

**UNIVERSITY OF RWANDA**  
**COLLEGE OF ARTS AND SOCIAL SCIENCES (CASS)**  
**SCHOOL OF LAW**  
**LLM IN BUSINESS LAW**

**ASSESSMENT OF CONSUMER PROTECTION IN  
RWANDAN INSURANCE SECTOR**

**A thesis submitted in partial fulfilment of the academic requirements for  
award of a Master's Degree in Business Law (LLM)**

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**Kigali, May 2016**

## **APPROVAL SHEET**

This thesis entitled “**ASSESSMENT OF CONSUMER PROTECTION IN RWANDAN INSURANCE SECTOR**”, written and submitted by NTAGANDA R. Anicet in partial fulfilment of the requirements for the award of Master’s Degree in Business Law (LLM) is hereby accepted and approved.

Prof. NGAGI M. Alphonse

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## **DECLARATION**

I, NTAGANDA Rwamulima Anicet, hereby declare that this thesis is my original work performed in partial fulfilment of the academic requirements for the award of a Master's Degree in Business Law (LLM) by the University of Rwanda (UR), and has not been presented elsewhere.

All references made from other peoples' work are acknowledged in bibliography.

The views expressed in this thesis are mine and do not necessary reflect the view or policies of the University of Rwanda.

NTAGANDA R. Anicet

## **DEDICATION**

To my Lord Jesus Christ, in Him we live and move and exist;

My wife NYIRAMUTUZO B. Pascaline, with whom we lovingly share the life;

Our children HIMBAZA Délices, HIRWA Sage, SHEJA Shalom, and ILIZA Elsa, who fill our lives with joy and happiness;

My Father, Brother and Sisters, and all other members' family, for our indefectible attachment;

This thesis is lovingly dedicated.

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At the end of this study that required many efforts and collaboration with or guidance from different persons;

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May our Lord Jesus Christ bless you all.

## ACRONYMS

ADECOR	: <i>Association pour la Défense des Droits des Consommateurs au Rwanda.</i>
A2ii	: Access to Insurance Initiative
Art.	: Article
ASSAR	: Association des Assureurs du Rwanda
BCBS	: Basel Committee on Banking Supervision
BNR	: Banque Nationale du Rwanda (National Bank of Rwanda)
COGEAR	: Compagnie Générale d'Assurance et de Réassurance au Rwanda
CORAR	: Compagnie Rwandaise d'Assurance et de Réassurance
CHROR	: Consumers Human Organization of Rwanda
CI	: Consumers International
Ed.	: Edition
EDPRS	: Economic Development, and Poverty Reduction Strategies
FSB	: Financial Stability Board
FSDP	: Financial Sector Development Program
IAIS	: International Association of Insurance Supervisors
IASB	: International Accounting Standards Board
IBA	: International Bar Association
ICPs	: Insurance Core Principles
IOSCO	: International Organization of Securities Commissions
KPIs	: Key Performance Indicators
LGDG	: <i>Librairie Générale de Droit et de Jurisprudence</i>
MFI	: Microfinance Institutions
MINECOFIN	: Ministry of Finance and Economic Planning
MINICOM	: Ministry of Trade & Industry
MMI	: Military Medical Insurance
NBFI	: Non-Bank Financial Institutions
NIC	: National Insurance Commission
NICA	: National Standards Inspectorate, Competition and Consumer Protection Authority
OECD	: Organisation for Economic Co-operation and Development
O.G	: Official Gazette
PSF	: Private Sector Federation

RAMA	: <i>La Rwandaise d'Assurance Maladie</i>
RICA	: Rwanda Inspectorate and Competition Authority
RSSB	: Rwanda Social Security Board
SACCOs	: Savings and Credit Co-operatives
SONARWA	: <i>Société Nationale d'Assurances du Rwanda</i>
UK	: United Kingdom
UN	: United Nations
UNR	: <i>Université Nationale du Rwanda</i>
VAT	: Value Added Tax
Vol.	: Volume

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## ABSTRACT

This study related to the “**Assessment of Consumer Protection in Rwandan Insurance Sector**” has been motivated by many complaints we receive and hear from various customers in connection with their request for indemnification, particularly from private insurance companies. Indeed, different customers raise their complaints stating especially that they are not satisfied with the compensation amount, the long time or period taken by insurers for the indemnification, and unbalanced or unsatisfactory contracts they conclude.

With regard to above complaints, we have undertaken the initiative to carry out this study with the purpose of evaluation or assessment of consumer protection in insurance sector. Therefore, after the identification of the existing Rwandan legal and institutional frameworks related to consumer protection, we made an assessment by comparison with international standards or benchmarks. The referred standards or benchmarks were those established by the World Bank given the responsibility of the latter in the guidance or management of financial institutions.

Given the fact that the protection of consumers requires the existing of efficient and effective legal and institutional frameworks, our assessment focused on the two (2) respective aspects.

Concerning the assessment of the legal framework, we have found out that, on the one hand, the Rwandan legislation in place comprises interesting consumer protecting provisions. On the other hand however, we pointed out that the existing Rwandan legal and regulatory framework has important gaps to be made up. Consequently, the related recommendation has been to fill the various gaps identified in the existing legal and regulatory framework.

About the assessment of the current Rwandan institutional framework, we noticed that Rwanda has important and various institutions in charge notably of consumer protection. However, it has been underlined that the roles of some of them are overlapping, while other institutions are inactive. For this reason, it has been recommended to clearly specify respective missions of different involved institutions, to sensitize consumer associations for playing their responsibilities, and to speed up the enactment of the law governing the forthcoming Competition and Consumer Protection Regulatory Body.

# GENERAL INTRODUCTION

## 1. Background and interest of the topic

Rwandan insurance sector has been established since 1975<sup>1</sup>. From this period, the insurance industry grew progressively up to date. The insurance sector in Rwanda developed in number of insurance companies (public and private) and in insurance intermediaries (insurance brokers, insurance agents and loss adjusters). Especially for insurance companies, the Country has currently thirteen (13) companies: two (2) public and eleven (11) private<sup>2</sup>.

The development of insurance sector concerns also the development of laws whereby many aspects were regulated. In this regard, various laws, which will be mentioned later, were put in place in order to promote the insurance industry. In particular, the enacted Law n° 52/2008 of 10/09/2008 governing the organization of insurance business<sup>3</sup> has the purpose of organization of insurance business and the establishment of principles relating to licensing, supervision, control and regulation of insurance profession and insurance intermediaries<sup>4</sup>. In addition, it is worth mentioning that the National Bank of Rwanda has been mandated to supervise and regulate notably the insurance sector<sup>5</sup>. Consequently, with this mandate, the Bank developed various and important regulations to implement, especially, the law n° 52/2008 of 10/09/2008 governing the organization of insurance business above-mentioned.

Therefore, considering the development of the insurance business in Rwanda, someone should expect that the protection of consumers in the insurance field follows in the same way. However, despite the above development of Rwandan legislation in insurance sector and unless provisions protecting consumers are scattered in Rwandan legislation, the legislator did not set down a specific law on consumer protection covering also the insurance sector. The specific legislation on consumer protection

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<sup>1</sup> Decree-Law n° 20/75 of 20/6/1975 governing insurances (in general), as modified to date, in *J.O* 1975, p.449; SONARWA, *Sonarwa General Historical*, <http://www.sonarwa.co.rw>, visited on 23/5/2014.

<sup>2</sup> Rwandan insurance companies are: 1° RSSB – Medical Scheme (RSSB - MEDICAL), public company governed by a specific law; 2° Military Medical Insurance (MMI), public company governed by a specific law; 3° SONARWA General Insurance Ltd, private company licensed in 1975; 4° Soras Assurances Générales Ltd (SORAS AG Ltd), private company licensed in 2010; 5° Société Rwandaise d'Assurance Vie Ltd (SORAS-VIE Ltd), private company licensed in 2010; 6° SAHAM Assurance (former Compagnie Rwandaise d'Assurance et de Réassurance: CORAR S.A), private company licensed in 2001; 7° Compagnie Générale d'Assurance et de Réassurance au Rwanda (COGEAR Ltd), private company licensed in 1995; 8° PHOENIX of Rwanda Assurance Company S.A, private company licensed in 2006; 9° PRIME LIFE ASSURANCE Ltd (PRIME Life Ltd), private company licensed in 2012; 10° SONARWA LIFE ASSURANCE COMPANY Ltd, private company licensed in 2012; 11° UAP INSURANCE RWANDA LIMITED, private company licensed in 2013; 12° RADIANT INSURANCE COMPANY, private company licensed in 2013; 13° BRITAM INSURANCE COMPANY RWANDA Ltd, private company licensed in 2013, BNR, <http://www.bnr.rw>, visited on 23/5/2014.

<sup>3</sup> The mentioned law n° 52/2008 is in *O.G* n° special of 31/03/2009, p.3.

<sup>4</sup> Article 1 of the Law n° 52/2008 above-mentioned.

<sup>5</sup> Article 6 of the law n° 55/2007 of 30/11/2007 governing the Central Bank of Rwanda, in *O.G* n° special of 20/02/2008.

in general was established in 2012, under the Law n° 36/2012 of 21/09/2012 relating to competition and consumer protection. However, the issue is to know if this general law on consumer protection covers also the protection of consumers of insurance products.

After the above general introduction, it is advisable to look on research questions on this study.

## **2. Research questions**

Following the purpose of this topic, the research questions to which we have tried to respond are the following: 1° Is there in Rwanda adequate legal and institutional frameworks for the protection of consumers in insurance sector? 2° How effective are these legal and institutional frameworks? 3° How the consumer protection in the insurance sector can be improved in Rwanda?

Regarding the first question, we have tried to find out from Rwandan legislation different provisions protecting consumers in insurance sector. In this regard, we have analysed the law n° 36/2012 of 21/09/2012 relating to competition and consumer protection, and consider possible existing different other related scattered provisions.

With regard to the second question, we have assessed the fairness and implementation of the possible existing legal and institutional framework related to consumers in Rwandan insurance industry. In this context, we have assessed the fairness of Rwandan insurance consumer protection legislation by comparison with possible international standards.

Concerning the last question, we tried to find means of improvement of consumer protection in insurance sector.

## **3. Research objectives**

Principally, the objective followed in this research is the determination of the level of consumer protection in Rwandan insurance sector. This process proceeds by the identification of legal issues that consumers in insurance sector are facing. Specifically, the determination of consumer protection aims at identification of standards considered as benchmarks from which the protection is measured. These benchmarks are normally constituted with the legal and institutional framework. In other words, this study tried to point out the existence or not of the national laws and institutions prevailing in insurance consumer protection. Also, it will clarify if Rwanda complies or not with the international standards

related to insurance consumer protection. Finally, this research tried to propose possible solutions to promote the consumer protection in Rwandan insurance industry.

#### **4. Research methodology**

In the framework of identification of legal issues above mentioned, we used various methods and techniques appropriate for this research as indicated hereinafter. For methods, we mainly used the following: desktop method (for the analysis, interpretation and explanation of legal instruments to understand the scope of legal provisions), comparative method (for the comparison of Rwandan legislation with foreign and international legislation), analytical method (for analysis of data availed by this study) and the synthetic method (for summarizing this research to be more clear and understandable).

About techniques, we mainly used the documentary technique or literature review to find opinions from different writers on the topic. In this regard, we used books, laws, internet information and other written information able to provide required and appropriate information. Furthermore, to be more practical, we used the technique of interview in order to try to find some opinions from consumers of insurance services. Indeed, this step helped us to know exactly how consumers of insurance services appreciate or assess the protection provided to them by the regulator and other institutions in charge of their protection.

#### **5. Delimitation**

Our topic will be concerning only the assessment of Rwandan insurance sector, even if international standards will be taken into account.

#### **6. Topic structure**

Apart from this general introduction, in order to respond to the legal issues aforementioned rose in the framework of assessment of consumer protection in Rwandan insurance sector, this study is divided into two chapters. The first is concentrated on the description of the existing Rwandan legal and institutional framework, while the second concerns the compliance of Rwandan insurance framework with the international standards and proposes means to improve consumer protection in insurance sector. At the end, we have the conclusion and recommendations.

## CHAPTER I. CURRENT STATUS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK ON CONSUMER PROTECTION IN INSURANCE SECTOR

Insurance has been referred to as the handmaiden of industry. Leave alone reducing loss, damage and stress in community to more agreeable levels, the insurance companies of Rwanda have played an important role in mobilization of savings and investments in the social sector in the past 25 years. The services offered by insurance companies in Rwanda are evidencing remarkable growth in the range and nature of insurances provided by this dynamic industry. The focus has been to stick to the traditional roles of insurance in community, which are to spread risk, and if the risk materializes, to spread the resulting loss but at the same time making diverse the range of products provided. Incidental to this task, but increasingly a significant subordinate task of insurance in itself, has been the management of risk and the prevention of loss<sup>6</sup>.

In Rwanda, the insurance companies offer various types of services ranging from life, retirement fund, medical fund, automobile, to property coverage. Furthermore, insurance industry performance has improved since the adoption of new legislation in 2008.

Also, according to 2013-2018 Rwanda Financial Sector Strategy, further refinement of the regulatory regime has to be introduced to foster its development, including completion of the separation of life and non-life businesses, and revisions to capital, solvency and investment rules. Rwanda specific mortality (life) tables are expected to be developed to foster development of life insurance and annuity products<sup>7</sup>.

Given the importance of insurance industry in the world, especially in Rwanda, and, consequently, the role of consumer protection in this domain, it is fair to examine the current status of the legal and institutional framework related to consumer protection in Rwandan insurance sector. Indeed, no domain can be well managed if there is no sound legal and institutional framework. Also, as indicated by the A.M. Ngagi, the consumer protection is today a necessity that nobody can deny<sup>8</sup>.

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<sup>6</sup> Guide Africa, *Insurance in Rwanda*, <http://www.guideafrica.com/rwanda/insurance-rwanda/insurance-in-rwanda.html>, visited on 19/01/2016.

<sup>7</sup> Republic of Rwanda - MINECOFIN, *Final Report-Rwanda Financial Sector Strategy*, 2013-2018, Financial Sector Development Secretariat.

<sup>8</sup> A.M.Ngagi, *La protection des intérêts économiques des consommateurs dans le cadre du libéralisme économique en droit rwandais*, UNR, les éditions de l'Université Nationale du Rwanda, Butare, 2005, p.10.

Therefore, for better analysis of this chapter, we first described the general overview on insurance sector (I.1), and thereafter we described the legal and institutional framework on consumer protection in insurance sector (II.2).

## **I.1. General Overview on Insurance Sector**

In general, the law regulating insurance may conveniently be divided into three (3) parts. The first, named *insurance contract law*, regulates the contractual relationships between policyholders and insurers. The second, *the law of intermediaries*, regulates the conduct of and liability for those intermediaries who are commonly found in the process of creating insurance contracts. The third, entitled *the insurance company law*, regulates the financial soundness and probity of insurance companies<sup>9</sup>.

Under Rwandan Law, as stated in this chapter, the above aspects of insurance are covered in the law governing insurance business in Rwanda complemented by its implementing regulations.

Therefore, in view of the above considerations, this section starts by the notion of insurance contract (I.1.1), and then describes respectively the types of insurance business organized in Rwanda (I.1.2), and how supervision of insurance business is performed in Rwanda (I.1.3).

### **I.1.1. Notion of insurance contract**

In Rwandan legislation, an insurance contract is defined as a contract by which a person, named an insurer, commits itself, on basis of payment of one or more premiums, to provide to another person, named insured or beneficiary, a pecuniary benefit in case of happening of a determined risk<sup>10</sup>. With regard to this definition however, we think that the word “risk” is not appropriate given that some insured situations, such as education, cannot be named risks. For this reason, we would rather use the word “event” and prefer the following definition which sounds better. In summary, this definition states that an insurance contract is a contract between two parties whereby one party called insurer undertakes, in exchange for a payment of a sum called premium, to pay the other party, called policyholder, a fixed amount of money after happening of a certain event<sup>11</sup>.

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<sup>9</sup> Andrew McGee, *The Modern Law of Insurance*, 2<sup>nd</sup> ed., Lexis Nexis Butterworths, 2006, p.3.

<sup>10</sup> Article 1 of the Decree Law n° 20/75 of 20/06/1975 above-mentioned, as modified and complemented to date.

<sup>11</sup> Article 1, 5° of Latvia Insurance Contract law of 10/6/1998.



Based on the above definition, even if it varies depending on each country, it is therefore worth mentioning that every insurance contract must have three (3) principal elements namely: an insurable interest (derived financial or other kind of benefit a policyholder has from the continuous existence of the insured object or the continued survival), a risk or insured event, and the transfer of the risk against the payment of a premium or quotation<sup>12</sup>. An insurance contract lacking those elements is null and void<sup>13</sup>. It is important underlining that an insurance contract plays a major role in insurance business organized within a country. For this reason, let's describe the types of insurance organized in Rwanda.

## **I.1.2. Types of insurance business organized in Rwanda**

The insurance types organized in Rwanda are, one side, the Long term and short term insurance (I.1.2.1), and Public insurance and private insurance (I.1.2.2), on the other side. However, these two categories are not exclusive from each other. Also, we may add another category related to mandatory and voluntary insurance (I.1.2.3).

### **I.1.2.1. Long term and short term insurance**

In Rwanda, the insurance business is legally divided into two categories: the long term insurance business and the short term insurance business. Classes of each category are specified by regulations that the Bank is required to issue on this purpose<sup>14</sup>.

#### **1. Long term insurance**

Long-term insurance business refers to insurance business of all or any of the following classes, namely<sup>15</sup>:

1° **Ordinary life insurance business:** means the business of, or in relation to, the issuing of, or undertaking of liability to pay money on death (not being death by accident or specified sickness only) or on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability contract), and includes a contract which is subject to the payment of premiums for term dependent on the termination or continuance of human life and any contract securing the grant of an annuity for a term dependent upon human life.

