

## **The limits of liability insurance for statutory auditors -the case of the Algerian insurance company CAAT-**

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**Abstract:** this paper aims to study the insurance for professional civil liability of the auditor, although liability insurance is mandatory for statutory auditors, but we have noticed that the insurance company CAAT, Bordj Menaiel subsidiary, has not subscribed many contracts ; the number of contracts was four in 2017 and three in 2018, We therefore propose that the marketing of the insurance product of professional civil liability be increased, and not to grant licenses for statutory audit activity except after subscribing to an insurance contract for professional civil liability, we also propose to encourage takaful insurance in accordance with sharia law.

**Keywords:** insurance; civil liability; statutory audit; auditor.

### **1-Introduction:**

Civil responsibility in the field of auditing has received the attention of many studies, where the relationship of trust between the auditor and companies was based on ethical foundations far from judicial disputes, However, professional errors made by auditors and the consequences of decisions made through their reports, It led to research on this topic by enacting a legal system that defines the civil responsibility of the auditor, that must be insured as a result of these mistakes committed by the auditor and the consequences thereof, given the large amount of compensation, It was necessary to insure these faults by issuing an insurance policy. Under the latter, insurance companies agree to compensate for errors made by auditors due to professional negligence during the insurance period.

#### **1-1-Problematic:**

To delve into the context of the topic and explain its merits, we have raised the following problem: what are the limits of insurance on the civil liability of auditors in Algeria in protecting auditors and covering the losses of the parties affected by the auditor's mistakes?

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### **1-2-Sub-questions:**

Under this major problem, the following sub questions are included:

- What is the civil liability of the auditors?
- What are the general and specific conditions for insurance on the professional civil liability of the Algerian Insurance Company -agency n° 144- ?

### **1-3-Objectives of the study:**

After we have identified the research problem and its sub-questions, our research aims to achieve a number of objectives, namely:

- Clarify the role of civil liability insurance in protecting auditors and covering compensation;
- To highlight the effectiveness of civil liability insurance for auditors in maintaining the continuity of the practice of the profession in Algeria.

### **1-4-Importance of the study:**

The importance of the study is that it addresses the subject of the civil responsibility of the auditor, given the practical need to explain the mistakes committed by the auditors and the extent of their responsibility; in addition to the role that professional civil liability insurance plays in protecting those affected by occupational errors; by pushing insurance companies to compensate for what they owe.

### **1-5-Research methodology and tools used:**

We relied on the descriptive and analytical method in the theoretical side because it is the most appropriate to study and analyse the subject of the research, in order to introduce various concepts related to the insurance of the auditor's civil liability, on the practical side, we relied on the analytical method when presenting the case study through processing information related to an agency of the Algerian company for insurance -CAAT-.

### **1-6-Research structure:**

The research contains a theoretical aspect linked to the general concepts of insurance on the professional responsibility of the auditor, and a practical aspect based on the case of the Algerian Insurance Company for the period 2017 and 2018.

## **2-Legal audit in Algeria: its regulatory laws and its various responsibilities:**

### **2-1- Evolution of laws regulating legal audit in Algeria:**

Since the independence of Algeria, the legal audit profession has undergone three major steps that should be known before 1991, after 1991 and after 2010.

### **2-1-1-Period before 1991:**

The legal audit profession is governed mainly by the commercial code (Ordinance No.75-59, 1975), which has been amended and/or supplemented five times by various legislative texts: (Djouimaa, 2014, p13)

- Law No. 87-20 on the Finance Act for 1988; (Official journal No. 54, 1987, p2112)
- Legislative Decree No. 93-08 of 25 April 1993 Order No. 96-23 of 9 July 1996; (Official journal No. 27, 1993, p03)
- Law No. 05-02 of 6 February 2005. (Official journal No. 11, 2005, p 08)

### **2-1-2-Period after 1991:**

Law n ° 91-08 of April 27, 1991 relating to the profession of chartered accountant, auditor and accountant came to regulate three professions including that of legal audit. (Official journal No. 20, 1991, p651)

### **2-1-3-Period after 2010:**

Law n ° 10-01 of June 29, 2010, relating to the professions of chartered accountant, auditor and accountant (Official journal No. 42, 2010, p04), repealed by its article 83 all the provisions which are contrary to it and in particular the law n ° 91- 08 of April 27, 1991 relating to the profession of chartered accountant, auditor and accountant.

