian legislator's strategy in the field of regulatory rules on the solvency of insurance companies depends on the prudent man's standard, which is close to what was brought by the new international standards called "Solvency System 2," but not in all cases.
- The Algerian legislator focuses on the risks of liabilities, at the expense of asset risks, in which it differs from the Solvency system 2 standards that focus on all risks (market, credit, employment and underwriting).
- The Algerian legislator relies on the principle of fixed capital, and ignores the risks to which the company is exposed. This is in contrast to the standards of the Solvency system 2, which is based on the principle of risk-based capital that changes based on the type of risk.
- Insurance companies in Algeria still rely on simple and traditional standards in calculating the solvency margin, which are not commensurate with the real risks to which these companies are exposed, despite the separation between personal insurance and damage insurance. This is according to the latest amendments of the Algerian legislator.
- The lack of a system that allows the rapid and widespread dissemination of information and its effective disclosure.
- Although there are regulatory bodies that works to maintain the financial solvency of insurance companies, they are still not yet qualified to implement the requirements of the new international standards called "Solvency System 2."

In order to fix some of the imbalances in the field of supervising the solvency of insurance companies, we present the following suggestions:

- To prepare a legislative framework with the aim of amending the process of evaluating financial solvency in line with market requirements. Although insurance companies are committed to the rules set for them related to solvency, these rules themselves need to be amended in order to actually achieve the soundness of the financial position of insurance companies.
- The legislator must take into account the various risks that could affect the financial solvency of insurance companies, and prepare a clear framework for all the risks to which they are likely to be exposed.
- Working to apply qualitative pillars in the insurance supervision process, including establishing governance rules at the level of both insurance companies and regulatory bodies, and preparing an effective internal control system.
- Regulatory bodies should adopt advanced supervision policies by relying on an effective information system that allows access to all necessary information on a large scale.
- Providing a sufficient number of qualified competencies, especially actuarial experts, as it is impossible to determine the exact values of solvency, nor determine the types of risks or separate them, except with the presence of an actuary.

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