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<sup>12</sup> Peter Etzbach, International Bar Association (IBA) Insurance Committee Substantive Project 2013 - *The legal nature of insurance contracts*, 2013, p. 6, ([www.nos.org/media/documents/VocInsServices/m2--f3.pdf](http://www.nos.org/media/documents/VocInsServices/m2--f3.pdf), visited on 10/05/2015).

<sup>13</sup> Idem, p. 126.

<sup>14</sup> Article 4 and appendix 1 of the law n° 52/2008 above-mentioned.

<sup>15</sup> Article 2, 10° of the law n° 52/2008 above-mentioned; Article 2 and appendix 1 of the regulation n° 05/2009 of 29/07/2009 on licensing requirements and other requirements for carrying out insurance business, in *O.G* n° 34 bis of 23/08/2010.

2° **Industrial insurance business:** means the business of affecting assurances on human life, premiums in respect of which, are payable at intervals not exceeding two months in each case, to collectors sent by the insurer to each owner of a policy, or to his residence or place of work.

3° **Treasury bonds investment business:** means the business of issuing bonds or endowment certificates by which a company, in return for subscriptions payable at periodic intervals, contracts to pay the bondholder a sum or series of sums at a future date, not being life assurance business but including sinking fund or capital redemption insurance business.

4° **Any business carried on by the insurer as incidental to any class of business abovementioned:** business such as the management of collective pension funds and any other class of long term insurance business that the Central Bank may determine.

## 2. Short term insurance

Short-term insurance business refers to insurance business of any class not being long-term insurance business<sup>16</sup>. It concerns<sup>17</sup>:

1° **Motor insurance business:** on the occurrence of an event specified in the contract as a risk relating to the use, possession or ownership of a motor vehicle in case of Commercial Lines and Personal Lines.

2° **Property insurance business:** on the occurrence of an event specified in the contract as a risk relating to the use, ownership, loss or damage to movable or immovable property, in case of Fire (Fire and natural forces), Aviation (Aircraft), Marine (Ships).

3° **Miscellaneous:** Damage to property; Expropriation and confiscation of property; Insurance contracts primarily designed to cover the interests of any natural person against loss or damage to immovable and movable property as well as specified property as a result of fire, explosion, storm, water and certain natural forces, excluding the risks riot, strike, war and nuclear energy, accidental incident or any other unforeseeable event.

4° **Transportation insurance business:** on the occurrence of an event specified in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft for the conveyance of goods by air, land or water, or to the storage, treatment or holding of goods so conveyed or to be so conveyed in case of: Goods in transit, Railway rolling stock, Marine.

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<sup>16</sup> Article 2, 11° of the law n° 52/2008 above-mentioned, and Article 2 of the regulation n° 05/2009 above-mentioned.

<sup>17</sup> Appendix 1 of the regulation n° 05/2009 above-mentioned.

**5° Accident and health insurance:** in case of a disability event, health event or death event such as: Personal Accident (sustaining injury as a result of any accident or an accident of a specific class; dying as a result of any accident or an accident of a specific class; becoming incapacitated as a result of any disease or a disease of a specific class, including industrial injury and occupational disease), Sickness, Personal Lines (sustaining injury as a result of any accident or an accident of specific class, dying as a result of any accident or an accident of a specific class; or becoming incapacitated as a result of any accident or disease and providing fixed pecuniary benefits or benefits in the nature of indemnity, or a combination of both).

**6° Liability insurance:** on the occurrence of an event specified in the contract as a risk relating to the incurring of a liability occurs in case of Marine, Aviation, Commercial Lines, Personal Lines (Liability for motor vehicles for risks arising from the use and possession of such vehicle; third party risks; passengers liability and the risk of pecuniary loss to the person insured in case of the incurring of legal cost, including litigation costs; or Other risks, not being risks associated with motor vehicle risks, of the person insured incurring liability to third parties), and Miscellaneous (general liability against risks other than risks covered aviation, marine and commercial lines and personal lines of a person insured incurring liability to third parties).

**7° Engineering insurance business:** on the occurrence of an event specified in the contract as a risk in relating to: the possession, use or ownership of machinery or other equipment other than a motor vehicle in the carrying on of a business; the construction of any infrastructure or other works; the installation of machinery or equipment; and include a reinsurance policy in respect of such a policy.

**8° Guarantee insurance business:** to assume responsibility for payment of the debts of any person or to make good any obligations of that person in the event of the failure of that person to pay his debts or make good his obligations in case of: Contracts against risks of loss to the person insured in case of such person entering guarantee contracts; Contracts of fidelity bonds, performance bonds, administration bonds, bail bonds or custom bonds or similar contracts of guarantee; or Credit (contracts against risks of loss to the person insured in case of insolvency of any debtor of such person or from the failure other than through solvency of any such debtor to pay his or her debt when due and payable).

**9° Miscellaneous insurance:** on the occurrence of the event specified in the contract as a risk relating to any matter not otherwise defined in the law occurs in case of: Fire (miscellaneous financial loss insurance contracts against any of the following risks: risks of loss to the person insured in case of business interruptions and reduction of scope of business; risks of loss to person insured in case unforeseen expenses and; risks here before or legal expenses not covered, as well as those that will result

in the insurer to register another class of business); Legal expenses (insurance contracts against risks of loss to the person insured in case of incurring of legal costs, including litigation costs); Co-insurance (insurance contracts in respect of one or more of the other classes of short-term insurance business specified in this appendix).

**10° Any other class of short term insurance business** that the Central Bank may determine from time to time.

An insurer is not allowed to combine long-term insurance business and short-term insurance business except for a person engaged in a reinsurance business who is engaged in any of the categories of insurance activities<sup>18</sup>.

### **1.1.2.2. Public insurance and private insurance**

This naming is only doctrine based. Therefore, it is not legally binding. Let's first examine the public insurance, and then the private insurance.

#### **1. Public insurance**

A public insurance may be defined as an insurance coverage written by governmental bodies or operated by private agencies under government supervision and control<sup>19</sup>. The public insurance deals with social insurance, as detailed hereunder.

##### **a. Social Security**

In Rwanda, the Social Security is defined as “a Government program aimed at providing social protection to people living in Rwanda from effects based on lack or reduction of input due to the following reasons: old age, death, disability, occupational hazards, sick leave, maternity leave, treatment, unemployment and provide family basic necessities. The programme may also provide for shelter, nutrition, education, poverty reduction with an intention of social welfare”<sup>20</sup>. The Rwandan social security insurance is managed by Rwanda Social Security Board (RSSB) from a long time, while

<sup>18</sup> Art. 3 of the regulation n° 05/2009 above-mentioned.

<sup>19</sup> Moneycontrol, [http://www.moneycontrol.com/glossary/insurance/public-insurance\\_1433.html](http://www.moneycontrol.com/glossary/insurance/public-insurance_1433.html), visited on 23/02/2015.

<sup>20</sup> Art. 2, 1° of the Law n° 45/2010 of 14/12/2010 establishing Rwanda Social Security Board (RSSB) and determining its mission, organisation and functioning, in *O.G* n° 09 bis of 28/02/2011; and art. 1,1° of the law n° 04/2015 of 11/03/2015 modifying and complementing the law n° 45/2010 of 14/12/2010 establishing Rwanda Social Security Board (RSSB) and determining its mission, organisation and functioning, in *O.G* n° 15 of 13/4/2015.

the health insurance is organized by RSSB, MMI, and community based health insurance scheme (Mutuelles de Santé). The Rwandan social security comprises three (3) main branches namely:

1° Pension : Its aim is for helping the worker who becomes old and incapable of working (for a salary) or becomes invalid and incapable of living by working, and helping the survivors of the deceased worker. It provides to the beneficiary the following benefits: old age benefits (retirement), early retirement benefits (anticipated pension), non-occupational disability benefits, and survivorship benefits for beneficiaries. This includes the invalidity pension, old age lump-sum, survivors pension, and the survivor's lump sum benefits<sup>21</sup>. 2° Occupational hazards (work accidents and professional illness). This insurance protects the beneficiary at work, travelling to work or on a work related journey. It also covers an occupational disease that is caused by work. The benefits provided for are free medical care, daily sickness allowances, incapacity social security benefits, incapacity lump sum benefits, and Survivors benefits. 3° Medical insurance. Details are provided for hereunder.

However, further to benefits provided for by Rwanda, other countries provide more range of benefits, such as sickness, unemployment, old age, employment injury (incapacity of work, invalidity, survivors), maternity, invalidity, and survivors<sup>22</sup>. In France, for example, this Country provides the following family allowances: prenatal, unemployment, maternity, daily allowance, health, social and family actions (actions sanitaires, sociales et familiales,.....). Rwanda should imitate the example of those countries given that especially, during her maternity leave, a woman benefits 20% of her salary<sup>23</sup>.

### **b. Health Insurance Scheme for Government Employees**

The health insurance scheme for Government employees that, for a long time, was managed by a public institution named “la Rwandaise d’Assurance Maladie” (RAMA)<sup>24</sup>, is currently managed by Rwanda Social Security Board (RSSB)<sup>25</sup> under its Health Medical Insurance Scheme. Members of this scheme automatically include all civil servants, and pensioners who previously contributed towards medical care. However, private institutions also are allowed to affiliate their employees<sup>26</sup>. Therefore, given this

<sup>21</sup> Art.17-30 of the law n° 05/2015 of 30/03/2015 governing the organization of pension schemes, in *O.G.* n° 20 of 18/5/2015.

<sup>22</sup> Art. 67 of C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102).

<sup>23</sup> Art. 66 of the law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, in *O.G.* n° special of 27/05/2009.

<sup>24</sup> Art. 2 of the law n° 24/2001 of 27/4/2001 on the establishment, organisation, and functioning of a health insurance scheme for Government employees, in *O.G.* n° 13 of 01/7/2001; Art 1 of the law n° 27/2007 of 27/06/2007 determining the responsibilities, organization and functioning of a Health Insurance scheme for employees (RAMA), in *O.G.* n°....(Unknown).

<sup>25</sup> Art. 14 of the Law n° 45/2010 above mentioned.

<sup>26</sup> Art. 3 of the law 29/2002 of 19/9/2002 modifying and completing the law n° 24/2001 of 27/4/2001 on the establishment, organisation, and functioning of a health insurance scheme for Government employees, in *O.G.* n° 13 of 01/7/2001.

mixed character, the question is to know if this scheme should continue bearing the title of “Government employees”. On my opinion, it should not.

The insured members of this scheme are entitled to all or part of both preventive and curative care following the state of sickness or accident, pregnancy, delivery and their consequences<sup>27</sup>. This scheme covers the following medical care provision: Medical consultations; Surgical interventions; Dental care including prosthesis; Medical imaging, including CT Scan & MRI; Clinical biology tests (Laboratory tests); Physiotherapy; Nursing care; Hospitalization and treatment fees; Supplying medicine and pharmaceutical drugs, including chemotherapy; Antenatal care, care during delivery and postnatal care; Eye treatment including provision of lenses and frames; Lower / upper limb prosthesis & Orthosis; Dialysis; Full Medical check-up<sup>28</sup>. The full medical checking is provided under conditions (35 years for women and 40 years for men).

The list of pharmaceutical products and medical services allowed to members of the scheme are approved by the Minister supervising RSSB in consultation with the Commission of Conventions. The Minister establishes also the list of enumerating care services determining their costs and specifying their application rules, and the required qualification for the person to qualify for each of them, upon a request of the Board of Directors of RSSB<sup>29</sup>.

It is important noting that medical care is refundable by RSSB provided that the health facility has signed an agreement with RSSB. The Ministry of Health in collaboration with RSSB agreed on which medical procedures and drugs are to be refunded<sup>30</sup>. The contribution paid to RSSB represents 15% of employee’s basic salary. It is paid by both the employer and the employee at the rate of 7.5% each<sup>31</sup>. RSSB covers 85% of the bill for medical treatment and prescribed drugs. Patients themselves cover the remaining 15% of the cost<sup>32</sup>. RSSB also covers the medical insurance for pensioners with 7.5% contribution deducted from their monthly pension.

The beneficiaries of the affiliated member are his/her legal spouse, his/her child or legally recognized child, a child of whom the affiliated member is guardian, and the adopted child<sup>33</sup>. It is extremely regrettable that the parents of the affiliated member be absent on the list of his/her beneficiaries. Concerning the dispute settlement, before any complaints regarding any decision taken by RSSB can be

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<sup>27</sup> Art. 37 of the law n° 24/2001 of 27/4/2001 above-mentioned.

<sup>28</sup> Art. 38 of the law n° 24/2001 above-mentioned.

<sup>29</sup> Art. 47 paragraph 1, and 48 of the law n° 24/2001 above-mentioned.

<sup>30</sup> Art. 49 and 50 of the law n° 24/2001 above-mentioned.

<sup>31</sup> Art. 5 paragraph 1 of the law n° 29/2002 above-mentioned.

<sup>32</sup> Art. 5 paragraph 2 of the law 29/2002 above-mentioned.

<sup>33</sup> Art. 34 of the law n° 24/2001 above-mentioned.

taken before the courts, that complaint must first be handled by the reconciliation Commission put down by the Board of Directors<sup>34</sup>.

### **c. Community-based health insurance scheme**

A Community-based health insurance Scheme is defined as a solidarity system in which persons come together with their families and pay contributions for the purpose of protection and receiving medical care in case of sickness<sup>35</sup>. The list of services a patient is entitled to receive is examined and approved by the Board of Directors, in agreement with the Minister in charge of health<sup>36</sup>.

According to the law governing the Community-based health insurance Scheme, this scheme shall cover the following drugs and medical services<sup>37</sup>: 1° drugs and medical services provided at the health station or health centers; 2° drugs and medical services provided at the hospital of District or Province; and 3° drugs and medical services provided at the hospital or referral hospital level. An Order of the Minister in charge of health<sup>38</sup> has to determine medical services provided at each level of health facilities.

Affiliated members are entitled to seek medical care from public and Government aided health facilities and private health care facilities which contracted with the Institution in charge of the management of the community-based health insurance scheme. Members of Community-based health insurance scheme are also entitled to receive primary medical care from a health center or from a health station. However, in case of emergency cases, a patient benefits from medical care of health facilities of superior category if he or she has a transfer note<sup>39</sup>. The issue in this case is whether the transfer is refused or delayed without valid reason. Sanctions should be provided in such a case for liable persons. Unfortunately, such sanctions do not exist.

The annual contribution, the rate of co-payment and the person responsible for payment for the indigent shall be determined by an Order of the Minister<sup>40</sup> in charge of the community based health insurance scheme<sup>41</sup>. For beneficiaries of the community-based health insurance scheme, they are all household members, with the exception of any member insured under any other medical insurance scheme. They shall have their healthcare coverage offered by the community-based health insurance scheme if all of

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<sup>34</sup>Art. 62 of the law n° 24/2001 above-mentioned.

<sup>35</sup> Art. 5, 1° of the law n° 03/2015 of 02/03/2015 governing the organisation of the community-based health insurance scheme, in *O.G* n° 15 of 13/04/2015.

<sup>36</sup> Art. 9 of the law n° 03/2015 above mentioned.

<sup>37</sup> Art. 9 of the n° 03/2015 above-mentioned.

<sup>38</sup> The concerned Ministerial order has not yet been approved and published.

<sup>39</sup> Art. 11 of the law n° 03/2015 above-mentioned.

<sup>40</sup> The concerned Ministerial order has not yet approved and published.

<sup>41</sup> Art. 6 and art 10, paragraph 2 of the law n° 03/2015 above-mentioned.

them have paid their respective contributions<sup>42</sup>. The issue is to know what will happen for other members in case one member of the household does not pay the co-payment. We think that it should be better if everyone who pays the co-payment starts benefiting medical facilities.

For the validity of contribution to the community-based health insurance scheme, a member who joins for the first time the community-based health insurance scheme shall start benefiting from medical care services thirty (30) days after the payment of his/her subscription fees<sup>43</sup>. We do not understand the ratio legis of this period of thirty (30) days. Why waiting this long period without benefiting the medical care services, especially for vulnerable people? We think that once the co-payment paid, the affiliated member should automatically start by enjoying medical care services.

Another issue is about a claim related to community-based health insurance scheme. Indeed, it is stipulated that a complaint related to community-based health insurance must be referred to the General Management of the institution in charge of community-based health insurance scheme before being filed with the court of law. The General Management of the institution in charge of community-based health insurance must respond to the claim in writing within a period of one (1) month<sup>44</sup>. So, what shall happen if the General Management does not respond, or does not respond within the prescribed period? Shall the claim be considered as rejected automatically, or the claimant has to wait? The draft law should have provided the way forward. Otherwise, this provision is not necessary, given that its implementation is not clear. In addition, the provision 25 of the law on community-based health insurance scheme in connection with the misconduct committed by a staff member is not clear. Indeed, this provision does not specify the staff to whom it applies. Is it any staff in general, Government staff, staff from RSSB or for which institution? Therefore, precision is needed for the determination of scope of this provision.

It is important mentioning that Rwanda is one of a handful of low income countries that has implemented community-based health insurance schemes in order to reduce the financial barriers that prevent poor people from seeking and receiving needed health services. This scheme has helped reach 92% of the country's population with health-care coverage<sup>45</sup>.

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<sup>42</sup> Art. 5 and 7 of the law n° 03/2015 above-mentioned.

<sup>43</sup> Art. 8 of the law n° 03/2015 above-mentioned.

<sup>44</sup> Art. 14 of the law n° 03/2015 above-mentioned.

<sup>45</sup> Republic of Rwanda - Ministry of Health, *Rwanda National Health Insurance Policy*, April, Kigali, 2010, p.9.



#### **d. Military Medical Insurance (MMI)**

One of the main missions of MMI is to cover medical care to Rwanda Defence Forces and others who subscribe to this insurance, only within Rwanda, and their eligible family members<sup>46</sup>. Unfortunately, the law does not specify who “others” are. Does it mean that every person, it doesn’t matter his/her origin, is accepted in this scheme? About the organization and management of the MMI insurance, the law stipulates that it shall be determined by a Prime Minister’s Order<sup>47</sup>.

