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The Management of Operational Risk Specific to Non-banking Financial Institutions in the Context of Actual Financial Crisis

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Abstract. *The current financial crisis is not a singular event in the history of crisis episodes. The essential difference between past episodes of financial turmoil and the actual crisis is the unprecedented severity, the pace of contagion and its global size. Financial markets have been seriously disturbed, threatening the robustness of financial institutions and their ability to meet current needs to properly manage the risk. One such risk is operational risk, which has become an important source of loss not only for credit institutions but, especially, for non-banking financial institutions (NFI). In this context, the main purpose of this study is to present the best techniques and methods of managing this risk, less addressed problem in the literature from our country.*

Keywords: non-banking financial institutions; financial crisis; financial lease; operational risk; corporate governance; internal audit; internal control; SOX.

JEL Codes: G01, G32.
REL Codes: 7J, 11B.

1. The financial leasing under actual crisis impact

Although not expressly included as a BASEL II requirement in the capital compliance calculation for the Non-Banking Financial Institutions, the operational risk is an important source of loss for this industry in the context of the financial crisis from Romania. The leasing market (as a majority activity of the Romanian NFIs) was shattered by over EUR 100 million in frauds during the years 2007-2009. Operational risk management inside the Romanian NFI through the adoption of a Corporate Governance that would harmonize the sometimes conflicting interests of the shareholders and managers, through the assimilation of new control and internal audit methods, may prevent situations that brought certain NFI's to the edge of bankruptcy. On the other hand, the role of the Central Bank in the risk management surveillance must increase, in full coordination with the new surveillance institutions settled on European level, for the purpose of anticipating and preventing systemic crises similar in size with the current one.

The Romanian non-banking financial institutions sector developed as a competitive alternative to the classical bank financing. The importance of the non-banking financial institutions in the Romanian financial system was on a constant upward trend. The increase by more than 10 times of the financing volume between 1998 and 2004 was correlated with the increase of the population income, as well as with the economic boost and the alignment to the European standards. In 2006 the Romanian National Bank incorporated these institutions within the financial sector which operated under its direct regulation and surveillance. Starting from this date, the Non-Banking Financial Institutions (the shadow of the banking system)[(1)] have undergone the banking registration and surveillance rigours, adopted the banking financial accounting and reporting, and adjusted their loan and operational norms according to the prudential requirements of the Central Bank. Although many NFI's are registered in the NBR Registers under the multiple loan activities category, most of them function according to the financial leasing system. A very large weight in the total activities performed by the NFI's is held by the financial leasing (78.7%), in slight decline compared to the year 2007. Following this regulation, the financing granted by the NFI's increased up to more than EUR 4 billion in 2008, the year in which the weight of the net assets of the NFI's inside the total net assets of the entire financial system reached 11.2 %.

