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# INSURANCE, A GUARANTEED RISK OR A RISK ASSUMED?

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## **Abstract**

*In the context of various changes in the players' composition on the insurance market, along with the changes that take place in the legislative area of the insurance system, we ask ourselves whether insurance is a guaranteed risk or a risk assumed by secure? At national level, due to the fact that within the insurance companies the internal control is not well implemented, there is no staff to pursue this goal and no mitigating measures are taken so that the risks triggered by the human decision-making factor be decreased. Because of this fact, the insurance can become a lottery for the insuree at one point because either the insuree cannot cover the damage s/he has secured, or s/he can lose as a result of some decisions taken by a representative of the insurance company. Therefore, a well-implemented and managed internal control can save both the activity of an insurance company as well as its image. That will generate a profitability, a good reputation for the insurance company, as well as policy-holders' satisfaction. In this paper we aim to highlight the importance of internal control within insurance companies, as well as the consequences arising from a lack of internal control or its existence at a declarative level only.*

**Keywords:** insurance, risk, assumption, warranty, control

**JEL Classification:** G22, M40, M41

## **1. Introduction**

This article was designed to highlight fundamental elements that are generally not known in the true sense of the word by insurance recipients. These elements are decisive for the conclusion of an insurance policy, because on their basis, any natural or legal person should make the decision whether or not to secure a good, event or particular situation.

Failing to recognize basic elements of the concept of insurance leads to a series of decisions made under ignorance, indifference or emotion, and the repercussions of these decisions often lead directly to risks, risks that generally transform the insurance policy from a risk guaranteed by insurance companies into a risk assumed by the insured.

In addition to risks directly or indirectly concealed inside the insurance contracts, the risks may also arise from the lack of well-structured and implemented internal control. Thus, we believe that there should be no unchecked structures or decision makers, as this generates forgeries, financial losses for both the insurer and the insured, as well as loss of image that ultimately leads to material losses.

The article is structured in four points, highlighting both the theoretical and explanatory part and the analysis of various situations encountered in insurance in 2017,

as well as situations in 2017, comparable to the previous years. The article ending with the conclusions resulting from the exposure of the material which forms the content of the work.

## **2. The concept of insurance**

Insurance is a form of protection for a variety of situations, based on a contract by which a natural or legal person called insuree seeks to minimize various losses by transferring certain risks to a legal person called the insurer, as a result of a money payment called insurance premium.

The Insurer undertakes under this contract to pay the insuree compensation if the events stipulated in the contract are to take place. Under Law 32/2000, insurance is the operation by which an insurer constitutes, on the principle of mutuality, an insurance fund by the contribution of a number of insured persons exposed to certain risks, and indemnifies those who suffer damage on the basis of the fund made of all the paid premiums, as well as from other revenues resulting from the activity that is carried out.

### **Terminology in the field of insurance.**

*The insurer* is a Romanian legal person authorized under the terms of Law 32/2000 that carries out insurance activities within the branch or subsidiary of an insurer in a country, as well as within a branch of an insurance company or a mutual company in a Member Country which has received an authorization from the competent authority of the home Member Country. The insuree is the person who has an insurance contract with the insurer.

*Actuary* is the natural person registered in the Actuaries Register in accordance with the provisions of Law 32/2000 specialized in risk assessment by statistical methods, which are used for the calculation of premiums, technical reserves and annuities in the insurance field.

*The beneficiary* of the insurance is a natural person indicated by the insuree to receive the benefit of the insurance, in case of the insured risk.

*The insurance broker* is a Romanian legal person authorized under Law 32/2000 that negotiates for his clients, the clients being physical or legal persons, insured or potential insured persons. The insurance broker negotiates for his clients, concludes of insurance or reinsurance contracts and provides assistance before and during the execution of the contracts or in connection with the settlement of claims on the situation. The insurance broker represents an intermediary from a Member State carrying out brokering activities on the territory of Romania, in accordance with both the right of establishment in Romania and the freedom to provide services.

*The insured event* is the event which has actually occurred, and for its consequence-removal the insurance has been made in the first place.

*The insurance contract* is the legal act governing the legal relations between the Contracting Parties. It consists of a set of documents comprising the insurance claim, the insurance policy, the basic insurance contract conditions and the additional clauses attached. By the provisions of the insurance contract, the insurance contractor or the insuree undertakes to pay a premium to the insurer, and he undertakes to pay the insuree, the beneficiary of the insurance or the injured third party the compensation or the insured amount, called indemnity, as the insurance contract provided, within the agreed limits and terms.