We consider unfair this kind of drafting and not recommendable, due to the fact that the purpose of the law n° 08/2012 of 29/02/2012 establishing military medical insurance (MMI) and determining its mission, organization and functioning is not fully covered. Indeed, considering the purpose of this law and the number of its articles (only 21), a Prime Minister’s order should not have been necessary and appropriate to determine MMI’s organization and management. The law should have covered its whole subject matter, in particular the organization and management of MMI, given that especially this Prime Minister’s order has only five (5) articles<sup>48</sup>. The law governing this scheme has another important gaps related notably to modalities or procedures on how services covered by MMI are offered to its members, the covered diseases and drugs, etc. Unfortunately and despite the lack of this legal basis, in October 2012, MMI has published the list of refundable drugs<sup>49</sup>.

After the presentation of public insurance, let’s now examine the private insurance.

## **2. Private insurance**

A private insurance is an insurance protection provided by non-governmental sources such as private insurance companies. This can also refer to a policy which is purchased by an individual directly from the insurer and that is not part of a group or employer-backed policy<sup>50</sup>. Private companies provide various assurances such as life insurance, health insurance, travel insurance, fire insurance, motor vehicles insurance, sickness insurance, credit insurance, liability insurance....These types are,

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<sup>46</sup> Art. 4 of law n° 08/2012 of 29/02/2012 establishing Military Medical Insurance (MMI) and determining its mission, organization and functioning, in *O.G* n° 14 of 02/04/2012.

<sup>47</sup> Art. 12 and 13 of the law n° 08/2012 above-mentioned.

<sup>48</sup> Prime Minister’s Order n° 34/03 of 19/06/2012 determining the organisational structure and summary of job positions of the Military Medical Insurance, in *O.G* n° 27 of 02 July 2012.

<sup>49</sup>MMI: <http://www.mmi.gov.rw/spip.php?article136>, visited on 24/02/2015.

<sup>50</sup> Investorwords: [http://www.investorwords.com/19168/private\\_insurance.html](http://www.investorwords.com/19168/private_insurance.html), visited on 24/02/2015.

fundamentally, divided into two groups namely: insurance of persons, and damage insurance<sup>51</sup>. We shall start by insurance of persons, and then the damage insurance.

**a. Insurances of persons** (life insurance, insurance against accidents and illness insurance).

The insurances of persons cover the risks that may affect the human person of the insured, either in his existence (life insurance), either in physical or physiological integrity (bodily injury insurance: accident and sickness). Therefore, the insured event can be the life (living after a certain age), death, accident, disease, disability, birth or marriage. Basically, the characteristic of insurances of persons is that, at the occurrence of the event or risk insured, the benefits to be provided are just a lump sum determined in the policy without taking into account the damage suffered. They do not have any indemnity character, and many policies of insurances of persons may be held concurrently<sup>52</sup>. In insurance of persons, notwithstanding any contrary provision, the insurer's subrogation is not allowed<sup>53</sup>.

**1° Life insurance**

The crucial feature of a life policy is that the insured event is the death of the life assured. However, the modern practice of at least some life assurers is to pay the sum assured if the life assured is diagnosed as being critically ill (the definition of this is usually the prognosis is less than six months to live)<sup>54</sup>. The life insurance comprises two categories, the term assurance and endowment assurance.

The term assurance covers the risk that the life assured will die during the term of the policy, while the endowment assurance is a form of assurance which is both insurance and investment. In addition to providing cover against the risk of death during the term it also provides a lump sum of money payable when the policy matures<sup>55</sup>.

In Rwandan Law, life insurance concerns either the living of the insured person at a certain age, his death, or a combination of the two kind of insurances<sup>56</sup>. In case of death insurance, any third party is allowed to take out a policy in favour of the insured person, subject to his written consent. If the insured person is married, the prior written consent of his or her spouse is required. Otherwise, the policy is null

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<sup>51</sup> Y. Lambert-Faivre et L. Leveneur, *Droit des assurances*, 12 ed., Dalloz, Paris, 2005, p.393 ; NSANGANIYE Emmanuel, *La protection des consommateurs des produits d'assurance au Rwanda : cadre juridique et institutionnel*, mémoire de maitrise en Droit des affaires, UNR, Kigali, 2010, p.14.

<sup>52</sup> Y. Lambert-Faivre et L. Leveneur, *op.cit*, p.54 ; NSANGANIYE Emmanuel, *op.cit*, p.14, unpublished ; article 38 of the Decree-Law n° 20/75 of 20/6/1975 above-mentioned.

<sup>53</sup> Article 39 of the Decree-Law n° 20/75 above-mentioned.

<sup>54</sup> Andrew McGee, *op.cit*, pp.443-444.

<sup>55</sup> *Ibid.* p. 443.

<sup>56</sup> Articles 40 and 41 of the Decree-Law n° 20/75 above-mentioned.

and void<sup>57</sup>. However, we do not understand why this kind of policy from a third party taken out in favour of a person under disability or a person legally incapable because a minor is automatically null and void, even in case the concerned person or his representative has accepted<sup>58</sup>. Also, in death insurance, it is important mentioning that the benefits from insurance policy cannot be payable in case of conscious or voluntary suicide of the insured person, or if the death has been made by a beneficiary who has been (criminally) sentenced<sup>59</sup>.

Concerning beneficiaries in death insurance, they have to be determined or individually designated. However, even not designated in insurance policy, the spouse of the insured, his children and his heirs are deemed to be the determined beneficiaries<sup>60</sup>. Then, the question is to know if, in designation of his beneficiaries, the insured is allowed to exclude among them his spouse, his children or his heirs.

By virtue of articles 55 and 56 of the Decree-Law n° 20/75 of 20/6/1975 governing insurances (in general), the insured person is allowed to exclude them among his beneficiaries, but we think that this should not be the case. Instead, the law on succession should also be applicable as in case stipulated in article 54 of the Decree-Law above-mentioned. Finally, in death insurance, except for temporary death insurance, the repurchase is allowed subject to prior payment of three annual premiums<sup>61</sup>.

## **2° Insurance against accidents**

The insurance against accidents may be individual or collective. It can be defined as an assurance which pays specified amounts (including the reimbursement of medical expenses) on the happening of particular accidents. Personal or collective accident policies are not liability policies. Therefore, the amounts recoverable for particular injuries do not need to have any relationship with the amounts which might be recovered for those injuries in legal proceedings<sup>62</sup>. An accident is something which is unforeseen, unexpected, extraordinary, an unlooked for mishap, sudden and unintended<sup>63</sup>.

In Rwandan legislation, accident is defined as any bodily injured from sudden external causes<sup>64</sup>.

## **3° Illness insurance (due to increment of medicine cost)**

Some policies protect against the risk of loss of income arising from illness, while others pay out on the policyholder being diagnosed as suffering from one or more of the particular diseases covered by the policy. Therefore, it is an indemnity policy<sup>65</sup>. In Rwandan Law, the illness insurance is less developed<sup>66</sup>.

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<sup>57</sup> Article 42 of the Decree-Law n° 20/75 above-mentioned.

<sup>58</sup> Article 43 of the Decree-Law n° 20/75 above-mentioned.

<sup>59</sup> Articles 48 and 49 of the Decree-Law n° 20/75 above-mentioned.

<sup>60</sup> Article 50 of the Decree-Law n° 20/75 above-mentioned.

<sup>61</sup> Article 59 of the Decree-Law n° 20/75 above-mentioned.

<sup>62</sup> Andrew McGee, *Op.cit*, p.463; and Y. Lambert-Faivre et L. Leveneur, *op.cit*, pp.858-859.

<sup>63</sup> Andrew McGee, *Op.cit*, p.463; and Y. Lambert-Faivre et L. Leveneur, *Op.cit*, p.859.

<sup>64</sup> Article 60, paragraph 3 of the Decree-Law n° 20/75 above-mentioned.

At the end of examination of insurance of persons, we shall examine the damage insurance.

**b. Damage insurance** (property insurances, civil liability insurances, financial operations insurance).

In Rwanda, damages insurances are governed by articles 24-37 of the Decree-law n° 20/75 of 20/6/1975 relating to insurance in general, as modified and complemented to date<sup>67</sup>. Especially, articles 24-33 deal with insurances of properties, while articles 34-37 are related to insurances of liability.

The characteristic of the damage insurance is the indemnification by the insurer of the damage suffered by the insured. Therefore, the compensation function of the damage insurance prohibits that the latter becomes a source of enrichment for the insured or the beneficiary, and limits the insurer's guarantee to the only damage suffered<sup>68</sup>. This is also the content of articles 27, 29 paragraph 2 and 30 paragraph 2 of the Decree-law n° 20/75 of 20/6/1975 because they state that *the amount of indemnification cannot, in any way, exceed the value of the insured property, even in case of over insurance or double (cumulative) insurance*. The compensation concerns the whole damage suffered: **total loss** (*damnum emergens*), and any **lost profit** (*lucrum cessans*)<sup>69</sup>. The most popular of this type insurance<sup>69</sup> is the motor insurance which insures risks from motor accidents. In Rwanda, it is governed by the Decree-Law n° 32/75 of 07/8/1975<sup>70</sup>.

Article 25 of the Decree-law n° 20/75 of 20/6/1975 describes exclusions to the insurance of property which are: losses or damages caused either by foreign war, civil war, riots or popular movements. However, in this article, we do not understand how and why a foreign war can affect a national insurance policy. The legislator should have put some limits in this provision. Unfortunately, even if some provisions of the law n° 41/2001 of 19/09/2001 relating to the compensation of victims of physical accidents caused by motor vehicles, and those of its implementing presidential order<sup>71</sup>, protect consumers in important aspects, some others are harmful to victims of accidents given that they contain serious weaknesses or loopholes. The main loopholes are the following:

- Article 4 of the law stipulates that when the injury has resulted in a temporary incapacity at work entailing total or partial loss of salary, treatment or professional income, the victim is entitled to a

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<sup>65</sup> Andrew McGee, *Op.cit*, p.473.

<sup>66</sup> Only art. 60, last paragraph and art. 61 of the Decree-Law n° 20/75 above-mentioned.

<sup>67</sup> The mentioned Decree-Law is in *O.G*, 1975, p.449.

<sup>68</sup> Y. Lambert-Faivre et L. Leveneur, *Op.cit*, p.397; Andrew McGee, *Op.cit*, p.45.

<sup>69</sup> Y. Lambert-Faivre et L. Leveneur, *Op.cit*, p. 398.

<sup>70</sup> The mentioned Decree-Law is in *O.G*, 1975, p.544.

<sup>71</sup> Presidential order n° 31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles, in *O.G*. n° 18 of 15/09/2003.

compensatory indemnity, and that the first compensation must be granted within ninety (90) days of accident occurrence. The issue is how a victim, who is suffering and who lost his salary, has to wait for a period of 90 days (3 months) before receiving compensation. How does he live within this long period? This period should be shortened. This issue of long period is also observed in the Presidential order on article 3 paragraphs 2 & 3 on request for compensation; article 5 paragraph 1 on second medical opinion; article 6 on approval of the second medical; article 8 on proposal for settlement in case of compensation procedure for non-fatal personal damage; article 11 on proposal for settlement in case of compensation procedure for fatal personal damage; article 20 on payment deadline of compensation.

- Article 15 of the Presidential order states that in case of complete work resumption, no compensation for material loss shall be granted. This provision is not clear about the commencement of the compensation. Is it not due just at the commencement of the resumption, or at least after one month of working? The latter should be the case.
- The law and its implementing presidential order provide for insufficient compensation, because the compensation is generally based on the guaranteed annual minimum wage (article 4 last paragraph of the law, and articles 15-19 of the Presidential order) which does not currently exist in Rwandan legislation. Also, the guaranteed monthly minimum wage of 2,500 Frw fortunately fixed by the Supreme Court in the case RCAA 0202/07/CS of 09/04/2009<sup>72</sup> is not sufficient. The issue is worse for students, unemployed persons and adults persons<sup>73</sup>. In addition, compensation for the only three (3) non-pecuniary losses considered (pretium doloris/cost for pain, aesthetic damage, and Loss of likelihood of marriage) is very derisory<sup>74</sup>.
- As long as they are reasonable, funeral expenses and hospitalization fees presented before death, and transport of the body expenses are reimbursed upon presentation of the documentary evidence, but cannot exceed 10 times the guaranteed minimum wage<sup>75</sup>. The issue is why this limit?

Articles 32 and 33 are related to insurer subrogation. It is worth mentioning that *subrogation* may be expressed as being the doctrine that a person who undertakes a contractual obligation to another to provide indemnity against loss is entitled to stand in the shoes of that other in relation to that other's rights to receive or claim any money which would go to diminish the loss<sup>76</sup>. Therefore, after paying compensation, the insurer is entitled to recover from third parties who caused damage to the insured property the same paid amount. However, the subrogation is not applicable in case third parties are

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<sup>72</sup> Supreme Court, RCAA 003/11/CS opposing SOCABU (represented by SONARWA) to Faraja Ormiel, Mutabeshya Sandra, Mugisha André, Amani Vanessa, Ngabo Christian, Ntwari Parfait, and Manzi Kévin (successors of Mutabeshya Vumiliya, Noella), in *Igitabo cya kabiri* 2013, n° 17, Mata, 2013, p. 62.

<sup>73</sup> Art. 16, 17, & 22 of Presidential order n° 31/01 of 25/08/2003 above-mentioned.

<sup>74</sup> Art. 19 of the aforementioned Presidential order n° 31/01 of 25/08/2003.

<sup>75</sup> Art. 21 of the aforementioned Presidential order n° 31/01 of 25/08/2003.

<sup>76</sup> Andrew McGee, *Op.cit.*, p.303.

ascendants, descendants, official or employee of the insured person, or persons usually living in the household of the insured, unless the damage was caused by their malicious intent. The insurer is not liable for compensation, in part or in whole, in case the subrogation cannot be used as a result of the insured party.

Concerning the liability insurance, it is important mentioning that *the third injured party has a direct action against the insurer for the liability of the person who caused the damage but must necessarily involve the person who caused the damage*<sup>77</sup>. However, this provision is not clear about the involvement of the person who caused the damage. Is it meaning that he (she) has to be required to indemnify the injured party before the insurer? Or, are both (him/her and insurer) jointly liable?

Following the two above types of insurance (public insurance and private insurance), we consider better to clarify another distinction based on mandatory or voluntary affiliation.

### **1.1.2.3. Mandatory and voluntary insurances**

Mandatory insurance is an insurance whereby affiliation is compulsory for its members, while a voluntary insurance is an insurance whereby membership is voluntary acquired or members voluntarily contribute. For better clarification, we shall start by mandatory insurance, and thereafter the voluntary insurance.

#### **1. Mandatory insurance**

According to the aforementioned Rwandan legislation, mandatory insurances are the following: Social security insurance, Health Insurance Scheme for Government Employees, Community-based health insurance Scheme, Military Medical Insurance (MMI), Motor insurance, and Insurance for public buildings or other public places<sup>78</sup>.

About insurance of public places, article 11 of the Prime Minister instructions N° 001/03 of 11/07/2014 relating to the fire prevention in Rwanda states that “*For the purpose of insuring materials, properties, persons and their adequate compensation, all public buildings and other public places shall have insurance against fire outbreaks*”<sup>79</sup>; while article 25 of the above Prime Minister’s Order stipulates that “*Owners of vehicles transporting inflammable materials, storage facilities and any other place*

<sup>77</sup> Art. 37 of the Decree-law n° 20/75 above-mentioned.

<sup>78</sup> Prime Minister instructions N° 001/03 of 11/07/2014 relating to the fire prevention in Rwanda, in *O.G* n° special of 11/7/2014.

<sup>79</sup> The Prime Minister’s Instructions are in *O.G.* n° special of 11/7/2014.

*operating those materials shall subscribe the necessary insurance protecting people and property against fire accidents*". In connection with this Prime Minister's Order, without considering its content, it is important pointing out that it does not have any legal basis. Therefore, it is an illegal instrument.

Apart from these mandatory insurances, other insurances provided for by the law are voluntary insurances.

## 2. Voluntary insurance

By virtue of the Rwandan legislation, voluntary assurances concern various domains such as: Professional liability, Fire, Life, Crops, and Transport.

After the description of the above types of insurance business organized in Rwanda, it is fair to examine the supervision of insurance business.

### I.1.3. Supervision of insurance business

The insurance business supervision is carried out by the BNR<sup>80</sup>. When exercising supervision of the insurers and insurance intermediaries, the BNR may carry out the following activities<sup>81</sup>: 1° inspecting the premises and business, whether in or outside the territory of the Republic of Rwanda, including the procedures, systems and controls of insurers and insurance intermediaries or a company in the same group of companies involved in the same business; 2° inspect the assets, including cash, held, possessed or controlled by the person specified in paragraph one above; 3° examining and making copies of documents belonging to or in the possession or control of a person specified in paragraph one that, in the opinion of the Bank, relate to the carrying of insurers business by that person; and 4° seeking information and explanations from the officers, employees, agents and representatives of a person specified in paragraph one, whether in preparation for, during or after a compliance inspection.

The Bank informs in writing the person specified above that it intends to apply these powers but, in case of any sound justification, it may apply such powers without any notification<sup>82</sup>.

Further to the power above-mentioned, the BNR has the power of *written performance supervision*<sup>83</sup> (*usually named Off-site Supervision*), or the review of written information provided by an insurer.

<sup>80</sup> Art. 6 of the law n° 55/2007 of 30/11/2007 above-mentioned.

<sup>81</sup> Art. 54, paragraph 1 of the law n° 52/2008 above-mentioned.

<sup>82</sup> Art. 54, paragraph 2 of the law n° 52/2008 above-mentioned.

<sup>83</sup> Section 1 (Art. 51 and 52) of the law n° 52/2008 above-mentioned.

In this regard, in a period not exceeding six (6) *weeks*<sup>84</sup> from the end of the quarter, an insurer has to submit to BNR a written report with various documents specified in regulations<sup>85</sup>.

Finally, if the Bank considers that the report and any document or information were submitted in a manner that is inappropriate, incomplete, or were prepared in a manner that does not respect the law, it may, in a written form, request the insurer or an insurance intermediary to complete such a document or to replace it. The basic idea is to use social means to prevent deprivation and vulnerability to deprivation<sup>86</sup>.