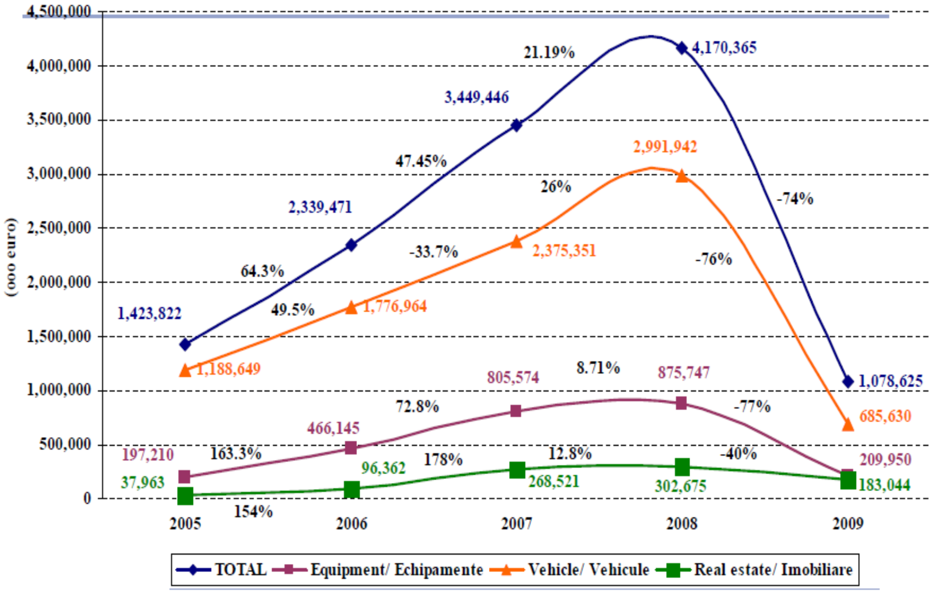
Table 1

The evolution of weight of financial sector in GDP(2)

				% in GDP	
Financial Intermediaries	2004	2005	2006	2007	2008
Credit Institutions	36.6	44.6	50.6	61	62.4
Insurances Companies *	1.9	2.2	2.5	3.0	3.0
Pension Funds	0	0	0	0	0.2
Investment Funds	0.2	0.2	0.3	0.3	0.2
Financial Investments Companies**	1.3	1.8	2.3	2.8	1.2
Non Banking Financial Institutions (NFI)	3.6	4.5	4.7	7.2	8.4
Total					
* total assets ** estimates					

The majority of the NFI's developed inside the large banking groups: BCR leasing IFN, Unicredit Leasing IFN, OTP Leasing IFN, BRD Sogelease IFN etc. At the same time, a special category was represented by the NFI's belonging to the large vehicle constructors Porsche Leasing IFN (Audi-VW-Porsche Group) or RCI Leasing IFN (Renault-Nissan-Dacia Group). Last but not least, a small category is represented by group of independent leasing companies held by the local shareholders (Ager Leasing IFN or International Leasing IFN).

In the period before the financial crisis hit the Romanian market starting with the fall of 2008, a fierce competition started between NFI's to gain "market share", which led to the creation of very risky financing products with an impact on the solidity of the loan portfolios. The financial crisis tremendously hit the NFI sector and the collapse of the leasing-type financing was catastrophic, reaching almost 74% between September 2008 and September 2009. The sales numbers for the year 2009 brought the industry on the level of the year 2004.



Source: Asociația Societăților Financiare – ALB ROMANIA.

Figure 1. *Romanian Leasing Market Evolution during 2005-2009*[(3)]

During this financial crisis the clients could not fulfil their current payments and the leasing companies accumulated stocks of tens of thousands of recovered vehicles. The decrease in car sales reduced dramatically the profits of the leasing companies in the years 2008 and 2009. This information spread it out along with news about major frauds in the leasing financing. The most illustrative example is Marfin Leasing IFN SA, where most of the EUR 50 millions losses in 2008 had been generated by fraud. The same fraud mechanism was used in other important leasing companies, yet not with the same extent. Currently 16 NFI's are undergoing insolvency procedures and 18 NFI's are cancelled from the General Registered opened by the National Bank. The only Non-banking Financial Institution with an important asset size (registered with the Special Register of the NBR) which started the insolvency procedure by January 2010 is ARAD LEASING IFN SA. From a size point of view, this company held total assets of approximately RON 93 millions in 2007 and of approximately RON 60 millions in 2008. During the working committees of ALB[(4)] the fraud mechanisms have been analysed, as well as the fact that almost all the leasing companies have been "tricked" to a certain scale by such fraudulent clients. In most of the cases, they were very much aware of the procedures, norms and internal limitations and they were usually supported from the inside of the leasing companies.