### **2-2-Various responsibilities of the legal auditor:**

Professional liability is an important issue for auditors. In some states, audit firms have been made responsible in a number of cases for amounts which were disproportionate with the audit fee and with the auditor's direct responsibility for the financial failure. The auditor usually disposes of professional indemnity insurance and there is a tendency to sue by preference the party whose professional liability has been insured. (Green paper, N.D, p28)

The exercise of the profession of statutory auditor is a source of heavy responsibilities. He may therefore be faced with a risk:

- Civil liability;
- Of criminal liability;
- And disciplinary responsibility.

He is civilly liable, both to the company and to third parties, for any faults and negligence he may have committed in the performance of his duties.

Law 01-10 in its chapter VIII, deals with the liability of the professional in the following logic: (auditor's review, 2014, p01)

- Article 61 deals with civil liability;
- Article 62 deals with criminal liability;
- And section 63 of disciplinary liability.

Article 61 of Law 10-01 states: “the auditor is responsible to the audited entity for faults committed by him in the performance of his duties.

He is jointly and severally liable, both towards the entity and towards third parties, for any damage resulting from violation of the provisions of this law. He is not relieved of his responsibility for offenses in which he did not take part, unless he proves that he has performed the normal procedures of his function and that he has informed the board of directors of these infringements and if they have not been adequately remedied, at the nearest general meeting, after he has learned about them and, in the event of a finding of an infringement, he proves that he has informed the public prosecutor at the competent court.” (Law n ° 10-01, 2010, p09)

Article 62 of Law 01-10 states: "the legal liability of the chartered accountant, the auditor and the accountant is incurred for any breach of a legal obligation." (Law n°10-01, 2010, p09)

This article thus increases the risk of seeing the auditor involved in lawsuits criminal with serious consequences on his life professional, social and family.

Article 63 of Law 01-10 states: “disciplinary liability is incurred before the disciplinary commission of the National Accounting Council, even after their resignation, for any violation or breach of professional, technical or ethical rules committed during the exercise of their function.” (Law n ° 10-01, 2010, p09)

It is true that in criminal matters there can be no penalty without a text. However, the existence of such a provision may compromise the professional by involving him, at any time, in criminal proceedings when, during the he exercises of his mission has transgressed legal provisions which may have no connection with the criminal law.

### **3-The production of agency n°144 developed between 2017 and 2018:**

In this paragraph, we will examine the production of agency n°144 developed between 2017 and 2018.

### **3-1-Definition of agency n ° 144 Bordj Menaiel:**

The Bordj Menaiel regional agency is one of the agencies affiliated with the Algerian Insurance Company (CAAT), which holds the serial number 144, where it has all the powers and laws that allow them to provide all insurance services in various fields: (Official website CAAT, 2020)

- At the agency level, there are the following departments;
- Insurance department for the transport of goods;
- The car insurance and minor risks department;
- Industrial risks and personal insurance department;
- Finance and accounting department.

It started its activities in 1994 with the permission of the state, this agency exercises all types of insurance, it also performs two basic tasks, namely production and compensation.

#### **3-1-1-Production:**

It is a contract, so the person who wants to insure is subject to several procedures before performing the insurance process, and for this insurance to become a valid contract, the following must be available: request, insurance policy, parties to the contract, risk, determination of the insurance premium, determination of the amount of insurance, the date of the insurance policy, the contract's validity period, and the insurance supplement.

Through the agency's administrative system, the production process is divided into several departments: (Official website CAAT, 2020)

- Car insurance and simple dangers;
- Personal insurance;
- Insurance for the transport of goods.

#### **3-1-2-Compensation:**

The compensation process is carried out in two stages:

##### **3-1-2-1-The stage of estimating the compensation value:**

At this stage, the damage caused by the verification of the insured risk will be calculated, Until the insured receives a compensation equal to the damage he deserves, the company enters into an agreement with specialized experts who estimate this compensation.

### **3-1-2-2-Compensation payment stage:**

After the expert has assessed the value of the damage, the agency director will sign a bank check with the amount of the compensation.

### **3-2-Analysis of the production of the CAAT professional civil liability branch for the period 2017-2018:**

In what follows, we will explain the development of the civil liability Branch, which is considered a branch of general civil liability, this is done by analyzing the percentages of change in production in table No. 01.