At the end of this section describing the general overview on Rwandan insurance sector, it is worth also to describe, in the following section, the Rwandan legal framework on consumer protection.

## **I.2. Description of the legal and institutional framework on consumer protection in insurance sector**

For the purpose of this section, we have first examined the description of the legal framework (I.2.1), and thereafter the institutional framework (I.2.2).

### **I.2.1. Description of the legal framework**

This description concerns especially the law governing the insurance business in Rwanda (I.2.1.1), the law relating to competition and consumer protection in Rwanda (I.2.1.2), and the law concerning the organization of internal trade (I.2.1.3).

#### **1.2.1.1. Law governing the insurance business in Rwanda**

The law governing insurance business in Rwanda<sup>87</sup> provides protection of consumers in various aspects, either indirectly, or directly. Let's start by indirect protection, and then end by the direct protection.

### **1. Indirect consumer protection**

In Rwandan insurance sector, a consumer is indirectly and mainly protected as follows:

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<sup>84</sup> Art. 52 of the law n° 52/2008 above mentions six (6) months, instead of 6 weeks. However, according to other versions of this article (Kinyarwanda and French) and its content, we think that it is a matter of translation error.

<sup>85</sup> Annex 4, Annex 3B and art. 26 of the regulation n° 05/2009 of 29/07/2009 above-mentioned.

<sup>86</sup> Art. 53 of the law n° 52/2008 of 10/09/2008 above-mentioned.

<sup>87</sup> Law n° 52/2008 of 10/09/2008 above mentioned.



- 1° An insurer or an insurance intermediary is prohibited to carry on insurance business without authorization<sup>88</sup>.
- 2° An insurer or an insurance intermediary is required to have a minimum paid up share capital<sup>89</sup>, one billion of Rwandan francs (1,000,000 Frw) for an insurer<sup>90</sup>, and fifty million Rwandan francs (Rwf 50,000,000) for an insurance broker<sup>91</sup>.
- 3° An insurer or an insurance intermediary is required to carry on and maintain insurance business in financially sound condition<sup>92</sup> by managing its risk that can damage their solvency<sup>93</sup>.
- 4° An insurer is required to have a minimum solvency margin<sup>94</sup> : For long-term insurance business, (an excess of admitted assets over the aggregate value of its admitted liabilities equivalent to five hundred million Rwandan francs (500,000,000 Frws); while for short-term insurance business, an excess of its admitted assets over the aggregate value of its admitted liabilities equivalent to five hundred million Rwandan francs (500,000,000 Frw), or twenty per cent (20%) of its gross premium net income of reinsurance transferred during the last previous year, whichever is greater<sup>95</sup>.
- 5° A private insurer must provide to BNR the detailed basis on establishment of premiums rates, and avoid cartel in the establishment of premium rates<sup>96</sup>.
- 6° An insurance broker and an insurance agent are required to handle premiums and other clients' funds in accordance with regulations issued by BNR<sup>97</sup>.
- 7° An insurer has obligation to have reinsurance<sup>98</sup>.
- 8° An insurer is required to disclosure its financial situation as required by BNR<sup>99</sup>.
- 9° The BNR conducts off-site and on-site inspections for the supervision of insurers and insurance intermediaries<sup>100</sup>. Also, the board has the duty to oversee the conduct of the institution's business to ensure that the business is being properly managed and dealings with policyholders, claimants and creditors are fair and equitable<sup>101</sup>.

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<sup>88</sup> Art. 4-8, and 67-68 of the law n° 52/2008 above-mentioned; Art. 1, 7 and 8 of the regulation n° 05/2009 above-mentioned; and art. 1 of the regulation n° 06/2009 above-mentioned.

<sup>89</sup> Art. 11 of the law n° 52/2008 above-mentioned; Art. 12 of the Regulation n° 07/2009 above-mentioned;

<sup>90</sup> Art. 17 of the regulation n° 05/2009 above-mentioned.

<sup>91</sup> Art. 4 and 17 of the regulation n° 05/2009 above-mentioned; and art. 2 of the regulation n° 06/2009 above-mentioned.

<sup>92</sup> Art. 10 of the law n° 52/2008 above-mentioned; and art. 19 of the regulation n° 05/2009 above-mentioned.

<sup>93</sup> Art. 19 of the regulation n° 06/2009 above-mentioned

<sup>94</sup> Art. 12 of the law n° 52/2008 above-mentioned; and Art. 12 of the Regulation n° 07/2009 above-mentioned.

<sup>95</sup> Art. 18 of the regulation n° 05/2009 above-mentioned.

<sup>96</sup> Art. 21 of the law n° 52/2008 above-mentioned; and art. 23 of the regulation n° 05/2009 above-mentioned.

<sup>97</sup> Art. 40 of the law n° 52/2008 above-mentioned; Regulation n° 06/2009 above-mentioned; Art. 14 of the Regulation n° 06/2009 above-mentioned.

<sup>98</sup> Art. 15 of the law n° 52/2008 above-mentioned.

<sup>99</sup> Art. 24, 25, 26 & 68 of Regulation n° 06/2009 above-mentioned.

<sup>100</sup> Art. 51-54 of the law n° 52/2008 above-mentioned; and art. 22 of the regulation n° 06/2009 above-mentioned.

<sup>101</sup> Art. 7 and 15 of the Regulation n° 07/2009 above-mentioned.

10° The board has the responsibility to establish a strong internal control system and internal audit<sup>102</sup> to ensure that the business is conducted in a prudent manner in accordance with policies and strategies.

11° The board of a licensed insurer is obliged to set-up an independent Compliance Function<sup>103</sup> for coordination, monitoring and facilitation of compliance with existing laws and regulations.

## 2. Direct consumer protection

A consumer in insurance sector is directly protected in the main following cases:

- 1° Insurers and insurance intermediaries have to seek from their customers the necessary information for appropriate assessment of their needs before giving advice or concluding a contract<sup>104</sup>.
- 2° An insurance intermediary is required to disclosure to customers information related to his status (independent or associated with an insurer,...)<sup>105</sup>. Unfortunately, there is no requirement for the time at or the form in which this information is to be provided. Also, there is no requirement to publish the insurer's regulated status or their address in public documents such as marketing materials.
- 3° Before an insurance contract is signed, an insurance intermediary is required to provide accurate information related to the purpose of the insurance coverage (insurance policy)<sup>106</sup> to enable the consumer to make a balanced and informed decision regarding the most suitable product in their best interest. However, there is no requirement that the brochure contain specific information on the risks of the insurance (such as the risk of under-insurance in home insurance, or of non-disclosure generally) and, no specific requirement that the brochure and all other information for the purchasing decision be provided prior to the purchasing decision being made by the consumer. Also, the Rwandan Legal and regulatory framework does not provide the cooling-off period for insurance.
- 4° An insurer or an insurance intermediary is not allowed to conduct, facilitate or accept any advertisement, publishing of pamphlets or any other related documents that mislead or announce false information<sup>107</sup>. Comparing articles 7 and 9 of the Market Conduct Regulations, it is not clear that there is an absolute prohibition on misleading and deceptive conduct in respect of an insurer's materials or statements generally (such as brochures and advice) other than items that would qualify as "advertising" or "announcements." It is also unclear what rights the consumer has for the breach of these provisions, although BNR may impose sanctions under article 14.

<sup>102</sup> Art. 10, 24 and 25 of the Regulation n° 07/2009 above-mentioned.

<sup>103</sup> Art. 11 of the Regulation n° 07/2009 above-mentioned.

<sup>104</sup> Art. 1 b, d & g of Annex 1, and art. 8 of the Regulation n° 12/2009 above-mentioned.

<sup>105</sup> Art. 7, 9 & 16 of the Regulation n° 06/2009 above-mentioned; Art. 6 & 17 of Regulation n° 12/2009 above-mentioned.

<sup>106</sup> Art. 17 of the regulation n° 06/2009 above-mentioned; and art. 7 & 8 of Regulation n° 12/2009 above-mentioned.

<sup>107</sup> Art. 50 of the law n° 52/2008 above-mentioned; art. 7 of Regulation n° 12/2009 above-mentioned.

- 5° The BNR is allowed to take enforcement action<sup>108</sup> or sanctions against an insurer, an insurance intermediary and senior officials of insurance companies who fail to comply with the Law governing insurance business or its regulations implementing this law<sup>109</sup>.
- 6° The BNR is entitled to establish pecuniary sanctions payable by insurers or insurance intermediaries<sup>110</sup>, through regulations<sup>111</sup>, in case of failure to comply with provisions of the law governing insurance business and its implementing regulations<sup>112</sup>.
- 7° Insurers and insurance intermediaries have to keep confidentiality of relations and dealings they have with policyholders<sup>113</sup>. Business and financial information about any policyholder may be used or made available to third parties only with prior written consent of the policyholder or when disclosure is required by law<sup>114</sup>.
- 8° Insurers and insurance intermediaries are required to ensure that they act with due skill, care and diligence; that their staff members are competent, suitable and have been given adequate training, and a system is in place to monitor the quality of advice<sup>115</sup>. Furthermore, the Financial Sector Development Plan II contains a proposal to introduce an internationally-recognized standard of education for insurance intermediaries or insurer technical staff, the Certificate of Proficiency or similar, with a substantial lead-time to enable members of the industry to meet the standard. Also, the insurance industry association, ASSAR, is currently developing a proposal for a training institute for the insurance industry and intermediaries<sup>116</sup>.
- 9° Insurers are required to have an internal dispute resolution process that addresses policyholders' complaints in a timely and fair manner, and to communicate it to policyholders<sup>117</sup>. However, even if it is so important, access to the insurer's dispute resolution mechanism is not extended to any person with an interest under a policy, such as beneficiaries.
- 10° Insurers are required to have consumer education policy. By Rwanda Vision 2020 Revised 2012<sup>118</sup>, especially under Rwanda EDPRS 2 (2013-2018), the Rwanda goal is to increase financial inclusion to 80 percent by 2017, and to 90 percent by 2020<sup>119</sup>, and Rwanda is currently developing a National Financial Education Strategy. The strategy targets key groups in Rwanda's population, including

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<sup>108</sup> Art. 55 of the law n° 52/2008 above-mentioned; Art. 27 of the regulation n° 05/2009 above-mentioned; and art. 24 of the Regulation n° 06/2009 above-mentioned.

<sup>109</sup> Art. 27 of the regulation n° 05/2009 above-mentioned; Art. 24 of Regulation n° 06/2009 above-mentioned; and art. 14 of Regulation n° 12/2009 above-mentioned.

<sup>110</sup> Art. 56 of the law n° 52/2008 above-mentioned.

<sup>111</sup> The required regulations have not yet been put in place.

<sup>112</sup> Art. 28 of the regulation n° 05/2009 above-mentioned; and art. 25 of the Regulation n° 06/2009 above-mentioned.

<sup>113</sup> Art. 22 of the Constitution of the Republic of Rwanda of 04 June 2003, as revised to date, in *O.G* n° special of 04 June 2003; and art. 5 of Regulation n° 07/2009 above-mentioned

<sup>114</sup> Art. 44 of the Regulation n° 07/2009 above-mentioned; And Regulation n° 06/2009 above-mentioned.

<sup>115</sup> Annex 1, provisions 2a & 10, and art. 4 of the Regulation n° 12/2009 above-mentioned.

<sup>116</sup> The World Bank, Diagnostic Review of Consumer Protection and Financial Literacy, Volume II, November 2013, p.87.

<sup>117</sup> Art. 10 and Annex 1, provision 7 of the Regulation n° 12/2009 above-mentioned; and BNR Directive n° 05/2012 of 07/5/2012 (See <http://www.bnr.rw>, visited on 30/12/2015).

<sup>118</sup> MINECOFIN: <http://www.minecofin.gov.rw>, visited on 30/12/2015.

<sup>119</sup> *Idem*.

crucial sectors of the population such as children, youth, elders and women, and outlines multiple delivery channels for each. There are also KPIs that have been established to measure success under the regular FinCap survey<sup>120</sup>. It has also been identified that financial education is required to increase the currently small available pool of qualified financial services workers. This has the flow-on effect of enabling customer service staff to assist with the education of financial consumers.

In terms of insurance, it appears that there is a high level of awareness of the national health insurance scheme, with the FinCap survey indicating that the level of awareness of insurance is nearly as high as awareness of savings products<sup>121</sup>. However, a separate survey<sup>122</sup> noted that 20.4 percent of surveyed Rwandans had not heard of insurance and 29.6 percent did not know how to use it; 22.1 percent said they could not afford it.

After the description of the law governing insurance business, let's now examine the competition and consumer protection law.

### **I.2.1.2. Law relating to competition and consumer protection**

The consumer protection is, *stricto sensu*, governed by the Law N° 36/2012 of 21/09/2012 relating to competition and consumer protection, especially from articles 33 up to 50<sup>123</sup>, generally named Consumer Protection Law. This law defines a *consumer* as a person who purchases or acquires a commodity or a service for personal or family use for non-commercial purposes<sup>124</sup>. This definition is similar to the one provided by the Cambridge Dictionary as it states that a *consumer* is “a person who buys goods or services for their own use”<sup>125</sup>. Therefore, a consumer may be the policyholder, the insured party, the beneficiary, or the aggrieved third party<sup>126</sup>.

With regard to the above Consumer Protection Law, insurance consumers are protected from the main following aspects which are less important than consumers of goods:

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<sup>120</sup> The World Bank, *op.cit*, p.92.

<sup>121</sup> 14% of respondents stated they were not aware of insurance, compared to 17% for savings accounts.

<sup>122</sup> FinScape Rwanda 2012.

<sup>123</sup> The law mentioned is in *O.G* n° 46 of 12/11/2012.

<sup>124</sup> Art. 2, 11° of the law n° 36/2012 of 21/09/2012 relating to competition and consumer protection, in *O.G.* n° 46 of 12/11/2012.

<sup>125</sup> Cambridge Advanced Learner's Dictionary, Third edition; Jean Calais-Auloy and Frank S., *Droit de la consommation*, 6e ed., Dalloz, Paris, 2003, p.7.

<sup>126</sup> M. Fontaine, *Droit des assurances*, 3eme ed., Bruxelles, Larcier, 2006, p.46.

## 1. Right to information

No later than the time of the conclusion of a sale contract, the seller must provide the consumer with correct and necessary information on the characteristics of the product or service and conditions of contract considering the need for information expressed by the consumer and given the reported use by the consumer or reasonably foreseeable use<sup>127</sup>. However, this provision does not require the seller to provide the consumer with whole and necessary information without expecting the need expressed by the consumer or to provide it on his request, given that the consumer's knowledge is generally very limited.

It is worth mentioning that the consumer is prejudiced whenever there is no tangible fairness in the agreements between the rights and obligations of parties to the contract<sup>128</sup>. Also, in all business transactions in connection with the supply of goods or services to consumers, with promotion pricing in any means of supply or use of goods or services, *it is prohibited for a seller to provide a consumer with information that is, in all the circumstances, deceiving or misleading*<sup>129</sup>.

## 2. Advertisement

Any advertising that may encourage risky behavior dangerous for health or safety of persons is prohibited<sup>130</sup>. A comparative advertising must not be misleading or likely to mislead the consumer, must be for goods or services meeting the same needs or intended for the same purpose, and must objectively compare one or more characteristics of goods or services compared<sup>131</sup>. However, in Rwanda, there is a doubt for a fair advertisement, given the existence of Rwandan insurers association named ASSAR.

## 3. Invoicing

Except for sales of products from agriculture, animal husbandry, fisheries and craft products which are exempted from the invoicing; other business transactions by commercial firms and professional service providers shall be accompanied by invoices. However, the exemption shall not apply to industrial producers of products from agriculture, animal husbandry, fisheries and craft products<sup>132</sup>. However, for acquisition of some insurance products, such as motor insurance, the invoice is accompanied by a vignette.

<sup>127</sup> Art. 33 of the law n° 36/2012 of 21/09/2012 relating to competition and consumer protection, in *O.G.* n° 46 of 12/11/2012.

<sup>128</sup> Art. 34 of the law n° 36/2012 above-mentioned.

<sup>129</sup> Art. 37, paragraph 2 of the law n° 36/2012 above-mentioned.

<sup>130</sup> Art. 38 of the law n° 36/2012 above-mentioned.

<sup>131</sup> Art. 39 of the law n° 36/2012 above-mentioned.

<sup>132</sup> Article 40 of the law n° 36/2012 above-mentioned.

#### **4. Monitoring of delivery of goods and services to consumers**

The Regulatory Body, i.e. the Competition and Consumer Protection Regulatory Body, is responsible to monitor whether the modes used by a supplier to deliver goods and services to consumers comply with provisions of this Law. A Ministerial Order has to determine the requirements to monitor the delivery of goods and services to consumers by the supplier<sup>133</sup>. Unfortunately, up to date, this ministerial order does not exist. Therefore, the monitoring also does not exist.

#### **5. Civil actions for damages**

Any person who has incurred loss as a result of a violation of provisions of the law n° 36/2012 of 21/09/2012 relating to competition and consumer protection may institute an action in a court of law. Registered consumers protection associations may also institute a civil action in a court of law upon request by a consumer or when the subject matter of the action aims at seeking compensation for damages<sup>134</sup>.

#### **6. Administrative fines**

The aforementioned Regulatory Body may impose against an enterprise that violates the provisions of the Law n° 36/2012 of 21/09/2012 relating to competition and consumer protection an administrative fine of five per cent (5%) to ten percent (10%) of the enterprise's annual turnover of the preceding fiscal year in which the violation has occurred. Any faults provided under this Law committed by an individual or an enterprise that cannot reveal its annual turnover have to be punishable by an administrative fine of twenty thousand (20,000) to five million (5,000,000) Rwandan francs<sup>135</sup>

After the law related to competition and consumer protection, let us examine how the consumer is protected under the law concerning the organization of internal trade.