*Insurance policyholder* is the person who concludes the insurance contract to insure a risk to another person, and he undertakes to pay the insurance premium to the insurer.

*Damage* is the loss suffered by the insuree after the assured case has occurred. *The period of insurance* is the period of time during which the insurance relations between the insurer and the insuree remain valid as set out in the insurance contract.

*Franchise* represents the part of the damage suffered by the injured person, stipulated as a fixed amount or percentage of the total compensation stipulated in the insurance contract.

*The insured amount* is the maximum amount within which the insurer is required to pay the insurance indemnity to the insured event.

*The insurance indemnity* is the amount of money the insurer pays when the insured event occurs.

*The subject of the insurance* is composed of: certain goods, the indemnities owed by the insured due to his civil liability to a third person or person-attribute (life, work capacity, etc.), that is to say, the patrimonial or non-patrimonial values exposed to the danger.

*The grace period* is the period for which coverage continues beyond the expiry date of an insurance contract to allow payment of the insurance premium.

*Insurance premium* is the amount of money that the insurer or the insurer's insurer pays for assuming the risk, i.e. the insurance price.

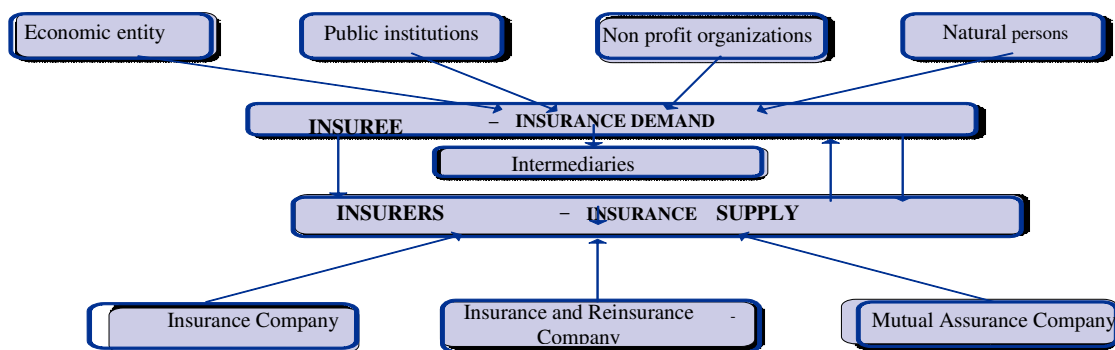
*Reinsurance* is the operation consisting in taking over the risks transferred by an insurer or reinsurer.

### 3.Principales of insurance activity

#### 3.1 Community of the Insurance Market: Operators, Regulatory and Supervisory Institutions, Dimensional and Structural Elements

As for any other market, the definition of the insurance market is the place where demand is met with the offer of specific products and insurance.

**Figure no. 1** - Structure of the insurance activity.



*Source: Made by the author according to the data from the Insurance Supervisory Commission, Course support, Continuous professional training of insurance intermediaries”*

Its main features can be highlighted by the three common features of any market, whatever its nature, namely:

- the organizational framework;
- Market size;
- Structure and competition structure.

**The organizational framework is represented by:**

- The demand for insurance products can come from individuals as well as from organizational entities such as: economic agents, public institutions, non-profit organizations. Future insuree can come from all of these potential customer categories.
- The offer is generated by insurers, which can be organized as insurance companies, insurance-reinsurance companies or mutual insurance associations.

From the point of view of the organizational form, an insurer can be:

- a Romanian legal person authorized under the law to carry out insurance;
- the branch of an insurer from a third country;
- the branch of an insurance or a mutual company in a Member State which has received authorization from the competent authority of the home Member State.

Insurers can also be classified by the nature of the products and services offered:

- life insurers;
- non-life insurers;
- insurers with composite activity.

Other market operators are insurance intermediaries such as insurance brokers, brokerage assistants, insurance brokers, insurance agents, subagents, subordinate insurance agents.

Insurance intermediaries may be (Pellino and Sorgi,2006):

- natural or legal persons performing insurance mediation in exchange for remuneration, authorized or registered under the law;
- an intermediary from Member States that carries on the territory of Romania insurance intermediation activity, according to the right of establishment and the freedom to provide services in our country.

Other categories of personnel involved in the distribution of insurance products are:

- employees of insurance companies involved in the distribution of insurance products,
- the staff of the insurance or reinsurance broker who has as its main service task the intermediation of insurance or reinsurance contracts.