We are talking about the famous case of the construction machines (crushers, excavators, draglines) sold by a company located in Baia Mare several times to some leasing companies. 8 leasing companies have been cheated during the year 2008 by the aforesaid company by fictive sales to other companies that had agreements concluded with the machines supplier. In fact, the legal representatives of the "beneficiary" companies acted in agreement with the suppliers, the financing companies being mislead with respect to the existence of the purchased goods. The fraud level reached EUR 100 millions in 2008. Some of the most widely spread fraud methods applied to the leasing companies have been the forgery of the documentation required to obtain financing, the forgery of balance sheets and profit and loss accounts or the sale of the assets acquired in leasing.

All these frauds were possible with support from the inside of the leasing companies. The correlation of the bonuses granted to management, sales agents or other "decision makers" rather with the financing volume than with its quality created a shallow climate for their granting and favoured the use of false documents for this purpose. The operational risk is therefore crucial in the continuation of the activity of a NFI. Ignoring the importance of this risk by the management is suicidal and may lead to catastrophic consequences.

An additional risk was represented by the non-deductibility of VAT, which amplified the level of frauds by 19%, to which 16% is added for non-deductible VAT-related expenses. ANAF followed closely the issue of the leasing frauds and the fiscal laws changes rapidly in order to prevent the VAT deduction for goods that have not been in fact delivered.

The NFI bankruptcy spectre is more and more menacing and it's not entirely due to the loan risk (exponential increase of the number of bad debts), but to the operational one as well. Although the market is affected mostly by the dramatic decrease in car sales and the issues related to leasing contracts reimbursement by the clients affected by the financial crisis, the operational risk is an important element in the management of the risks undergone by the activity of a NFI.

2. Implementing the Corporate Governance in the NFIs, method for operational risk management

In this context we believe that the financial losses registered by the Romanian non-banking institutions raise with maximum urgency the issue of assimilating and implementing the principles of the Corporative Governance in their activity.

First, the NIF managers and the shareholders or other interest holders must have a common vision on the objectives and skills of the Corporative Governance. For a good Corporative Governance the management departments must direct and control the organisations in the owners' interest. They must also be liable in from of the company owners and act in accordance with their mandate. They will also be held liable in front of the company owners and they must act according to their mandate. Good Cooperative Governance means therefore more than observing codes and regulations; it implies the adoption of a wider range of rules. Recent events prove that many non-banking financial institutions lacked these good governance rules. It is high time that the management boards concentrated on implementing these rules, not only on acknowledging them. Rumours have spread about shareholders who allegedly try pursuing the former executives in court for the frauds caused to the respective NFI (see the latest management changes on the level of some large NFI's).

Secondly, the Management boards of the NFI's must set an example. They must set the correct tone and act accordingly; following with extreme care the application of some healthy ethic to the organisations' activity. We must not forget the impact that the organisations have on employees and on the society in general. There are many NFI's that lack a Business Ethics Code that mentions special limitations especially in terms of conflict of interests. The management boards must set clear objectives, responsibilities, adequate structures and committees, policies and delegated authorities. They must put at the executive managers' disposal the necessary resources in order to reach the objectives of the organization through daily monitoring of the operations and progress made in reaching them. A fundamental role of the management Boards is to direct and control. Control means monitoring. Changes, such as the "Sarbanes-Oxley Act" in the USA (refereed to in the present study) meant to guarantee the fact that the non-executive managers will create the necessary challenges and will monitor at the same time.

Thirdly, the executive managers' rewards promote performance and transparency in an organization. Rewards must be in line with the individual performance, so as to lead to the results increase and the prestige of the organization. The management boards must understand the risks faced by the organization, ensure that the risk level is acceptable and request for answers from the executive management whenever necessary. Many of the frauds committed inside the NFI's are due to the fact that performance was analysed through the "market share". There was fierce competition in creating exceedingly "competitive" financing products for the unspoken purpose of attracting as much financing as possible. As a result, financing was granted to anyone, in any amount and in any way. Ridiculous financing products such as "zero down-payment" or "ID loan" did nothing but create the illusion of some increase of diversified portfolios, which were in fact very risky and sub-guaranteed and this became obvious. The performance schemes must be based on healthy principles and be applied accordingly. The incentives and promotion packages inside the NFI's brought significant rewards, but also contributed to the creation of a short-term thinking. The lack of long-term thinking discouraged a prudent risk management and affected the other interest holders. Risk and reward management must be tightly connected with the incentive system. Profits accompanied by a high level of risk for an organisation must bring a smaller bonus than the similar profits which imply a lower risk level. Reward offering should be avoided or deferred until the profit is effectively reached (Mark, 2009).