##### **I.2.1.3. Law concerning the organization of internal trade**

Articles 8, 9, 14, 19 and 22-31 of the law n° 15/2001 of 28/01/2001 amending and complementing the law n° 35/91 of 05/8/1991 concerning the organization of internal trade<sup>136</sup>. Especially, article 19 requires

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<sup>133</sup> Article 46 of the law n° 36/2012 above-mentioned. Unfortunately, the concerned Ministerial order does not yet exist.

<sup>134</sup> Article 50 of the law n° 36/2012 above-mentioned.

<sup>135</sup> Articles 52 and 55 of the law n° 36/2012 above-mentioned.

<sup>136</sup> The mentioned Law is in *J.O* n° 3 du 1/2/2001.

notably the protection of all categories of consumers. Indeed, under its paragraph 1c, it states that “*The management, coordination and the follow up of the commercial activities shall ensure that the protection of consumers of all categories;...*”.

After the examination of the existing Rwandan consumer protection legal framework, it is also fair examining the current Rwandan institutional framework on insurance consumer protection.

## **I.2.2. Description of institutional framework of consumer protection in insurance sector**

By describing the Rwandan institutional framework on insurance consumer protection, we described respectively the public institutions, and the private institutions.

### **I.2.2.1. Public institutions**

The public institutions to be described are the National Bank of Rwanda which plays the role of Regulator of Insurance Sector (1), the Competition and Consumer Protection Regulatory Body (2), the Ministry of Trade and Industry/MINICOM (3), the Office of Ombudsman (4), and the Commercial Courts (5).

#### **1. National Bank of Rwanda (BNR)**

BNR is legally mandated to supervise and regulate the activities of financial institutions including insurance companies<sup>137</sup>. According to this power, no person is entitled to carry on insurance business as insurer or as an insurance intermediary in the territory of the Republic of Rwanda without a license authorizing him to do so<sup>138</sup>. Therefore, BNR exercises supervision of the insurers and insurance intermediaries<sup>139</sup>. Finally, BNR may take action against an insurer, an insurance intermediary and senior officials of insurance companies who fail to comply with the Law governing insurance business or regulations issued by the Bank. It may also take pecuniary sanction and remedial measures by appointing an expert, an independent examiner, an administrator before liquidation, or by revoking members of the Board of Directors and senior officers<sup>140</sup>.

After this description of the role of the Regulator of Insurance Sector, let’s examine the role of the Competition and Consumer Protection Regulatory Body.

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<sup>137</sup> Article 6 of the Law n° 55/2007 above-mentioned.

<sup>138</sup> Articles 7 and 60 of the law n° 52/2008 above-mentioned.

<sup>139</sup> Article 54 of the law n° 52/2008 above-mentioned.

<sup>140</sup> Articles 55-61 of the law n° 52/2008 above-mentioned.

## 2. The Competition and Consumer Protection Regulatory Body

The Regulatory Body, i.e. the Competition and Consumer Protection Regulatory Body, provided for by the law relating to competition and consumer protection has to be established by a specific law<sup>141</sup>, and is defined as a public body responsible for regulating commercial competition and ensuring consumer protection<sup>142</sup>. This law exists from 2013 and the Regulatory Body has been named National Standards Inspectorate, Competition and Consumer Protection Authority (NICA)<sup>143</sup>. Unfortunately, from its enactment date up to date, the implementation of this Law has been suspended by the Government awaiting for the enactment of another law which will supersede it<sup>144</sup>. With regard to the draft of law establishing and determining its responsibilities, organization and functioning, this Regulatory Body is expected to be named “Rwanda Inspectorate and Competition Authority”, abbreviated as “RICA”. Also, according to this draft law in progress into Parliament, the Scope of services and products to be inspected by RICA, in connection with its responsibilities, covers notably the design of products and services<sup>145</sup>. Its responsibilities and powers are specified at articles 5-7.

After examination of the role of the Competition and Consumer Protection Regulatory Body, we looked at the involvement of the Ministry of Trade and Industry.

## 3. The Ministry of Trade and Industry (MINICOM)

The Ministry of Trade and Industry (MINICOM), through its Department of Trade and Investment, has notably the key mission to enhance competition and consumer protection. It is specified that, in its responsibilities of protecting consumers’ rights, this Ministry works with other public and private stakeholders to ensure consumer protection and in line with the internal trade law; there is a strike to remove all barriers faced by consumers<sup>146</sup>. MINICOM has five strategic objectives, one of which is to create a business environment conducive to growth and the protection of consumers.

Further to the examination of involvement of MINICOM in connection with consumer protection in insurance sector, it is worth mentioning the role of the Office of Ombudsman.

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<sup>141</sup> Article 5 of the law n° 36/2012 above-mentioned.

<sup>142</sup> Article 2, 12° of the law n° 36/2012 above-mentioned.

<sup>143</sup> See the Law N° 61/2013 of 23/08/2013 establishing National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its mission, organization and functioning, in *O.G* n° 43 of 28/10/2013.

<sup>144</sup> See the draft law n° ..... of..... establishing Rwanda Inspectorate and Competition Authority (RICA) and determining its responsibilities, organization and functioning.

<sup>145</sup> Art 1 and 3 of the draft law n° ..... of..... establishing Rwanda Inspectorate and Competition Authority (RICA) and determining its responsibilities, organization and functioning.

<sup>146</sup> MINICOM: <http://www.minicom.gov.rw>, visited on 24/8/2015.



#### 4. The Office of Ombudsman

Among its mission, the Office of Ombudsman is allowed to act as a link between the citizen and public and private; to prevent and fight injustice, corruption and related offences in public and private entities; and to receive and examine complaints from individuals and associations in connection with the acts of civil servants, State organs and private institutions, and mobilize such civil servants and institutions to resolve those complaints if it finds they are founded<sup>147</sup>. In implementing its missions, the Office of Ombudsman observes the two following principles<sup>148</sup>: 1° to always search for solution of problems through dialogue and mutual understanding; and 2° to promote mediation, conciliate, provide guidance and initiate correction before resorting to its powers as conferred on it by law.

Concerning its powers, the Office of Ombudsman has notably the following powers<sup>149</sup>: 1° to request for explanations on decisions and actions taken by Government and public institutions, private institutions and non-governmental organizations with which the population is not satisfied; 2° to carry out investigations on actions of Government institutions, public establishments or those of private institutions or international organizations or institutions operating in Rwanda and in which the population finds injustice; and 3° to identify laws that hinder the good functioning of Government institutions or that hamper the general interest of the population.

After determining the role of the Office of Ombudsman, it is also important to examine the role of Commercial Courts.

#### 5. The Courts

On the one hand, the courts, especially commercial Courts have to hear in the first instance, all commercial, financial and fiscal cases and other correlated matters<sup>150</sup>. On the other hand, “commercial matters” have the meaning of commercial, financial, fiscal and other related matters in connection with notably disputes related to insurance with the exception of those related to accident compensation claimed from insurance companies by those who have no contract with such companies<sup>151</sup>.

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<sup>147</sup> Art 4 of the law n° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, in *O.G* n° special of 18/10/2013.

<sup>148</sup> Art 5 of the law n° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, in *O.G* n° special of 18/10/2013.

<sup>149</sup> Art 6 of the law n° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, in *O.G* n° special of 18/10/2013.

<sup>150</sup> Art 12 of Organic Law n° 06/2012/OL of 14/09/2012 determining the organization, functioning and jurisdiction of commercial courts, in *O.G* n° 45 of 05/11/2012.

<sup>151</sup> Art 2, 5° of the Organic Law n° 06/2012/OL above-mentioned.

After description of public institutions, it is fair to describe the role of private institutions.

### **I.2.2.2. Private Institutions**

The private institutions to be described are the Association des Assureurs du Rwanda (ASSAR) (1), Private Sector Federation (PSF) (2), and Consumers Associations (3).

#### **1. Association des Assureurs du Rwanda (ASSAR)**

In the framework of consumer protection, ASSAR has among its objectives to promote underwriting discipline and education; to act in the best interest of each client; to provide high standard of service thus protecting; and to promote sound competition in the interests of consumers<sup>152</sup>. In the same way, through especially its Disciplinary Committee, ASSAR imposes various sanctions to insurance companies in breach of ASSAR's code of conduct and laws and/or regulations governing insurance business<sup>153</sup>. However, given the practice of Rwandan insurance companies in protecting their interests (current price cartel notably), the protection of consumers by ASSAR cannot be more expected.

Besides the ASSAR, let us describe the Rwanda Private Sector Federation.

#### **2. Rwanda Private Sector Federation**

The Private Sector Federation (PSF)-Rwanda has been established in 1999 as a fusion between the then Chamber of Commerce and Industry and the employers' organization. Currently, the Federation groups together ten (10) professional and promotional Chambers, eight (8) of them representing business sectors and two cross-cutting in nature. These Chambers are: Chamber of Agriculture and livestock, Chamber of Industry, Chamber of Commerce and Services, Chamber of Financial Institutions, Chamber of ICT, Chamber of Liberal Profession, Chamber of Tourism, Chamber of Arts, Crafts and Artisans, Chamber of Women Entrepreneurs, and Chamber of Young Entrepreneurs<sup>154</sup>. As an employers' professional organization and given that its main mission is to only protect the members' professional interest, and advocate effectively<sup>155</sup>, it is clear that this organization has no direct mission for consumers' protection. However, through its Code of Business & Excellence established in July 2009 and reviewed in November 2014, this Organization has indirectly this mission.

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<sup>152</sup> Clauses 3, 5 and 6 of ASSAR Code of Conduct, dated April 3<sup>rd</sup> 2014.

<sup>153</sup> Clause 8 of ASSAR Code of Conduct, dated April 3<sup>rd</sup> 2014.

<sup>154</sup> PSF: Psf\_brochure\_2013.pdf

<sup>155</sup> Article 2 of PSF Statutes, in *O.G.* n° 20 of 15/10/2002.

Let's now look on the role of consumers associations.

### **3. Consumer associations**

In Rwanda, there are currently two associations for consumer protection namely: Association for the Defence of the Rights of Consumers in Rwanda (ADECOR), and Consumers Human Organization of Rwanda (CHROR).

#### **a. Association pour la Défense des Droits des Consommateurs au Rwanda (ADECOR)**

In Rwanda, the only one and operational consumers' association for the protection of consumers' rights is named ADECOR (Non-profit making Association): Association pour la Défense des Droits des Consommateurs au Rwanda, in French or, Association for the Defence of the Rights of Consumers in Rwanda, in English. Its legal personality has been established by the Ministerial Order n° 17/11 of 27/01/2009 granting legal status to the Association for the Defence of the Rights of Consumers in Rwanda (ADECOR), and approving its Legal Representatives<sup>156</sup>. Currently, this Association is composed of 250 members, and is headquartered in Kigali City.

The Association has the following objectives: 1° Fight, by all legal means, against the excessive increase of prices on the market; 2° Fight for the quality, exactness of weight and measurements of products on the market; 3° Sensitize consumers about the defense of their rights and the fulfillment of their obligations; 4° Look for solutions to all the problems facing Rwandan consumers through dialogue and consultations; and, 5° Participate in the integral development of our country through permanent and transparent dialogue with other economic operators<sup>157</sup>.

The above objectives have to be achieved especially through four (4) following ways and means: 1° Inform and educate consumers about the defence of their rights and interests; 2° Represent consumers and assert their rights before public authorities as well as national organisations inside and outside the country; 3° Organise and develop close collaboration with all partners: Government, specialised services, economic operators, national or international Non-Governmental Organisations and the mass media; and 4° Initiate concrete actions in favour of consumers<sup>158</sup>. Furthermore, the activities of the

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<sup>156</sup> The Ministerial order is in *O.G* n° 24 of 15/06/20009.

<sup>157</sup> Art. 2 of the Ministerial Order n° 17/11 of 27/01/2009 granting legal status to the Association for the Defence of the Rights of Consumers in Rwanda (ADECOR), and approving its Legal Representatives, in *O.G* n° 24 of 15/06/20009.

<sup>158</sup> Art. 4 of the statutes of the Association for the Defense of the rights of Consumers in Rwanda, "ADECOR" a.s.b.l, in *O.G* n° 24 of 15/06/20009.

Association have particularly to focus notably on the Services (banks, insurance, hotels, restaurants, nightclubs, etc)<sup>159</sup>.

Unfortunately, despite its ambitious objectives and according to the explanations provided for by the ADECOR's representative, there is no case in insurance sector which has been settled by this Association.

#### **b. Consumers Human Organization of Rwanda (CHROR).**

Another association in formation is the Consumers Human Rights Organization of Rwanda (CHROR) which is based at Rubavu, West Province. However, given the fact that its legal personality has not yet been granted, there is no much thing to be told about this organization.

It should be noted that, by virtue of article 50 of the Competition and Consumer Protection Law, registered consumer protection organizations should already commence civil proceedings in respect of a breach of consumer protection law, either at the request of a consumer or if damages are claimed.

After the analysis of the Chapter I related to the current status of the legal and institutional framework on consumer protection in insurance sector, it is now further important to examine Chapter II that concerns the compliance of Rwandan insurance framework with the international required standards.

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<sup>159</sup> Art. 4 of the statutes of the Association for the Defense of the rights of Consumers in Rwanda, "ADECOR" asbl, in *O.G.* n° 24 of 15/06/20009.

## **CHAPTER II. COMPLIANCE OF RWANDAN INSURANCE FRAMEWORK WITH THE INTERNATIONAL REQUIRED STANDARDS**

The existence of a sound financial consumer protection framework in general is fundamental for expanding access to financial services and supporting further financial sector deepening in Rwanda. Therefore, ensuring the existence of sound business practices, disclosure regimes and redress mechanisms to address the imbalance of power between financial institutions and their customers constitute fundamental pillars of a consumer protection regime and expand access to financial services<sup>160</sup>, insurance services included. Otherwise, consumers cannot be able to exercise their rights as consumers, to select the financial products that suit them best, and to be protected from mis-selling, fraud, and other market abuses in violation of financial service providers' statutory and regulatory obligations towards them.

Therefore, in this comparison framework, we have examined the compliance of Rwandan insurance framework with the international required standards (II.1), and the proposal of means to improve consumer protection in insurance sector (II.2).

### **ii.1. Compliance of Rwandan insurance framework with the international required standards**

For better analysis of this section, we first examined the general principles or guidelines for consumer protection (2.1.1), the assessment of the compliance of the legal framework (2.1.2) and the assessment of the compliance of the institutional framework (2.1.3).

#### **II.1.1. General principles or guidelines for consumer protection**

In this subsection, our attention focused on the principles or guidelines established by the United Nations (2.1.1.1), the translation of these principles/guidelines by Consumers International (CI) organization into clear consumer rights (2.1.1.2), the needs intended to be met by those principles or guidelines (2.1.1.3), the objectives of the said principles or guidelines (2.1.1.4), the standards for Rwanda consumer protection (2.1.1.5), and the Principles set by the World Bank (2.1.1.6).

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<sup>160</sup> The World Bank, *Diagnostic Review of Consumer Protection and Financial Literacy*, Volume I, November 2013, p.5.

### II.1.1.1. Principles or guidelines established by United Nations

The general principles or guidelines to be considered are those put in place by the United Nations for the consumer protection from which each Government of member state is required to set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.

Those general principles or guidelines put in place by the United Nations are summarized as following: 1) Physical safety; 2) Promotion and protection of consumers' economic interests; 3) Standards for the safety and quality of consumer goods and services; 4) Distribution facilities for essential consumer goods and services; 5) Measures enabling consumers to obtain redress; 6) Education and information programmes; 7) Promotion of sustainable consumption; and 8) Measures relating to specific areas (Food, water and pharmaceuticals)<sup>161</sup>.

### II.1.1.2. Summary of the principles or guidelines

The above principles/guidelines have been interpreted by Consumers International (CI) organization and translated into clear **consumer rights** as follows<sup>162</sup>: 1° **The right to satisfaction of basic needs** (To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation), 2° **The right to safety** (To be protected against products, production processes and services that are hazardous to health or life), 3° **The right to be informed** (To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling), 4° **The right to choose** (To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality), 5° **The right to be heard** (To have consumer interests represented in the making and execution of government policy, and in the development of products and services), 6° **The right to redress** (To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services), 7° **The right to consumer education** (To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them), and 8° **The right to a healthy**

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<sup>161</sup> United Nations - Department of Economic and Social Affairs, *United Nations Guidelines for Consumer Protection* (as expanded in 1999), New York, 2003.

<sup>162</sup> Consumers International (CI), <http://www.consumersinternational.org/who-we-are/consumer-rights>, consulted on 12/8/2015; and <http://www.consumersinternational.org/who-we-are/un-guidelines-on-consumer-protection>, consulted on 12/8/2015.

**environment** (To live and work in an [environment](#) that is non-threatening to the well-being of present and future generations).

Consumers International (CI) is the world federation of consumer groups, and has been founded in 1960. It is a not-for-profit company limited by guarantee and registered in the UK (United Kingdom) under company no. 4337865. It is also registered UK charity no. 1122155<sup>163</sup>.

Further to these rights, Consumers International introduced also a set of **consumer responsibilities** to compliment consumer rights. Those consumer responsibilities are the following<sup>164</sup>: 1° **Critical awareness** (Consumers must be awakened to be more questioning about the provision of the quality of goods and services), 2° **Involvement or action** (Consumers must assert themselves and act to ensure that they get a fair deal), 3° **Social responsibility** (Consumers must act with social responsibility, with concern and sensitivity to the impact of their actions on other citizens, in particular, in relation to disadvantaged groups in the community and in relation to the economic and social realities prevailing), 4° **Ecological responsibility** ( there must be a heightened sensitivity to the impact of consumer decisions on the physical environment, which must be developed to a harmonious way, promoting conservation as the most critical factor in improving the real quality of life for the present and the future), and 5° **Solidarity** (the best and most effective action is through cooperative efforts through the formation of consumer/citizen groups who together can have the strength and influence to ensure that adequate attention is given to the consumer interest).

### **II.1.1.3. Needs intended to be met by the principles or guidelines**

The legitimate needs which the above principles/guidelines are intended to meet are the following<sup>165</sup>:

1° The protection of consumers from hazards to their health and safety; 2° The promotion and protection of the economic interests of consumers; 3° Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs; 4° Consumer education, including education on the environmental, social and economic impacts of consumer choice; 5° Availability of effective consumer redress; 6° Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them; 7° The promotion of sustainable consumption patterns.