It is worth mentioning that both insurers and insurance intermediaries have formed professional associations such as: *National Association of Insurance and Reinsurance Companies in Romania* and Insurance Consulting Companies in Romania, plus the associations of actuaries and lawyers in the field: Romanian Association of Actuaries, Association of Romanian Insurers Law.

**Guarantee Fund, component of the organizational framework of the insurance market**

The Guarantee Fund was set up to protect policyholders by Law No.136 / 1995 on Insurance and Reinsurance in Romania. The Fund is constituted by the contribution of

the insurance companies and is intended for the payments of indemnities and insured amounts to the insurance creditors of the insured insurance companies.

The Insurance Supervisory Commission has adopted rules setting out how to set up, manage, structure the revenue and expenditure budget, the procedure and conditions for making payments from and to the Guarantee Fund, as well as the recovery procedure for advanced payments from Guarantee Fund. Law No. 503/2004 on financial recovery and bankruptcy of insurance companies contains a number of provisions regarding the attributions of the Guarantee Fund.

### **Street Victim Protection Fund**

It is a legal entity of private law without patrimonial purpose, organized as a professional association of all insurers entitled to practice Civil Auto Liability insurance on Romanian territory. It fulfills the three functions provided by the European directives:

- body for payment of compensation to injured persons for uninsured vehicles for civil liability risks or unidentified authors;
- information center;
- a compensation body providing compensation to injured parties as a result of an accident occurring on the territory of a Member State, other than the residence of the injured person, caused by a registered and insured car on the territory of Romania.

### **Insurance Supervisory Commission) - the insurance regulatory and supervisory authority**

It is a specialized autonomous administrative authority with legal personality, which carries out its activity in order to protect the rights of the insured persons and to promote the stability of the insurance activity in Romania. The legal basis for its organization and operation is Law No. 32/2000 on insurance and insurance supervision.

The management of the Commission is ensured by a seven-member council consisting of: a chairman, two vice-presidents and four members, appointed by Parliament on a proposal from the specialized committees. The main tasks of the Commission are:

- elaborates and approves the drafts of normative acts that concern the insurance field or have implications in this field;
- authorizes insurers and insurance brokers;
- approves the direct or indirect shareholders of insurers and brokers;
- authorizes the compulsory insurance established by law;
- approves or withdraws approval for significant insurers and insurance brokers;
- approves the division or merger of an insurance insurer / broker;
- approves the portfolio transfer;
- approves the limitation, suspension or cessation of the activity of insurers and insurance brokers;
- supervises the financial situation of insurers and intermediaries;
- approves the curriculum and the theme of the graduation exams for entities organizing vocational education courses, as well as the requirements for lecturers for these courses;

- applies the measures provided by the law on the financial recovery, reorganization or bankruptcy of insurers;
- fulfills the capacity of administrator of the Guarantee Fund;
- applies the sanctioning measures provided by law;
- receives and responds to complaints and complaints regarding the activity of insurers and insurance intermediaries;
- Participates in the bodies from insurance sector attached to the European Commission and in international associations.

#### **4. Risk and protection against risk through the insurers**

The risk to which people are exposed is defined as a potential hazard or possible loss. Dangers materialize themselves in undesirable events with serious material, spiritual, and financial consequences, with bodily injury or health damage. The concept of risk is characterized by two dimensions:

- the degree of uncertainty;
- the material and financial consequences of a particular unwanted event.

Particular attention is paid to events with a high frequency, while those less-frequent being often neglected. There are, however, very frequent events that have catastrophic consequences such as those in the aviation and maritime transport sectors. The two major dimensions of the risks are also added to a third dimension, namely, perception of risk.

Risk perception is a psycho-social component, which has a particular importance in analyzing and interpreting the risks we are all subject to, as well as in creating the means of protection against risks. Synthesizing, we can say that we are dealing with three interpretations of the notion of risk:

- a distress, a danger, a possible event, an unpleasant event;
- a possible, future and likely to happen event endangering property, patrimony, life, health or physical integrity of people concerned. The event may be predictable when certain factors that bring losses can be predicted, or unpredictable when the event is determined by certain forced situations;
- a phenomenon of general and permanent nature, since any activity (economic, social, cultural, political, etc.) may be threatened by the occurrence of loss-causing events.