Fourthly, organisation risk management and control are different objectives that must be treated independently from the rest of the management fields. This is not an easy task: the Management Boards and their audit committees receive a large volume of risk-related information from the internal and external auditors, the management and from other sources (Moxley, 2008). Not all of them can be found in a useful form, since managers tend to make sure that the information sent to the non-executive managers does not lead to raising too difficult questions.

Management boards do not always understand the organisation risks because the information is adjusted before reaching them. Internal auditors play a very important part here. Shareholders must play a much more important role in holding the management boards liable so as to eliminate the need for additional regulations. The risk management manner is an essential element in determining the capital value. The executive managements of the NFI's should stop humiliating themselves in order to ask for additional contributions from the shareholders in order to adjust capitals.

Many of the risk management means, such as the risk-related value, are based on the assumption that the efficient market theory is working, when in fact this doesn't always happen. The efficient market theory implies the existence of a normal evolution of a resource and does not take into account a risk evolution that might not be linear. The risk-related financial reports should draw attention on the numbers uncertainty in a more explicit way and should be relevant for a field professional. The scenario analysis may lead to highlighting some imperfections of the risk management procedures.

For Greenspan (2007, p. 252), the solution is to self-discipline the companies through appropriate corporative governance policies and internal controls; if deemed necessary, the inefficient staff may be replaced and the shareholders must exert their influence through the management board. Should management fail to coordinate their activities and catastrophic loss occur, the salvation can come, according to Greenspan, from the market, under the form of a change of control over the corporation (change of ownership) through the take-over mechanism. In this scenario, the company control is transferred to some new owners who can capitalize the company resources more efficiently. This may lead to the corporation dissolution (if its separate components are more valuable than the whole), a process that reflects the “creative destruction” brought in foreground by Joseph Alois Schumpeter[(5)], an Austrian liberal economist and Harvard professor. This “destructive creation” means that if the shareholders in their turn are not dedicated and attentive to the way their company is managed, more skilled shareholders will come up to replace them.

3. Internal control and audit consolidation – an important tool for operational risk management

The experience inside some multinational companies, especially the ones listed in the New York Stock Exchange (NYSE), represents a support to the best practices promotion with respect to internal control and audit related to the so-called SOX (the Sarbanes Oxley Act). The regulations can be used not only in the companies with mandatory SOX requirements, but may also serve as model for any company that wishes to relate to an internal control best practices framework. An important aspect is represented by the fact that a company ensuring an efficient internal control system eliminates or diminishes substantially risks such as unauthorised, inexact, incomplete accounting records or even fraud, thus increasing their market competitiveness (Mihăileanu, 2008).

As a response to the public pressures following the famous bankruptcy cases of Enron and WorldCom in the year 2002, the United States Congress took measures that would prevent the re-issuance of the corporative scandals by formulating the Sarbanes-Oxley Act whose object is the enactment of the corporative governance. The purpose of this regulation was to created high quality norms for the NYSE listed companies (both for shares and bonds). This act also applies to the foreign companies listed in this exchange and is mandatory for their management, as well as for the law, audit and accounting firms. The SOX regulation has 11 chapters treating on the institutions, rules and procedures that the companies must observe and it was deemed having a positive effect (in spite of the implementation costs) in re-establishing public trust in the capital market, consolidating the financial activity control on a corporation level and, generally speaking, consolidating the internal control and audit system inside the companies. Frauds have been and still are an expensive business. The common ground of these frauds refers to the fact that the management made wrong, illegal or immoral decisions to conceal mistakes or take personal benefit from the companies. The internal control system imposed by SOX must be audited on the one hand by the internal auditor and on the other hand it must pass the “sufficient control” test of the external auditor.