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<sup>163</sup> Consumers International, <http://www.consumersinternational.org/who-we-are/about-us>, visited on 13/8/2015.

<sup>164</sup> Consumers International, <http://www.consumersinternational.org/who-we-are/consumer-rights>, consulted on 12/8/2015.

<sup>165</sup> United Nations - Department of Economic and Social Affairs, *op.cit.*

#### **II.1.1.4. Objectives of the principles or guidelines**

The United Nations, taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, specified that these principles or guidelines for consumer protection have the following objectives<sup>166</sup>: 1° To assist countries in achieving or maintaining adequate protection for their population as consumers; 2° To facilitate production and distribution patterns responsive to the needs and desires of consumers; 3° To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; 4° To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; 5° To facilitate the development of independent consumer groups; 6° To further international cooperation in the field of consumer protection; 7° To encourage the development of market conditions which provide consumers with greater choice at lower prices; 8° To promote sustainable consumption.

#### **II.1.1.5. Standards for Rwanda consumer protection**

In Rwanda, the Ministry of Trade and Industry specifies that there are six (6) basic consumer rights defined as follows<sup>167</sup>:

- 1° A consumer needs a well customer care ;
- 2° A consumer needs to clearly know the prices ;
- 3° A consumer has rights to qualified products with respect to both national and international standards ;
- 4° A consumer has rights to be offered products of true weights with respect to metrology mechanisms ;
- 5° A consumer has the right to choose – and to be assured, wherever possible, access to a variety of products and services at competitive prices ;
- 6° A consumer has the right to safety like being protected against the marketing of goods which are hazardous to health or life.

In view of these established Rwandan consumer rights, we do not understand why Rwanda did not adopt the whole above international standards/guidelines for consumer protection with regard to the needs and objectives intended to be met by these principles or guidelines.

<sup>166</sup> United Nations - Department of Economic and Social Affairs, *op.cit.*

<sup>167</sup> MINICOM, <http://www.minicom.gov.rw>, visited on 24/8/2015.



### II.1.1.6. Principles set by the World Bank

On its side, the World Bank has developed Good Practices for Financial Consumer Protection<sup>168</sup> which cover key five following areas: legal, regulatory and institutional framework; transparency and disclosure of information; retail business practices of financial institutions; complaints and dispute resolution mechanisms; and consumer awareness and education.

These principles are summarized under the seven (7) following aspects:

#### 1. Consumer Protection Institutions

##### 1° Consumer Protection Regime

The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules...

##### 2° Contracts

There should be a specialized insurance contracts section in the general insurance or contracts law, or ideally a separate Insurance Contracts Act specifying the information exchange and disclosure requirements specific to the insurance sector, the basic rights and obligations of the insurer and the retail policyholder...

##### 3° Code of Conduct for Insurers

There should be a principles-based code of conduct for insurers...

##### 4° Other Institutional Arrangements

Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution; the **judicial system** should provide credibility to the enforcement of the rules on financial consumer protection; and the **media** and **consumer associations** should play an active role in promoting consumer protection in the area of insurance.

##### 5° Bundling and Tying Clauses

Whenever an insurer contracts with a merchant or credit grantor as a distribution channel for its contracts, no bundling, tying or other exclusionary dealings should take place without the consumer being advised and able to opt out...

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<sup>168</sup>World Bank, <http://www.responsiblefinance.worldbank.org/~media/GIAWB/FL/Documents/Misc/Good-practices-for-financial-consumer-protection.pdf>, visited on 12/08/2015.

## **2. Disclosure and Sales Practices**

### **1° Sales Practices**

Insurers should be held responsible for product related information provided to consumers by their agents, Consumers should be informed whether the intermediary selling them an insurance contract is acting for them or for the insurer,.....

### **2° Advertising and Sales Materials**

Insurers should ensure their advertising and sales materials and procedures do not mislead customers, regulatory limits should be placed on investment returns used in life insurance value projections....

### **3° Understanding Customers' Needs**

The sales intermediary or officer should be required to obtain sufficient information about the consumer to ensure an appropriate product is offered....

### **4° Cooling-off Period (also known as free look periods)**

There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling.

### **5° Key Facts Statement**

A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.

### **6° Professional Competence**

Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell...

### **7° Regulatory Status Disclosure**

An insurer should disclose that it is regulated, and the name and address of the regulator; insurance intermediaries license proof of licensing should be readily available to the general public, including through the internet.

### **8° Disclosure of Financial Situation**

The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the insurance sector; Insurers should be required to disclose their financial information to enable the general public to form an opinion with regards to the financial viability of the institution...

### **3. Customer account handling and maintenance**

#### **1° Customer account handling**

Customers should receive periodic statements of the value of their policy in the case of insurance savings and investment contracts; Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period...

### **4. Privacy and Data Protection**

#### **1° Confidentiality and Security of Customers' Information**

Customers have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.

### **5. Dispute Resolution Mechanisms**

#### **1° Internal Dispute Settlement**

Insurers should provide an internal avenue for claim and dispute resolution to policyholders; The regulator or supervisor should investigate whether insurers comply with their internal procedures regarding consumer protection...

#### **2° Formal Dispute Settlement Mechanisms**

A system should be in place that allows consumers to seek affordable and efficient impartial and independent third-party recourse, which could be an ombudsman or tribunal, in the event the complaint with the insurer cannot be resolved to the consumer's satisfaction in accordance with internal procedures; The decisions of the ombudsman or equivalent institution should be binding upon the insurers...

### **6. Guarantee Schemes and Insolvency**

With the exception of schemes covering mandatory insurance (and possibly long-term insurance), insolvency guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry, the resulting fiscal risk to taxpayers where supervision and governance are not adequate, and the scope for moral hazard. Strong governance and prudential supervision are better alternatives...

## **7. Consumer Empowerment & Financial Literacy**

### **1° Broadly based Financial Literacy Program**

A broadly based program of financial education and information should be developed to increase the financial literacy of the population; The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial literacy program...

### **2° Unbiased Information for Consumers**

Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them; Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs—of the main types of financial products and services...

### **3° Measuring the Impact of Financial Literacy Initiatives**

Policymakers, industry and advocates should understand the financial literacy of various market segments, particularly those most vulnerable to abuse; The financial literacy of consumers should be measured through a broad-based household survey that is repeated from time to time...

These Good Practices were developed by the World Bank using international benchmarks, including the aforementioned UN principles/guidelines, the principles released by the Basel Committee, IOSCO (International Organization of Securities Commissions) and IAIS (International Association of Insurance Supervisors), as well as the OECD (Organisation for Economic Co-operation and Development) recommendations for financial education and awareness on pensions, insurance, and credit products.

The IAIS is the international standard setting body responsible for developing principles, standards and other supporting material for the supervision of the insurance sector and assisting in their implementation. It has been established in 1994, and its mission is to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability. It coordinates its work with other international financial policymakers and associations of supervisors or regulators, and assists in shaping financial systems globally. In particular, the IAIS is a member of the Financial Stability Board (FSB), founding member and co-parent of the Joint Forum, along with the Basel Committee on Banking Supervision (BCBS) and the International Organization of

Securities Commissions (IOSCO), member of the Standards Advisory Council of the International Accounting Standards Board (IASB), and partner in the Access to Insurance Initiative (A2ii)<sup>169</sup>.

The Insurance Core Principles (ICPs) established by IAIS provide a globally accepted framework for the supervision of the insurance sector, and apply to insurance supervision in all jurisdictions regardless of the level of development or sophistication of the insurance markets and the type of insurance products or services being supervised. The ICP statements are the highest level in the hierarchy and prescribe the essential elements that must be present in the supervisory regime in order to promote a financially sound insurance sector and provide an adequate level of policyholder protection<sup>170</sup>. The current ICPs established by IAIS are 26<sup>171</sup>.

At the end of this subsection describing the general principles or guidelines for consumer protection, it is now worth to carry out the assessment of the compliance of the Rwandan legal framework with these described consumer protection standards.

## **II.1.2 Assessment of the compliance of the legal framework**

A sound consumer protection regime is very key for effective and efficient consumer protection in all sectors, the insurance sector included. It especially strengthens financial consumer protection to help build consumer trust in the financial sector and expand the confidence of households to wisely use financial services. In this context, it is important mentioning that Rwanda has a specific law governing the protection of consumers in general (goods and services), including consumers of the insurance sector, complemented with sound prudential regulation and supervision.

Prudential requirements are intended to ensure that the financial promises made by financial institutions (insurance institutions in this case) are met, while proper supervision or oversight by financial authorities ensures adherence to these standards. In this sense, actions to strengthen the regulatory framework and practice of supervision contribute directly to protecting the interests of consumers<sup>172</sup>.

This assessment is based on compliance with the principles set forth in Good Practices for Financial Consumer Protection developed by the World Bank, given that these principles have been established

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<sup>169</sup> IAIS: [http://iaisweb.org/modules/icp/assets/files/Insurance\\_Core\\_Principles\\_Standards\\_Guidance\\_and\\_Assessment\\_Methodology\\_October\\_2011\\_revised\\_October\\_2013\\_.pdf](http://iaisweb.org/modules/icp/assets/files/Insurance_Core_Principles_Standards_Guidance_and_Assessment_Methodology_October_2011_revised_October_2013_.pdf), visited on 24/9/2015.

<sup>170</sup> IAIS: *Insurance Core Principles (ICPs), standards, Guidance and Assessment Methodology*, October, 1, 2011, p.5.

<sup>171</sup> IAIS: *op.cit*, p.3.

<sup>172</sup> The World Bank, *Diagnostic Review of Consumer Protection and Financial Literacy*, Volume I, November 2013, p.5.

by one of the world highest financial institutions, and by the fact that they are comprehensive and more detailed. Indeed, as said above, these Good Practices have been developed by the World Bank using international benchmarks, including the UN principles/guidelines, the principles released by the IAIS (International Association of Insurance Supervisors), as well as the OECD (Organisation for Economic Co-operation and Development). Therefore, for better assessment, we first considered the appropriateness of the Rwandan legal framework (2.1.2.1) in comparison with above international standards, and examined its effectiveness (2.1.2.2).

### **II.1.2.1. Appropriateness of the Rwandan legal framework**

Under this subtitle, we respectively pointed out the strength (1) and the weaknesses (2) of the Rwandan insurance regime in connection with consumer protection.

#### **1. The strength of the Rwandan insurance regime**

In general and according to the legal provisions aforementioned in chapter I, it is important mentioning that there are strong consumer protection provisions in Rwandan insurance industry. This statement has been confirmed by the World Bank in its 2013 Rwandan Diagnostic Review of Consumer Protection and Financial Literacy assessment<sup>173</sup>.

On the one hand, from the enactment of the Law n° 52/2008 of 10/09/2008 governing the organization of insurance business and, as described in above chapter I, this legal instrument intends to protect as well as possible insurance consumers. For example, this law requires insurers to separate their short and long term businesses into different companies, and increased capital requirements tenfold to Rwf one (1) billion.

In addition, one of its implementing Regulation n° 12/2009 of 13/10/2009 on Market Conduct Requirements for insurers and insurance intermediaries, contains provisions dealing with the insurers' and insurance intermediaries' duties to act with the utmost good faith, integrity, due care and diligence. There are also requirements for certain information to be given to the insured and for the insurer to have proper procedures and an effective mechanism to deal with claims and complaints handling. Indeed, this main regulation provides a number of important general and specific protections for consumers, including the following with regard to insurers and intermediaries:

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<sup>173</sup> The World Bank, *op.cit*, p.6.

- ❖ The **principle of utmost good faith** is the foundation of the business of insurance, and is the dominant principle regulating the conduct of all insurers and intermediaries<sup>174</sup>;
- ❖ **Directors, management and staff** are required: 1) to put service to policyholders above self and always endeavour to employ the most effective and efficient ways to do business<sup>175</sup>; at all times, to act with integrity (including fair dealing, truthfulness and objectivity), act honestly, and in a straightforward manner and avoid misleading and deceptive acts or misrepresentations<sup>176</sup>; to act with due skill, care and diligence<sup>177</sup>; and to avoid conflicts of interest or, if conflicts arise, ensure fair treatment to all policyholders or prospective customers by disclosure or other means. They must remain impartial and not place their interests above those of policyholders or prospective customers<sup>178</sup>.

Also, BNR is empowered to issue directives prohibiting any “unsafe, unfair and unsound insurance practices” against an insurer and its senior officials<sup>179</sup>.

On the other hand, as mentioned in chapter I, the Law n° 36/2012 of 21/09/2012 relating to competition and consumer protection has relevant provisions which apply to all types of services, including financial services, as well as insurance services. Those provisions are relating notably to information to be given to consumers, advertising and prejudicial provisions which do not have any “tangible fairness”<sup>180</sup>. Article 37 of this Law prohibits a seller of goods or services from providing consumers with information that is, in all the circumstances, deceiving or misleading.

Also, there are requirements for disclosures in insurance contracts for insurance services. Particularly in Competition and Consumer Protection Law, the relevant provisions are relating to the disclosure of information concerning the characteristics of the product or service and the contract conditions, but are subject to the need for information expressed by the customer<sup>181</sup>.

With regard to Dispute Resolution processes, the Market Conduct regulation requires the establishment of an internal dispute resolution procedure. Under this Regulation, insurers are required to have an internal dispute resolution process that addresses policyholders’ complaints in a timely and fair manner, and the insurer must communicate the processes and procedures to policyholders. Brokers

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<sup>174</sup> Article 2, paragraph 1 of the regulation n° 12/2009 of 13/10/2009 above-mentioned.

<sup>175</sup> Article 2, paragraph 2 of the regulation n° 12/2009 of 13/10/2009 above-mentioned.

<sup>176</sup> Article 3 of the regulation n° 12/2009 of 13/10/2009 above-mentioned.

<sup>177</sup> Article 4 of the regulation n° 12/2009 of 13/10/2009 above-mentioned.

<sup>178</sup> Article 6 of the regulation n° 12/2009 of 13/10/2009 above-mentioned.

<sup>179</sup> Article 27 of the regulation n° 05/2009 of 29/07/2009 above-mentioned

<sup>180</sup> Articles 33, 34 and 39 of the Law n° 36/2012 above-mentioned.

<sup>181</sup> Article 33.

have also to comply with certain basic requirements for complaints handling. Complaints must be accepted by phone or in writing, must be dealt with at a suitably senior level, and the broker must have a system for recording and monitoring them<sup>182</sup>.

Concerning Consumer Awareness and Financial Education, ongoing initiatives on financial education demonstrate the government's commitment to improve financial literacy and expand access to financial services. The National Financial Education Strategy, BNR's Financial Awareness Strategy, the Maya Declaration, presence within FSDP II (Financial Sector Development Program) and quarterly Access Forums in each district for all financial institutions and local businesses all demonstrate Government's interest and commitment to financial awareness and access<sup>183</sup>.

Growth in the insurance sector has been led by health insurance and in particular its crucial role in the government's universal healthcare policy. The former mutual health insurance scheme (*Mutuelles de santé*), currently named Community-based health insurance Scheme, has meant that nearly 98 percent<sup>184</sup> of the population has some form of health insurance (90.6 percent of the population was enrolled, and another 7 percent are covered by civil service, military or private insurance<sup>185</sup>). For relatively small sums, basic healthcare is being made available to most. For the poorest members of the population, donor funding is used to subsidize the cost of premiums.

There are also an increasing number of compulsory or mandatory insurances in Rwanda. These include insurance for civil servants, construction worker, and third party motor insurance. In some industries, professional indemnity insurance is mandatory (such as insurance brokers), and in 2012, a bylaw was passed that made it compulsory for all commercial buildings to be insured for fire<sup>186</sup>. The finance sector has also driven growth by requiring insurance on assets purchased with loans<sup>187</sup>.

In connection with the particular insurance product named micro insurance, this product currently falls within the general insurance prudential and consumer protection regime, although microfinance institutions may, under article 19 of the Law n° 40/2008 establishing the Organization of Microfinance Activities (the Microfinance Law), conduct "micro insurance operations"<sup>188</sup>. However, it is not clear

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<sup>182</sup>Article 7 of Brokers Code of Conduct above-mentioned.

<sup>183</sup> The World Bank, *op.cit*, p.27.

<sup>184</sup>Donald G. McNeil, "Rwanda's Health Care Success Story.", *New York Times*, February 4, 2013.

<sup>185</sup>Paul E. Farmer, "Reduced Premature Mortality in Rwanda: Lessons from Success," accepted 26 November 2012, published in the BMJ.

<sup>186</sup> Ngoboka Ivan, "Rwanda: Insurance Industry Grows by 36 percent", *All Africa*, 26 March 2013, <http://allafrica.com/stories/201303260163.html>, visited on 30/12/2015.

<sup>187</sup> Edward Ojulu, "Luring New Investors," *Rwanda Focus*, April 24, 2013.

<sup>188</sup> The microfinance law is in *O.G* n° 13 of 30/03/2009.



whether this extends to the underwriting of micro insurance products or whether only operational activities, such as the collection of premiums and facilitation of product issue, are included<sup>189</sup>.

The distribution of insurance in Rwanda is primarily through brokers and insurer agents. All brokers and agents need to be licensed with BNR, and there are currently 15 insurance brokers, 365 agents and 12 loss adjusters in Rwanda<sup>190</sup>. The sector is expanding rapidly, up from 5, 102 and 4 respectively in 2012. Anecdotally, it appears that some financial institutions also distribute insurance, while others (including some banks) do not distribute insurance.

Rwanda's first micro-insurance product was offered in June 2011 by Urwego Opportunity Bank, a registered microfinance institution. Urwego worked in conjunction with two insurers and a broker to provide life cover, funeral expenses and fire cover for business equipment to microfinance borrowers. New micro insurance products continue to be offered and, in October 2012, index insurance began to be offered to farmers in Rwanda for protection of crops against weather-related events.