Everyone's life and property can be affected by accidents, unpredictable phenomena, or catastrophes. To eliminate the risks, people have several choices and forms of protection:

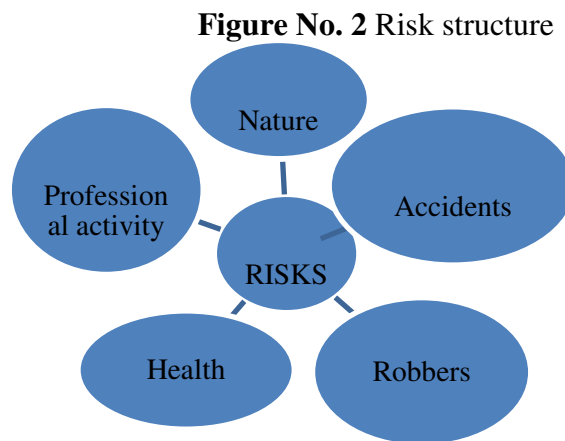
- avoiding or preventing risks - are simple, primary measures that are taken to avoid any risk. These measures are forward-looking. Risk prevention can be done through active actions, thus reducing the possibility of risk, or passively through actions that limit the degree of destruction:

- limiting damage, involves taking action to reduce the effects of destruction immediately after the catastrophe, but before the disaster comes to an end;
- the creation of reserves to cover possible damage means the creation of a reserve fund to be used for this purpose;
- switching risk to another person which undertakes to bear the damages of the risk for which it is paid.

#### 4.1. The main factors generating risk

Risk management is a frontier discipline that aims to develop theories and practical methods of risk protection.

In Figure no. 2 we highlighted the risk structure with the main risk generating factors from which they go, in order to expand later to form a spider .



*Source: Made by the author according to the data from the, Insurance Supervisory Commission „Course support, Continuous professional training of insurance intermediaries”*

The most effective risk management methods are:

- Avoiding the risks, which is a passive method of renouncing those activities that involve a certain risk, by avoiding certain actions and by giving up the advantages that they would offer;
- Reducing the likelihood of a certain risk consists of adopting a preventive attitude and behavior, recourse to some practical means that could limit the causes that lead to the occurrence of events by: installing alarm and anti-burglary systems, smoke detectors;
- Limiting the consequences associated with a risk requires that after the event has occurred but before it is over, the people concerned should take measures to minimize its disastrous effects, such as: preventing the spread of fire, applying curative treatments to persons who have suffered accidents;
- Assuming the risk involves the individual bearing the material and financial consequences of producing an unwanted phenomenon;



Transfer of risk involves taking risks from professionals such as insurance companies. It is an effective method especially when the financial consequences of the unwanted event are high, exceeding the person's ability to fully bear them. Transfer can only be done for those risks that can be dimensioned in value, and for those possible undesirable events whose material and financial consequences can be determined and measured (Koch, 2017)

#### **4.2. Protection against risk through insurance**

Insurance is the concept of uniting a community of risk through which community members agree to contribute financially to the formation of an insurance fund and subsequently to jointly supporting the damages caused to the members of the community.

The essence of insurance is the dispersal of risk on a specially organized community for this purpose (Huang, Snow and Tzeng, 2017).

The insurance transfers the risk from one person to a group of people who, through this procedure, can more easily compensate for the financial damage suffered. The concrete form of protection is represented by insurance companies operating on the basis of legislation, rules, economic principles and protection of persons who consent to participate in these financial funds under various forms of insurance for the prevention and compensation of damage caused by risks.

There are various meanings of insurance risk:

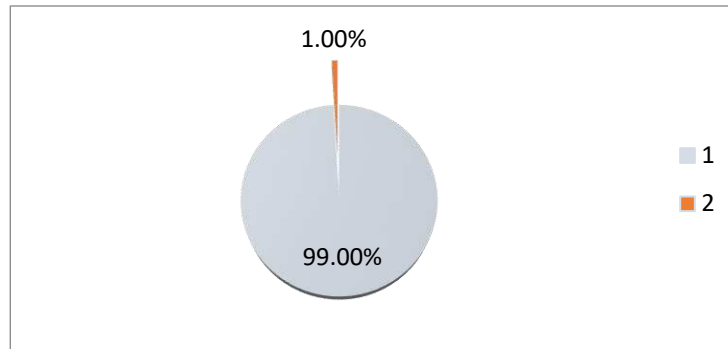
- the possibility of partial or total destruction of goods as a result of unpredictable phenomena;
- probability of occurrence of the phenomenon against which insurance is contracted;
- the protection that the insurance company assumes against a danger.