**Table N°1. production of the CAAT Professional Civil Liability Branch between 2017-2018**

Unit: Algerian Dinar

<b>Branch</b>	<b>Production 2017</b>	<b>Production 2018</b>	<b>Percentage change %</b>
<b>Professional civil liability</b>	198 141,65	205 116,47	0.035

**Source:** prepared by the researcher based on the agency's reports

We can see in table n°01 that the civil liability branch in 2018 achieved an increase compared to 2017, and this increase was estimated at 3.5%, this is due to the increase in subscription to the branch of professional civil liability for the year 2018 compared to the year 2017.

### **4-The pricing of professional civil liability for the statutory auditor in the agency n°144:**

In this paragraph, we will examine the pricing of professional civil liability for the statutory auditor in the agency n°144.

#### **4-1-The basic conditions of the civil liability insurance contract for auditors:**

The insurance contract for civil liability in general and civil liability for the statutory auditor in particular are subject to all legal obligations, in particular civil and commercial law and those provided for by ordinance n°95.07 of 25/01/1995 relating to insurance, modified and supplemented by law 06-04 of 02/20/2006, it is divided into general and specific conditions as follows:

##### **4-1-1-General conditions for civil liability insurance contract:**

This contract aims to secure the financial consequences of the civil liability of the insured according to the limits set in the general conditions or special conditions, according to the provisions of the civil law (in particular articles 124, 135, 136, 138 and 140 of the civil code), these texts determine the guarantees and restrictions imposed on the insurance company, and also define

mutual obligations between the two parties, taking into account legal and regulatory provisions.

#### **4-1-1-1-The purpose and scope of the contract:**

In this paragraph, we will examine the purpose and scope of the contract.

#### **4-1-1-1-1-Purpose of the contract:**

This contract aims to cover the insured against the financial consequences of civil liability that he may incur and stipulated in article 124 of the civil code, as a result of the damage caused to other parties, due to his activity or profession.

#### **4-1-1-1-2-Damages:**

The insurance company guarantees to the insured civil liability for the financial results that fall on the insured, or his employees, due to errors or omissions in the context of his various practices, particularly:

- Bodily injury: any bodily injury suffered by a natural person;
- Material damage: any deterioration or destruction of a thing or substance, any physical damage to animals;
- Intangible damage: any pecuniary damage resulting from the deprivation of enjoyment of a right, the interruption of a service rendered by a person or by movable or immovable property, or the loss of a profit and which results directly occurrence of bodily injury and/ or material.

#### **4-1-1-1-3-Date of expiry of the contract:**

the signing of the contract by the two parties enshrines the validity of the contract, and hence the continuity of the insurance companies in performance.

#### **4-1-2-Special conditions:**

This is the document which specifies in particular:

- The names and address of the natural or legal person who subscribes;
- The situation in which the guarantee is exercised;
- The characteristics of the risk;
- Guarantees subscribed and the amount of capital;
- The duration of the contract and its effective date;
- The premium to be paid, the number of deductibles and possibly the surcharges and surcharges.

#### **4-1-3-The exceptions mentioned in the statutory auditor's insurance policy:**

The insurance company is obligated, under the insurance contract for civil professional responsibility, to guarantee all physical, material and non-material damages to the insured, except for the following:

- Fires and explosions;
- Water damage;
- Accounting procedures prohibited by law;
- Contractual responsibilities.

#### **4-2-Pricing of civil liability products for statutory auditors:**

We will look at the various procedures for establishing liability, pricing methods and compensation modalities.

##### **4-2-1-The content of the contract:**

The contract includes the information of the insurance company and the insured, the terms of the contract, the installment paid by the auditor. As for the guarantee limit, it is calculated as a lump sum on the basis of the auditor's turnover multiplied by the rate of 0.03%; the maximum guarantee that the company provides to the auditor in the event of an accident is 30 000 000 DZD, regardless of the auditor's losses.

##### **4-2-2-Accident declaration:**

The auditor is obliged to declare when an accident occurs during the period in which the contract is valid, within the legal deadlines, which are seven days from the date of the accident, otherwise, he will lose his right to compensation, and he will also fill out the accident declaration form.

##### **4-2-3-Warranty practice:**

The auditor can obtain the compensation amount either directly, in a friendly manner, or through the judiciary.