It is worth mentioning that the Rwanda's FSDP II has identified micro insurance as an important element in providing access to finance. However, its promotion requires change to the regulatory structure because of the currently high capital requirement of RWF 1 billion for insurers. Therefore, the regulation may provide lower capital, corporate governance, reporting requirements and a broader range of distribution channels<sup>191</sup>.

Finally, the Intermediary Licensing Regulation and the Market Conduct Regulation require that any broker or agent makes disclosures about their status; that is, whether they are independent or associated with any insurance companies and whether they are authorized to conclude insurance contracts (Articles 16 and 7 respectively). Furthermore, under the Brokers Code of Conduct, the broker must also take appropriate steps to see that the consumer understands the broker's role and on whose behalf the broker is acting (Article 1b). Also, by virtue of article 6 of the Market Conduct Regulation, insurance brokers must avoid conflicts of interest or, if conflicts arise, ensure fair treatment to all policyholders or prospective customers by disclosure or other means.

After the description of the strength of the Rwandan insurance, we examined its weaknesses.

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<sup>189</sup> The World Bank, *Diagnostic Review of Consumer Protection and Financial Literacy*, Volume II, November 2013, p.77.

<sup>190</sup> BNR, <http://www.bnr.rw>, visited on 15/10/2015.

<sup>191</sup> The World Bank, *op.cit*, p.75.

## 2. The weaknesses of the Rwandan insurance regime

First of all, the Rwandan insurance legal framework is weak about Transparency and Consumer Disclosure because there is a deficient in relation to the type and amount of information that insurance institutions provide to their clients given that it vary by institution. Indeed, there are limited regulatory requirements in terms of information that needs to be disclosed to consumers, while the provision of clear, standardized and comparable information to consumers can be an effective mechanism to promote competition, bringing down the cost of financial products and services. Unfortunately, in Rwandan insurance regime, there is a lack of transparency on pricing of financial products and services. No official standard formula exists for comparing product prices, and this prevents consumers from comparing the same products from different insurers<sup>192</sup>.

Even if the disclosure requirements are provided for in insurance contracts, there is a need for the disclosures to be improved. Furthermore, the Rwandan current insurance legal framework does not address in any way the need to ensure customers understand the terms of the contracts they are signing and the features of the related products. This is of particular concern in a country such as Rwanda where there are low levels of financial literacy, high levels of illiteracy. In this circumstance, consumers are usually victims of abuse clauses<sup>193</sup>.

Despite the Market Conduct Regulation provides for the Dispute Resolution processes, unfortunately other potential complainants are not mentioned. Also, we think that complaints should not be accepted by phone or in writing but only in writing, due to the matter of proof.

Even if Rwanda has a legal framework for consumer education, further efforts are needed to educate clients regarding their rights and responsibilities as financial consumers. The fragmented recourse system and weak regulatory environment makes it difficult to educate consumers on their rights<sup>194</sup>. Furthermore, despite having doubled from 2006–2011, insurance penetration in Rwanda was just 2.3 percent in 2011<sup>195</sup> and is low even compared to many of its regional peers in East Africa. By comparison, Kenya's insurance penetration is 2.76 percent (the highest in the region), and Tanzania is at 2.2 percent, while Uganda trails its East Africa peers at 0.6 percent as of 2011<sup>196</sup>. The reasons for a low insurance penetration in Rwanda seem varied, including the fact that 45 percent of the population

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<sup>192</sup> The World Bank, *Diagnostic Review of Consumer Protection and Financial Literacy*, Volume I, November 2013, p.17.

<sup>193</sup> BYIRINGIRO B, *Protection des consommateurs contre les clauses abusives en matière d'assurance en Droit Rwandais*, mémoire de maîtrise en Droit des affaires, UNR, Kigali, 2009, pp.2-3, and 56.

<sup>194</sup> The World Bank, *op.cit*, p.27.

<sup>195</sup> Insurance penetration is measured by Gross Written Premium as a percentage of GDP.

<sup>196</sup> Minister of Finance & Economic Planning to FANAF summit 23 February 2012.

still lives in poverty. Other reasons also include what some cite to be a shortage of skilled financial sector staff, low levels of awareness of insurance in the community and low levels of marketing by insurers<sup>197</sup>. Others cite the 18 percent VAT on insurance premiums for the slower growth, a charge that does not apply elsewhere in the East African Community<sup>198</sup>. Under Vision 2020, the government of Rwanda's goal is to increase insurance penetration to 7 percent.

Despite article 13 of the Market Conduct Regulation includes mandatory codes for insurance agents, brokers and loss adjusters, there is however no currently Code of Conduct for insurers. Also, there are two key areas that may benefit from enhancement in the insurance sector which are the clarification of liability of agents of the insurer (including when distribution of products is conducted through financial institutions such as banks) and the implementation of specific insurance contracts laws<sup>199</sup>. In addition, there are no provisions in Rwanda's law that specifically make an insurer liable for the conduct of its agents in the distribution of insurance. This would cover all aspects of an agent's role, including the provision of pre and post-sale information on the insurance, advice regarding appropriate products, ongoing servicing of policies and assistance in respect of claims. Finally, there is no requirement for the time at or the form in which a broker or agent makes disclosures about their status (whether they are independent or associated with any insurance companies and whether they are authorized to conclude insurance contracts). Further, as already mentioned in this study, the Rwandan regime provides for late indemnification<sup>200</sup>, and insufficient compensation based on inexistent guaranteed annual minimum wage<sup>201</sup>. The currently sum fixed by the Supreme Court amounting to 2,500 Frw is derisory.

After examination of this appropriateness of the Rwandan legal framework, let's now consider its effectiveness.

### **II.1.2.2. Effectiveness of the legal framework**

After comparing the existing Rwandan legal and regulatory framework with the international legal and regulatory standard, the issue is then to determine if the existing legal and regulatory framework is effectively implemented.

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<sup>197</sup> "Insurance Sector Stable Despite Low Penetration Rate" <http://www.newtimes.co.rw/section/Printer/2012-02-13/49375/> and, [http://www.newtimes.co.rw/news/views/article\\_print.php?i=14901&a=50079&icon=Print](http://www.newtimes.co.rw/news/views/article_print.php?i=14901&a=50079&icon=Print).

<sup>198</sup> The World Bank, Diagnostic Review of Consumer Protection and Financial Literacy, Volume II, November 2013, p.74.

<sup>199</sup> The World Bank, *ibid.* p.76.

<sup>200</sup> Article 4 of the law n° 41/2001 of 19/9/2001 above-mentioned, and articles 3, 5, 6, 8, 11 & 20 of the Presidential order n° 31/01 of 28/8/2003 aforementioned.

<sup>201</sup> Article 4 of the law n° 41/2001 of 19/9/2001 above-mentioned, and articles 15-19 & 21 of the Presidential order n° 31/01 of 28/8/2003 aforementioned.

In the above context, according to the described content of the Rwandan legal and regulatory framework and the information provided for by different participants in insurance industry (the Regulator, insurance companies, and some policyholders), it appears from this that, even if most of the aforementioned existing legal and regulatory framework is implemented, there are however some provisions which are not implemented. Hereunder are some examples.

- 1) Insurers do not provide to the National Bank of Rwanda the basis and full details on establishment of premiums rates. Also, the Bank has not yet issued regulations relating to some considerations in matters concerning the rating of premium rates.
- 2) About the requirement related to the understanding customers' needs, insurers and intermediaries generally do not seek from their prospective customers the necessary information to make an appropriate assessment of the customer's insurance need before giving advice or concluding a contract. They don't mind whether the policy proposed is suitable to the consumer's needs and resources.
- 3) With relation to the disclosure of information related to the purpose of the insurance coverage, insurers and insurance intermediaries mostly do not comply with article 7 of the Market Conduct Regulations that requires them to pay "due regard" to the information needs of customers. As a reminder and by virtue of this provision, the insurer has to provide a brochure about each product that clearly states the scope of benefits, charges, estimated returns and the extent of insurance cover and that explicitly explains the warranties, exceptions and conditions of the cover. An insurer and an insurance intermediary must ensure that the consumer receives all "material information" in respect to the cover to enable the consumer to make a balanced and informed decision regarding the most suitable product in their best interest. Also, customers have to be fully informed about their duty of disclosure, including the consequences of non-disclosure.
- 4) With regard to the disclosure of financial situation, insurers are required to submit various financial reporting to BNR, including Margin of Solvency Reports, Quarterly Financial Statements, and prudential reports such as valuations of technical provisions, and compliance with investment restrictions, loans and exposures. Also, insurers must submit audited financial statements to the Central Bank by April 30 each year. After the Central Bank has reviewed insurers' financial statements, they are required to publish their audited financial statements in a newspaper and on their websites<sup>202</sup>. Unfortunately, this publication is never made.

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<sup>202</sup> Articles 25 and 26 of the Regulation no 05/2009 of 29/07/2009 above mentioned.

- 5) In connection with pecuniary sanctions, article 56 of the law n° 52/2008 of 10/09/2008 governing the organisation of insurance business empowers the Bank to issue regulations specifying fines payable by insurers or insurance intermediaries to whom it granted a license in case of failure to comply with provisions of this law and its implementing regulations. Unfortunately, the Bank has not yet put in place all needed pecuniary sanctions. The only pecuniary sanctions provided for by regulations in place are the following:
- a) Ten thousand Rwandan francs (Rwf 10,000) for everyday of delay, for a licensed broker that fails to submit prudential reports accurately in the prescribed form and within the set deadline (Article 25 of the Regulation n° 06/2009 of 29/07/2009 on licensing requirements and other requirements for insurance intermediaries).
  - b) No specific pecuniary sanction provided for by article 14 of the Regulation n° 12/2009 of 13/10/2009 on market conduct requirements for insurers and insurance intermediaries. This provision only states that *“The Central Bank may apply sanctions, without prejudice to any other disciplinary actions or penal proceedings, to an insurer or insurance intermediary who fails to observe this regulation”*.
  - c) A pecuniary sanction of fifty thousand Rwandan francs (50,000 Frw) for every day of delay, for a licensed insurer which fails to submit prudential reports accurately in the prescribed form and within the set deadline (Article 28 of the Regulation n° 05/2009 of 29/07/2009 on licensing requirements and other requirements for carrying out insurance business).
- 6) Concerning the consumer education, apart from the national health insurance scheme for which awareness is high, the awareness of private insurance is very low. Indeed, most of Rwandan population is not aware about the relevance of taking out an insurance policy. As a reminder, the FinScape survey noted that 20.4 percent of surveyed Rwandans had not heard of insurance, 29.6 percent did not know how to use it, while 22.1 percent said they could not afford it<sup>203</sup>.
- 7) About the monitoring of delivery of services to consumers, and the administration of administrative fines, they do not exist given that the Regulatory Body, provided for by the law n° 36/2012 of 21/09/2012 relating to competition and consumer protection, is not yet in place.

At the end of assessment of the compliance of the legal framework, let's pass to the assessment of the compliance of the institutional framework.

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<sup>203</sup>FinScape Rwanda 2012.

### **II.1.3. Assessment of the compliance of the institutional framework**

In this subsection, the focus has been on appropriateness of the institutional framework (2.1.3.1), and the effectiveness of the institutional framework (2.1.3.2).

#### **II.1.3.1. Appropriateness of the institutional framework**

The overall institutional framework for financial consumer protection in Rwanda, insurance sector included, is fragmented due to a lack of clearly defined roles and responsibilities among institutions as well as unclear enforcement capacity. Indeed, BNR's consumer protection responsibilities in insurance sector overlap with those of the Ministry of Trade and Industry under the Competition and Consumer Protection Law 2012, the forthcoming Competition and Consumer Protection Regulatory Body RICA, and the Ombudsman. Also, there is accordingly no separation of supervision of prudential and consumer protection laws and it is not clear that the BNR has specialized expertise on consumer protection matters<sup>204</sup>.

The insurance sector is supervised by BNR from 2007, but with only 11 staff with active steps being taken to build both capacity and resources, when supervision responsibilities were transferred from the National Insurance Commission (NIC). Supervision is performed through the Insurance Division of Non-Bank Financial Institutions (NBFI) Supervision Department of BNR which is responsible for supervision of all insurance and pension financial institutions, as well as other types of non-bank financial institutions.

Further to the existence of the above Institutions, the Ministry of Trade and Industry also supported the creation of the two (2) aforementioned viable consumer associations that advocate for the rights of consumers which are ADECOR and the CHROR. There is also a Rwandan insurers' association named ASSAR "Association des Assureurs du Rwanda". However, despite its small staff numbers, ASSAR has prioritized a number of crucial areas, including the development of a Code of Conduct for insurers and the examination of an insurance training institute to attempt to address the gap in specialist knowledge and experience within the industry. It has no interest in consumer protection.

Article 24 of the Intermediaries Regulation confers on BNR a broad range of enforcement powers to address breaches of the law, including temporary suspensions, the imposition of additional capital requirements, prohibitions against selling new or certain products, requiring training or refresher

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<sup>204</sup>The World Bank, *Diagnostic Review of Consumer Protection and Financial Literacy*, Volume I, November 2013, pp.6 &13.

courses or “any other directives the Central Bank may deem appropriate.” Article 14 of the Market Conduct Regulation also empowers the imposition of sanctions by BNR for breaches of those provisions.

After the appropriateness assessment, we passed to the effectiveness assessment.

### **II.1.3.2. Effectiveness of the institutional framework**

The Regulator of Rwandan insurance sector, that is currently the National Bank of Rwanda, is unfortunately not involved in the active processes of consumer protection. It only establishes the required regulatory framework.

About the role of the forthcoming Competition and Consumer Protection Regulatory Body, the latter is unfortunately not yet in place, which points out another serious evidence about the least consumer protection in Rwandan insurance sector.

Concerning the consumer protection organizations, by virtue of article 50 of the Competition and Consumer Protection Law, registered consumer protection organizations should already commence civil proceedings in respect of a breach of consumer protection law, either at the request of a consumer or if damages are claimed. Unfortunately, since their formation up to date, there is no case already defended by these associations in favour of consumers. The reason provided for by ADECOR’s representative is because this Organization has not yet put in place the modalities for intervention.

About the Office of the Ombudsman, this Office is engaged in insurance consumer protection by settling issues pending between insurers and policyholders. In the year 2009-2010, even if the results have not been provided, the Office of Ombudsman examined fifty five (55) cases opposing private insurance companies to their policyholders and eighty eight (88) cases against the Rwanda Social Security Board<sup>205</sup>. In the year 2010-2011, this Office handled nine (9) cases against private insurance companies, and thirty four (34) cases concerning Rwanda Social Security Board (RSSB)<sup>206</sup>.

Concerning the courts’ involvement, it appears that some consumers are well protected<sup>207</sup>.

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<sup>205</sup> Office of the Ombudsman, Annual Report 2009/2010, p.23

<sup>206</sup> Office of the Ombudsman, Annual Report 2010/2011, p.21.

<sup>207</sup> Supreme Court, RCAA0054/09/CS of 06/5/2011, SONARWA S.A v. Mukansanga Jeanne d’Arc & BACAR S.A; and High Court (Musanze), RCA 0108/14/HC/MUS of 24/4/2015, Gasigwa Labani, Mushimye Olive, Mukamana Emérence, Mfitumukiza Emmanuel v. SORAS AG Ltd.

Even if the consumer protection for insurance sector generally remains in its early stages, we hope that it will improve with the establishment of the National Inspectorate and Competition Authority (NICA) and consideration made to its legal duties.

Therefore, at the end of this first section related to the compliance of Rwandan insurance framework with international required standard, we examined the proposal of means to improve consumer protection in insurance sector.

## **II.2. Proposal of means to improve consumer protection in insurance sector**

In this section, we have provided key recommendations – which most of them have been provided by the World Bank – that are designed to strengthen the environment in which the insurance industry can flourish because consumers understand the nature of insurance and the potential benefits, and participants in the insurance sector are appropriately regulated. Recommendations concern respectively the legal and regulatory framework (2.2.1), on the one hand, and the institutional framework (2.2.2), on the other hand.

### **II.2.1. About the legal framework**

With regard to the improvement of Rwandan legal and regulatory framework related to consumer protection in Rwandan insurance sector, in comparison with the international standards above-mentioned, the main recommendations to be formulated are the following:

1. The insurers' Association or the Regulator of Rwandan Insurance Industry should conduct an education campaign for potential policyholders to educate them on the features and benefits of insurance products, including micro insurance. Also, all stakeholders should be encouraged to complement ongoing financial education/literacy efforts in order to increase consumer awareness about their rights and responsibilities. The design of effective methods for financial education can be informed by the new evidence and insights on financial education availed by the World Bank<sup>208</sup>. The financial education should concern the financial awareness campaigns related to the use of financial products and basic financial concepts that are understandable for the average consumer.
2. The Regulator of the Rwandan Insurance Sector should put in place appropriate measures or procedures to ensure that consumers understand the insurance products they are acquiring, such as a Key Features Statement that explains the key features of the policies, or verbal disclosure in the

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<sup>208</sup> The World Bank, *op.cit*, p.7.



case of consumers with lower levels of literacy. The key elements that could receive focus in consumer understanding should include ensuring that consumers understand that they have insurance, they know who their insurer is (particularly relevant when a consumer purchases insurance from a bank or other non-traditional intermediary), what their own obligations are, and how to access the benefits under the product.

3. BNR or ASSAR should specify the role of various participants in the insurance market (including banks, MFIs, and SACCOs), as the level of understanding of participants is currently unclear. Once the range and roles of participants is understood, consideration should be given to ensuring that all such participants are subject to appropriate rules and oversight based on their contact with and influence on consumers. This will enable focus on appropriate rules for such parties and enhance consumer protection initiatives.
4. The law on consumer protection should clarify the powers of the Office of the Ombudsman with regards to financial services (insurance sector included) and to make binding decisions in relation to disputes/claims between financial institutions and their customers.
5. There should be a cohesive Financial Consumer Protection framework that applies notably to insurance companies, as well as the brokers/agents of such institutions. Therefore, there is a need for consequential changes to the Competition and Consumer Protection Law and certain BNR legislation so that it is clear that relevant consumer protection provisions do not apply to financial services<sup>209</sup>.
6. Given the fact that there is a deficient in the Rwandan insurance legal framework related to the type and amount of information that insurance institutions present to their clients which vary by institution, the Rwandan insurance contract law should be revised accordingly regarding especially contractual terms and conditions. This means that there should be a specialized insurance contracts section in the general insurance or contracts law. This should specify the information exchange and disclosure requirements specific to the insurance sector, the basic rights and obligations of the insurer and the retail policyholder and allow for any asymmetries of negotiating power or access to information. Ideally, information about basic consumer insurance products should be presented in a standardized format to enable comparison across insurers. Also, any brochure and any information outlined needs to be provided to the consumer prior to their purchasing decision, that the consumer acknowledges its receipt, and that they have read and understood it.