Regulations may be used not only in the companies where SOX requirements are mandatory, but may also serve as model to any company, including NFI’s, that wishes to relate to an internal control best practices framework. A significant aspect is represented by the fact that a company that ensures an efficient internal control system eliminates or diminishes substantially risks such as unauthorised, inexact, incomplete accounting records or even fraud.

In our opinion, two of the best practices procedures offered by the Sarbanes Oxley Act may be applied to the Romanian non-banking financial institutions, namely: whistle blowing and the Risk Control Matrix – RCM.

Whistle blowing

The procedure is applied mainly when the shareholders are away from the management act (multiple offices, branches, etc.). It was enacted by SOX and resides essentially in the announcement of a fraud or abuse by the employee of a company. The issue of the announcement made by an employee has first of all an ethical nature, as sometimes the legal and financial control systems implemented by the companies are not able to seize the moral impact of the decisions and behaviour that the managers/employees make/show in relation to the social-corporative responsibility. Thus, any NFI worker may report to an e-mail address provided by the Audit Committee any illegal civil and/or penal activities, deontological and/or disciplinary deviations, the violation of the labour health and safety norms, any vicious management, internal and external frauds and immoral deeds. In this way, the NFI shareholders, through the reports of the Audit Committee, can also have at their disposal other type of information, different from the one coming from the executive management, which is generally adjusted; thus, they can make much better decisions for the management structures of the business in which they invested. However, the Audit Committee must filter and investigate very carefully such information prior to submitting it to the shareholders.

Risk control matrix

Essentially, such a matrix splits the activity per processes and assigns “process owners” to each of them, who are usually the heads of departments. These processes are divided into sub-processes. For instance, in a leasing company a process can be named: contract progress, whose process owner must be the head of the operations department. A sub-process of the aforementioned is the invoicing operation of the capital and interest instalments, as well as of some other amounts according to the leasing contract, establishing the risks appeared in its progress (example: amounts are not correctly invoiced according to the leasing contract. It is a risk type defined by the internal auditor together with the process owner. The risk mitigation controls are defined as in the attached template (Table 2)

Table 2

Model for risks and controls evaluations on the operation process - fulfill the contract – sub process invoicing

O.3	Risk Grade Medium - High
LEASING SERVICES	

Invoicing

The process from issuing the invoice till the customer gets it

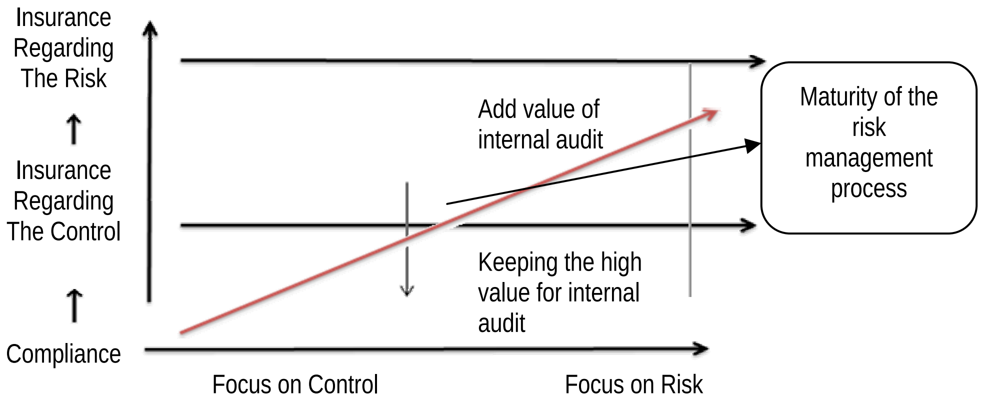
No	Risks Descriptions	Controls	Risk Grade	Note	Control Check	Level of Control	Freq.	1st Control	2nd Control	Owner
1	Not all the invoices at deadline are issued and sent to the debtor	Report for invoices that have to be released	High	To be generated from ERP a report with all due amounts that to be correlated with invoices to be released	Existence, Completeness, Presentation & Disclosure	Manual Prevent Control	periodically	Operation Officer	Operation Coordinator	Operation Coordinator