Risks that are accepted by insurance companies are called insurable risks. In order to be transferable to an insurance company, the insured risk must fulfill certain characteristics:

- the occurrence of the event is possible, but not inevitable;
- the event may be real, that is to say, a certain degree of danger to the insured;
- occurrence of the event can be in the future, but it is uncertain though;
- making the event possible in the widest possible range, including a large number of insurers generating the financial balance of the insurer;
- the nature of the event is accidental, unpredictable, both in terms of the event, moment and intensity of the event;
- the producing of the event has a certain frequency;
- the event has a statistical character so that it is subject to statistical evidence and the probability of emergence can be calculated;
- be evaluable, be expressed and determined in value; the production of the event does not depend on the will of the insured or the beneficiary.

In order to provide a mirror of the population's perception of the risk protection phenomenon through insurance, in figure no. 3 we highlighted the situation of the voluntary housing insurance policies at the end of 2016.

**Figure no. 3** - The Statement of Optional Insurance Policies at the End of 2016;  
1 = 99 % uninsured dwellings; 2 = 1% of insured accommodation.



*Source: Made by the author according to the data from the report published by the Financial Supervisory Authority.*

**The diversity of risks permits the configuration of a typology based on various categories of classification, as follows:**

- Insurable risks and excluded risks that are uninsurable;
- Pure risks and speculative risks;
- Fundamental risks and secondary, complementary risks
- Particular risks and general risks;
- Predictable risks and unpredictable risks;
- Internal risks and external risks;
- Economic risks, social risks and political risks;
- Common risks and special risks.

The existence of insurance is indissolubly linked to the necessity to set up a fund of money resources meant to compensate for the damages caused by certain phenomena. Like other components of the financial system, insurance fulfills certain functions:

- the function of compensating damages caused by natural calamities and accidents and payment of insured amounts;
- risk and damage prevention function;
- the financial distribution function, which occurs in the process of formation of the insurance fund, at the disposal of the insurance company, on the account of the insurance premium, incurred by the natural and legal persons included in the insurance, such as those in the contract or the legislative ones.

This function is also manifested in the process of directing the fund to its legal destinations such as: the payment of the insurance indemnity, the financing of preventive actions, the coverage of the administrative expenses of the company, the taxes owed by the insurance company to the state or local budget. The control function looks at how the insurance premiums and other income of the organization are collected, how the payments are made as insurance indemnity, the correct determination of the rights to the insured.

**5. Time and mode of negotiation of clauses in a risk assurance policy**

At the conclusion of an optional goods policy, our attention is directed to the amount of the insurance premium, which can be reduced after a negotiation, which we consider to be favorable to us at the conclusion of the contract (Angheni, Volonciu, Stoica and Lostun, 2000). In fact, the reduction is set by the insurer and left to the insurance agent, the broker, or the sales counselor to be granted if requested. Most insurers' representatives reduce the premium so as not to lose the customer.

Satisfaction with obtaining a low premium distracts policyholders from other suspicious or unfavorable terms stipulated in the contract. Usually these clauses are about how to calculate and pay indemnities, where insurers impose a whole series of prohibitions, exclusions, excessive obligations on policyholders to pay a minimum insurance premium and maximize their profit.

After an analysis of the general and special insurance conditions, we found that, in the category of exclusions for optional motor insurance, the majority of insurers include clauses, according to which no compensation is paid for situations such as: the damages produced to the motor vehicle of its running on closed public roads, which at the entrance are marked accordingly with visible inscriptions, thus also with other inscriptions, against the traffic signs prohibiting the access of the vehicles on the respective roads. Our opinion is that the insured person could not have foreseen the production of an insured risk by entering a closed road and therefore, the prohibition of non-payment imposed by the insurer is an excessive measure to the insured.

Other exclusions concern damage caused intentionally by insured persons, or by their predecessors, users or persons whom the policyholder entrusted to the motor vehicle. The rule is that the policyholder concerned carries out his car with the diligence of the good owner, which is why we ask ourselves how to intentionally damage the vehicle that drives us? However, there are cases where insurers impose exclusions and non-payment of compensation for the part of the damage that has been increased by deliberately not taking measures to conserve or limit it, during the occurrence of the risks insured or after their production. The insurers also introduce some franchises in the contract, by risk categories, so that when the damage occurs, they reduce the amount of compensation by the total amount of the franchises, which are not negotiated at the conclusion of the contract (Boroi and Stănciulescu, 2006).