##### **4-2-3-1-The field of civil liability:**

Insurance is a contract of civil responsibility for the auditor, through it, the insurance company guarantees compensation for damage resulting from lawsuits brought by third parties against the auditor, when the latter must subscribe to a contract of liability insurance to cover professional civil liability towards others.

##### **4-2-3-2-Friendly settlement:**

In the event that the insurance agency makes sure that the damage to the companies was due to the auditor's fault, and this damage shall fulfill the



conditions included in the contract, the companies prefer to resort to a friendly settlement, which suggests that the aggrieved party provide a specific compensation, this is to avoid judicial expenses and lengthy procedures, in addition, the compensation that insurance companies pay to companies is less than what the court decides, In some cases, the affected companies prefer to resort to the judiciary in the event that the auditor acknowledges his responsibility, or that the affected companies cannot prove the auditor's fault in order to avoid paying compensation.

#### 4-2-3-3-Resort to justice:

Affected businesses go to court for compensation for auditor fault, where she files a liability claim against him, affected institutions may also resort directly to the judiciary, especially if a criminal follow-up is required.

#### 5-Evaluating the auditor's professional civil liability insurance policy:

Although the insurance on the civil liability of the auditor is considered compulsory by law No. 10-01 relating to the chartered accountant, auditor and accountant, however, the unit of Bordj Menaïel does not contribute significantly, this is because the signing of insurance contracts during the years 2017 and 2018 was little, the following table shows the contracts written with the premium amounts for CAAT company « Bordj Menaïel »:

**Table N°2. underwriting professional civil liability contracts for auditors – CAAT Bordj Menaïel case-**

Unit : Algerian Dinar  
Agency: 144 agence Bordj Menaïel

Year	Number of customers	Net prime	Cost	Net prime+ cost	TVA	Tax stamp	Stamp duty	Premium TTC	Commission
2017	04	165 753,91	550,00	166 303,91	31 597,74	0,00	240,00	198 141,65	0,00
2018	03	171 547,87	550,00	172 097,87	32 698,60	0,00	320,00	205 116,47	0,00

Source: prepared by the researcher based on the agency's reports

We notice from the table that the agency Bordj Menaïel did not subscribe many contracts regarding professional civil liability insurance, as the number of contracts reached four in 2017, and three contracts in 2018.

From the previous statistics we suggest:

- The necessity of activating the insurance law against occupational hazards related to auditor errors;
- Provide the necessary protection for the auditor and insured companies;
- Not granting approvals except after signing a civil liability insurance contract;
- Withdrawal of approvals in the event of no civil liability insurance;
- Encourage takaful insurance in accordance with Islamic law.

### **6-Conclusion:**

The auditing profession plays a great importance in protecting the national economy due to the great role it plays in adding confidence to the financial statements published by the various companies subject to control; therefore, the auditor who neglects his role; is subject to a discussion of his responsibilities, this prescribes the existence of a liability. Either it is a criminal responsibility, according to which the auditor bears the penalties imposed on him, or civil liability related to causing harm to related parties, or even a disciplinary - professional- responsibility approved by the organization to which the auditor belongs.

And through the case study that we presented, we concluded that the civil responsibility of the auditor is of a high degree of importance despite the lack of underwriting in this contract; And since the damages that result from civil liability have complex characteristics, it will result in disciplinary penalties, in order to enable the affected party to obtain appropriate compensation.

### **6-1-Results:**

Through this research, we reached the following:

- Civil liability was established for the auditors to compensate the damages to the related parties, as a result of the mistakes they make while carrying out their duties;
- Civil liability occupies a large part of insurance companies, on the one hand it is considered obligatory by the force of law, and on the other hand, the volume of other insurance products is considered large;
- In all cases, the injured party receives compensation from the insurance company, whether through a friendly settlement or a judicial settlement;
- Lack of marketing on civil liability products by insurance companies;
- The underwriting of civil liability insurance is very weak with the insurance company CAAT, and the reason for this is the absence of the insurance culture of the auditors.

## 6-2-Suggestions:

From the previous results, we suggest the following:

- The necessity of paying attention to the insurance profession with the necessity of examining everything new in the sector;
- The need to pay attention to simplifying insurance procedures, with the aim of increasing the volume of voluntary insurance in an optional manner;
- The necessity of obligating auditors to ensure civil liability, as a condition for exercising their profession;
- Pay more attention to the marketing aspect of insurance companies, such as advertising in insurance products.

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