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<sup>209</sup> The World Bank, *op.cit*, p.16.

Specific terms relating to insurance contracts can provide essential elements of consumer protection in the insurance area, such as the following: clarification on when insurance cover commences; the duty of disclosure and requirements to notify consumers of their duty of disclosure, as well as specific provisions addressing the impact on contracts of insurance and claims if the duty of disclosure is not complied with; the timing for providing the policy document to the consumer; procedures to be followed on denial of claims, such as the provision of written reasons by the insurer; timing for settlement of claims, and interest for late payment of claims; notification requirements of policy renewals and expirations; cooling off periods in respect to certain non-compulsory types of insurance; issues arising from underinsurance, over insurance or double insurance; restrictions on varying contract terms; procedures for cancelling insurance; clarification that any ambiguity in the terms of an insurance contract will be interpreted in the interests of the consumer; crucial disclosures in the contract document, such as an upfront summary of contract terms and the clear disclosure of commissions and important exclusions; and the presentation of the insurance contract (such as type size and ease of understanding)<sup>210</sup>.

As a remainder, the current Insurance Contract rules is governed by the Decree Law n° 20/75 of 20 June 1975, and has been modified and completed by the law n° 01/2002 of 19/01/2002.

7. Contract documents should be made comprehensible through summaries of key information, clear language and format and explanations from insurance staff or intermediaries in appropriate cases. This might be achieved by implementing the following specific recommendations: 1° A Key Facts Statement should be provided on the first page of every contract summarizing the key terms; 2° Contracts should be both intelligible and legible; 3° Contract documents should be explained to customers who would not otherwise understand them; and 4° Customers should be given time to consider documents before the contract is signed.
8. Despite specific provisions of the Market Conduct Regulation dealing with misleading advertisements<sup>211</sup>, all information provided by an insurer should be required to be accurate and not misleading and there should be a right of recourse if this obligation is breached. The obligation to present accurate and complete information should be absolute (including brochures and other materials), and the consumer should have clear recourse in the event that the information does not comply.

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<sup>210</sup> The World Bank, Diagnostic Review of Consumer Protection and Financial Literacy, Volume II, November 2013, p.78.

<sup>211</sup>Article 7 of the Regulation N°12/2009 of 13/10/2009 on market conduct requirements for insurers and insurance intermediaries, in *O.G* n° 36 bis of 06/9/2010.

9. Information as to the status of an intermediary should be provided in such a way that the consumer fully understands who the intermediary acts for. This information should be given at the start of the relationship with the insured, or at least prior to any advice or recommendation being provided. Therefore, article 16 of the Regulation n° 6/2009 of 29/07/2009 on licensing requirements and other requirements for insurance intermediaries should be modified accordingly. Indeed, the current requirements do not make any provision for the timing or format of the disclosures that must be made by insurance intermediaries. However, the Intermediary Licensing and the Market Conduct Regulations do require that any broker or agent must make disclosures about their status. Intermediaries must also clarify whether they are independent or associated with any insurance companies, and whether they are authorized to conclude insurance contracts<sup>212</sup>. Also, when insurance is distributed by other financial institutions (such as banks), it is recommended that those institutions be required to make their roles clear and to make it clear to consumers that the products are not issued or guaranteed by them.
10. More specific regulatory guidance is needed to ensure that consumers are not misled about the potential investment returns for life investment products. For example, this could include a requirement that the insurer takes into account the type of assets and the terms of the contract in making predictions about investment returns and a requirement for a clear statement that past investment performance is no indicator of future performance.
11. BNR should consider working with the insurance industry and consumer protection associations to develop an insurers' Code of Conduct which would cover such key areas as customer service, disclosures, claims and complaints handling. This could be overseen by BNR, and ASSAR should also report to BNR on insurers' compliance. The Code would need to be made available or publicized to general public especially to customers, such as on the insurer's website or provided with new policy documentation and should apply to all participants in the insurance value chain, including banks, MFIs, and SACCOs. This code should be augmented by voluntary codes for insurers on such matters specific to insurance products or channels and disseminated in the same way. Also, there is a need to promote and support industry codes of conduct with treatment of disclosure, complaints, product appropriateness and other business areas strengthened, enforced and widely disseminated<sup>213</sup>.

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<sup>212</sup>Articles 16 and 7 respectively.

<sup>213</sup> The World Bank, Diagnostic Review of Consumer Protection and Financial Literacy, Volume I, November 2013, p.23.

12. Even if it is implicitly stated under the general law of contract in Rwanda that a principal is liable for the authorized conduct of their agents, ideally there would be an express provision in the consumer protection law to the effect that insurers are liable for their agent's conduct in relation to the insured and especially in relation to the sales and marketing process, the ongoing management of customer service, the claims or anything they say in respect of the relevant policy. This needs to be expressly stated and it requires to be clear that liability will apply in respect of anything said by an agent in relation to the insurance they are selling even if what is said has not been authorized by the insurer. This is because agents are usually paid on a commission basis and accordingly have an incentive to "up sell" the policy in question.
13. Insurers and insurance brokers should be required to publish details of their internal complaints procedures. Details about complaints procedures should be made widely available to customers and institutions would need to maintain, and provide to BNR detailed statistics about the number, type and origin of customer complaints and the time taken to respond to them. This requirement should be formalized in a law or regulation and the existing Directive be repealed. These recommendations are made against the background of the proposal that the Office of the Ombudsman take on new responsibilities to deal with complaints about financial services. It is particularly important in this context that banks have comprehensive procedures for considering complaints internally. Otherwise the Office of the Ombudsman is likely to be inundated<sup>214</sup>.
14. In case Rwanda chooses the Office of Ombudsman to handle insurance complaints, then this Office should consolidate dispute resolution for the financial sector in a well-trained, appropriately staffed and sufficiently empowered unit of the national Ombudsman. This includes making its findings binding and ensuring that BNR relinquishes these dispute resolution roles. Also, as indicated above, the Directive on Customer Service Delivery should be withdrawn and replaced. However, on my point of view, BNR, as the Regulator of insurance industry, is appropriate to deal with related consumers' issues.
15. The low income households who take out micro insurance need a specific consumer protection. In particular, regard should be given to their needs for education, the nature of risk based insurance products, and the establishment of clear rules and procedures to file claim. Insurers might also be encouraged to provide a simplified (one page and in understandable language) policy proposal in this market.

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<sup>214</sup> The World Bank, *op.cit*, p.25

16. There is an ongoing need to provide training to staff and intermediaries in the insurance industry. Such training should be extensive to build appropriate skills within the industry and, from a consumer protection perspective, should cover products (including features and suitability), the underwriting process, claims handling and assessment and training on consumer protection issues. Therefore, insurance intermediaries (brokers, agents, loss adjusters) and technical staff employed by the insurers should be required to have a professional qualification, such as the certificate of proficiency in insurance, which is available with various specializations. This should be the implementation of the FSDP II proposal for professional training of technical staff and insurance intermediaries. Education and experience requirements should apply both at the time of licensing or appointment by the insurer (in the case of agents), and there should also be ongoing educational requirements such as a minimum number of hours per year spent in updating or increasing relevant education. Given the real need to increase experience within the industry, any industry training institute should be encouraged and, if possible, assisted to meet the internationally recognized standards consistent with the proposals in FSDP II. Also, BNR staff should receive specific training to enable them to understand how the process of advice in the insurance context works and also potential consumer issues arising from the advice field<sup>215</sup>.
17. There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling.
18. There should be a legal requirement for an insurer to publish its license in all marketing materials.
19. BNR should quarterly publish, on its website, an overview of the financial strength of the insurance industry, with key information (market share in key segments, solvency margins, regulatory capital...). This should be facilitated by the disclosure by insurers of their financial and other prudential reports required by articles 25 and 26 of the Regulation n° 05/2009.
20. Given that, in some cases, personal information in relation to insurance may be obtained from a person other than the policyholder or prospective customer, consideration should be given to expanding the application of the confidentiality provisions to such third parties. In addition, it is recommended that specific data protection laws be introduced in Rwanda to ensure that personal data receives consistent and specific protection across all financial services sectors<sup>216</sup>.

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<sup>215</sup> The World Bank, Diagnostic Review of Consumer Protection and Financial Literacy, Volume II, November 2013, p.87.

<sup>216</sup> Ibid., p. 90.

After recommendations on legal framework, we provided recommendations on institutional framework.

## **II.2.2. Concerning the institutional framework**

In connection with the improvement of the institutional framework, the following should be the main recommendations:

1. The roles of BNR, Ministry of Trade, Ombudsman, and the forthcoming Competition and Consumer Protection Regulatory Body should be clarified in connection with consumer protection rule making, enforcement and dispute resolution in the financial sector. When the market has further developed, there should be a unique authority for consumer protection in all financial sectors, including insurance. The objective would be to have an authoritative financial services consumer protection regulator for all financial sectors. This would achieve consistency of interpretation, minimize the risk of gaps in regulatory coverage and avoid any real or perceived conflict of interest for the supervisor<sup>217</sup>.
2. The BNR's roles of regulation and supervision of financial consumer protection laws should be properly resourced and separated from the prudential function so as to avoid conflicts between supervising financial institutions and their customers. A practicable way to achieve this would be to have a new unit responsible for consumer protection<sup>218</sup>. Indeed, BNR should be given primary responsibility for supervision of laws and regulations applicable to consumer protection in the financial sector. This may require providing that the Competition Protection Law 2012 does not apply to insurance sector, and financial services in general thereby limiting its powers with regards to financial institutions and financial services, and clarification of the powers of the BNR. Therefore, a separate unit within BNR may be considered with primary responsibility for supervising consumer protection laws, in case BNR is mandated to protect consumer from the financial sector.
3. BNR staff should receive training on consumer protection issues to ensure supervisors are sufficiently able to carry out their duties.
4. The Office of the Ombudsman should be reviewed to ensure that the Ombudsman has appropriate powers and that the scheme is otherwise designed to meet international best standards for Financial

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<sup>217</sup> The World Bank, Diagnostic Review of Consumer Protection and Financial Literacy, Volume I, November 2013, p.13.

<sup>218</sup> The World Bank, *ibid.* p.14.

Ombudsmen schemes. In particular, it is proposed that the Ombudsman have clear and specific power (as well as the resources) to provide a dispute resolution service in relation to financial services and to make decisions which are binding on the financial institution concerned (but not on the customer), and that the new service should be designed so as to ensure that it is a clear, affordable and transparent third party dispute resolution system<sup>219</sup>.

5. Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution, but allocation of resources between prudential supervision and consumer protection should be adequate to enable the effective implementation of consumer protection rules.
6. The judicial system should enhance providing credibility to the enforcement of the rules on financial consumer protection.
7. The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.
8. Regarding transparency and disclosure of information, it is required that all fees, charges, penalties, rates and commissions required or put in place by insurance institutions be disclosed in a manner understood by the average consumer. Also, it should be required a disclosure of an effective interest rate for comparison purposes and on the basis of declining balances.
9. There is a need and urgency for putting in place RICA. Indeed, the Parliament should speed up the law establishing RICA, given that the two institutions it has to replace<sup>220</sup> — namely “National Standards Inspectorate, competition and Consumer Protection Authority (NICA)”<sup>221</sup>, and “Rwanda Food and Medicines Authority”<sup>222</sup> — have been hold up awaiting for its establishment.

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<sup>219</sup> Guidance may be obtained from the World Bank’s publication: David T., and Francis F, *Resolving disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman* (<http://www.networkfso.org/Resolving-disputes-between-consumers-and-financial-businesses-Fundamentals-for-a-financial-ombudsman-The-World-Bank-January2012.pdf>, visited on 07/01/2016) .

<sup>220</sup> Art. 20 of the draft law n° ..... of ..... establishing Rwanda Inspectorate and Competition Authority (RICA) and determining its responsibilities, organisation and functioning, in O.G n°....

<sup>221</sup> See the Law N° 61/2013 of 23/08/2013 establishing National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its mission, organization and functioning, in O.G n° 43 of 28/10/2013.

<sup>222</sup> Law n° 74/2013 of 11/09/2013 establishing Rwanda Food and Medicines Authority and determining its mission, organisation and functioning, in O.G n° 43 bis of 28/10/2013.

## GENERAL CONCLUSION AND RECOMMENDATIONS

At the end of this study related to the Assessment of Consumer Protection in Rwandan Insurance Sector, it is important mentioning that this assessment focused on the legal and regulatory framework, on one hand, and the institutional framework, on the other hand.

It has to be noted that consumer protection in the insurance industry can be defined as the totality of measures taken by the state and by private industry that contribute towards not only reducing information asymmetries between customers and insurance providers, but also eliminating potential incentive conflicts<sup>223</sup>.

Therefore, for better assessment, I first of all described the existing legal and institutional frameworks of consumer protection in insurance sector. After this important exercise, I identified the international standards or benchmarks to which the Rwandan consumer protection regime in insurance sector has to be compared and comply with. In this perspective, the Good Practices for Financial Consumer Protection set out by the World Bank have been used preferably to principles or guidelines established by the United Nations.

The reason for the above choice or preference was driven by the fact that, firstly, these Good Practices were developed by the highest international regulatory financial institutional, i.e. the World Bank, and, secondly, because this Bank used also other international benchmarks, including the aforementioned UN principles/guidelines, the principles released by the Basel Committee, IOSCO (International Organization of Securities Commissions) and IAIS (International Association of Insurance Supervisors), as well as the OECD (Organisation for Economic Co-operation and Development) recommendations for financial education and awareness on pensions, insurance, and credit products

Therefore, after identification of the benchmarks to be served in this comparison process, the assessment began by the legal aspect, followed by the assessment of the institutional framework.

About the assessment of the legal and regulatory framework, I pointed out that Rwandan legislation has strong legal provisions which protect consumers in insurance sector. In this regard, it has been mentioned the role of the law n° 52/2008 of 10/09/2008 governing the organisation of insurance

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<sup>223</sup> Pascal B., Martin E., and al, *The consumer's view of consumer protection: an empirical study of the Swiss insurance market*, Institute of Insurance Economics of St. Gallen University, Switzerland, vol.57, 2016, p.19.



business with its implementing regulations, the law n° 36/2012 of 21/09/2012 relating to competition and consumer protection, and the law n° 15/2001 of 28/01/2001 amending and complementing the law n° 35/91 of 05/8/1991 concerning the organization of internal trade.

However, in spite of the above-mentioned laws, it has been pointed out that the Rwandan insurance legal framework presents some following lacuna:

1. The law expected to establish the Rwanda Inspectorate and Competition Authority (RICA) and determining its responsibilities, organisation and functioning is not in place.
2. The Decree-Law n° 20/75 of 20/6/1975 governing insurances in general is not exhaustive, given that some areas are not covered, such as the determination of beneficiaries in death insurance.
3. Even if some provisions of the law n° 41/2001 of 19/09/2001 relating to the compensation of victims of physical accidents caused by motor vehicles, and those of its implementing presidential order n° 31/01 of 25/08/2003, protect consumers in important aspects, some other provisions are harmful to victims of accidents given that they contain serious weaknesses or loopholes. Among mentioned loopholes there are a long provided period for indemnification, and the insufficient compensation amount.

In connection with the assessment of the institutional framework, I saw the roles played by both public and private institutions.

Concerning public institutions, I at first pointed out that the forth coming Competition and Consumer Protection Regulatory Body – to be named RICA, in accordance with the existing draft law – has not yet been put in place. Furthermore, we noticed that the consumer protection roles of various public institutions involved in consumer protection, except the courts – i.e. National Bank of Rwanda, Ministry of Trade & Industry, and Office of Ombudsman – are overlapping.

However, in the framework of its missions, it has been noted that the Office of Ombudsman is more and directly involved in consumer protection process. Indeed, the number of cases handled by this Office is very significant.

For BNR and MINICOM, with some powers on consumer protection, they have essentially indirect implication in consumer protection given that they are mostly in charge of setting policies and following or supervising their enforcement.

About the involvement of courts, it has been noted their active role in consumer protection through various and important appreciable decisions, especially by fixing a guaranteed monthly minimum wage of 2,500 Frw.

Concerning the role of private institutions – composed by ASSAR, Rwanda Private Sector Federation and Consumers Associations – it has been noticed the only active implication of ASSAR, given that the consumers associations have not yet started their role of direct defence of consumers, and that Rwanda Private Sector Federation plays only indirect role of consumer protection.

Therefore, based on the all above considerations, we suggested various means to improve both the legal and institutional frameworks. In summary, these means or recommendations concern the enhancement of the existing legal and institutional frameworks, i.e. by more strengthening consumers' rights and consequently their protection.

In this regard, the Rwandan legal framework related to consumer protection has to be revisited in order to redress the identified existing gaps in various mentioned provisions, and to establish one institution that should be in charge of consumers' protection. On my sight, I would recommend that this desirable forth coming institution be either the National Bank of Rwanda, given its current role of regulator and its experience in supervising financial institutions, or a separate and autonomous body that should deal only with issues from the financial sector.

At the end of this interesting and important study, we think and hope that we have striven to achieve our objective by identifying the strength and weaknesses of the Rwandan legal and institutional frameworks, in regard with the consumer protection in insurance sector, by comparison with international standards. Even if we are conscious that we have not exhaust our expectations due to various constraints, such as time limit and knowledge in this domain, we think however that we have established an appreciable foundation from which other researchers may build on.

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