### **Abuse by using car wreckage**

Through the wreck method, policyholders are affected by the right to compensation and by the way the amount and extent of the damage is calculated. An important role in determining it is the assessment of the wreck of an insured vehicle in the event of total damage. Insurers are in the presence of an abusive clause when insurers determine that the insured amount is diminished with the value of the wreck and, as the case may be, with the cost of wreck assessment. In the rest of the cases, the insurer determines the value of the wreck by evaluating the web as a result of a real offer, and in the absence of the actual offer for the damaged vehicle, an evaluation done on the web will determine the amount of the wreck at 25% of the insured amount. Without going into pure technical details, we express our opinion that the real value of the wreck can only be determined by specialists, possibly based on extrajudicial expertise and not by web evaluation.

Most insured or car insurance companies are dissatisfied with the value of the wreck and implicitly damages, which is why insurers have taken shelter by including in the contract other clauses, according to which the amount of compensation will not exceed 75% of the insured amount, breaching the provisions of art. 2217 of the New Civil Code,

which states that "the compensation cannot exceed the value of the asset at the moment of the insured risk, the amount of the damage or the insured amount".

Therefore, when considering the possibility of concluding an insurance contract and we are in the presence of an offer, we must ask the representatives of the insurer to provide us with other clauses of the contract that can be negotiated. It is important to require the beneficiaries at the time of conclusion of the contract, to be informed of the general and special insurance conditions, the conditions that accompany the policy, because the rights and obligations of the policyholder are not provided in the policy, but derive from these general and special conditions, in its annex. The insurer has a clause stipulating that by signing the policy you have received the general and special insurance conditions.

### **Market share of Civil Auto Liability in 2017**

Andreea RADU published on 11.05.2017 as Misu NEGRITOIU, the President of the Financial Supervisory Authority declared that in the first quarter of 2017 there was a significant concentration on the top first insurers, reaching the situation where the first two insurers to cumulate approximately 59% of the RCA portfolio in Romania.

Of the total premiums written by City Insurance in the first quarter of 2017 (336,106,868 lei), a total of 8,738,319 lei (3%) was subscribed on the territory of Greece.

In Romania, the situation of the insurance market on the RCA domain is claimed by 9 insurance companies, and the weight per each company is presented in detail in table no.1.

**Table No. 1 Market share in the first quarter of 2017**

<b>No.</b>	<b>Society</b>	<b>Market share</b>
1	CITY INSURANCE	31.63
2	EUROINS	27.68%
Total(1+2)	59,31%	
3	ASIROM VIG	10.23%
4	ALLIANZ - TIRIAC	8.53%
5	OMNIASIG VIG	7.22%
6	GENERALI	6.14%
7	GROUPAMA	5.05%
8	UNIQA	3.47%
9	GRAWE	0.05%
<b>TOTAL</b>		<b>100%</b>

*Source: Made by the author according to the data from the report published by the ASF - Financial Supervisory Authority.*

With regard to the history of competition on Civil Auto Liability market and the struggle to gain a higher market share, a statistic for the years 2012-2017 indicates that traditionally the Romanian Civil Auto Liability market was dominated by 3-4 large insurers, while the weight of the other players was much lower, or even insignificant.

### **Conclusions**

As a result of the material contained in this article, we tried to highlight the essential elements that are necessary for the final consumer, namely the insuree. The article was

structured on four main points, and at the level of each point we explicitly exposed to the insurance beneficiaries or insurers the following:

- how they are defined;
- how to regulate and promote insurance in the various insurance fields;
- the risks arising from the conclusion of an insurance policy without being well informed and without studying the contract underlying the insurance policy;
- the risks arising from the choice of a company that does not organize, does not structure and does not properly supervise the entire chain from the insurer to the insured and vice versa;
- the importance of studying insurance contracts in their entirety and negotiating clauses where applicable;
- the situation of the insurance market in the first quarter of 2017 on a very impressive segment, namely the Civil Auto Liability.

From the paper, we can conclude that the insurance market got on an ascending trend in 2017, being dominated by 2-3 insurance companies and the rest of the companies comparing the difference of the participants on the insurance market, which leads to the formation of the whole.

Also, as we have presented, there are various categories of risks, risks that can generate losses for both the insurer and the insured. Risks can be generated by: legislative, exceptional or human-factor risks, and human-factor risks can be for both the insurer and the insured.

Our conclusion is that where there is a possibility for a human factor to influence a result, there must be a structure that can verify it, because uncontrolled situations create risks.

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