In 2007, little before the break-out and spread of the financial crisis, PricewaterhouseCoopers drew up a study concerning the design of an internal audit model, whose objectives are the identification of the main future trends of this activity.(6)

The main conclusions of this study are, in our opinion, the following:

- the internal audit departments will have to adopt an internal audit approach through a risk-centred professional reasoning if they want the internal auditors to still be key elements in the risk management and in management consultancy;

- The results of the study indicate five identifiable trends – *globalisation, risk management changes, technological progress, organisational abilities and talent, as well as the change of the internal auditor role.* All this will have a strong impact on the internal audit in the following years. It's essential to understand these trends, as well as their implications, so that the internal audit is able to provide the necessary help to the general management in the risk identification and management and in the end the internal audit function really contributes to adding extra value to the organisation;
- The results of this study also indicated the fact that the potential value of the internal audit function depends on two major factors: the nature of the internal audit primary activity and the relative maturity of the risk management processes inside the organisation. These correlations are captured in the below graph.



Source: PriceWaterhouseCoopers, 2007.

Figure 2. *The model of internal audit*

Starting from the premises of an active involvement of the internal auditor in the risk management processes inside the companies, we believe that the level of these risks should have been maintained within reasonable limits, which might be translated into the fact that the internal audit might have contributed to the early identification of the risks that subsequently generated the stream of negative phenomena starting with the summer of 2007. Thus many question marks appear: why did this not happen and what prevented it from happening? How should internal audit react in fighting the negative effects of the crisis?

Risk management is a complex process which starts with the implementation of an assigned infrastructure for this process and continues with the risk identification, analysis and evaluation, the establishment of some concrete fight and reduction measures for potential losses as a result of the occurrence of these risks (Dedu, Stanciu, 2008).

In this context, we might say that the premises for an efficient management of the potential risks that may threaten corporative life are ensured. Still, the events occurred since the summer of 2007 showed that the level of control over the key risks that are likely to become real menace was far from being kept at acceptable levels, the result of this being the stream of negative events that cascaded with much worse consequences that the different categories of specialists could have estimated.

Also, one of the causes that led to the break-out of the global financial crisis was the exaggerated level of bonuses accompanied by the assumption of some huge risks by the financial institutions. This is why the issue of incentives in the financial and banking sector became the subject of law projects in several countries (Great Britain, Sweden, France etc.) to implement both fiscal measures for the additional taxation of such bonuses or even the right of the surveillance authorities to ask the financial institutions to renegotiate the excessive salary packages and the power to set fines in case of non-observance of these requirements.

The connection between the manager's incentives and risk management is not always obvious. During the past few years the financial innovations, inappropriately regulated and monitored products, made possible the accumulation of short-term large profits at the same time with taking very high risks. There were no incentives meant to connect remuneration and prizes to the obtaining of medium and long-term profits. This encouraged the managers to take risks that either they didn't understand or they neglected in order to increase the prize-related profitability.

The remuneration and internal risk management policies may be de-correlated. The *de Larosière* report considers that the remuneration incentives must be better aligned to the shareholders interests and the long-term profitability in the organisation level. Especially the first ones must be established in a multi-annual framework and their payment must be done along the cycle. The *de Larosière* report suggests that the surveyors have the obligation to check the compliance of the remuneration policies of the financial institutions and the power to impose changes or additional capital requirements inside Basel II Pillar 2 if no corrective actions are taken. It is expected that such a measure is in line with the principle of competition and dynamism stimulation and is really welcome (Isărescu, 2009).

Conclusions

The present study brought under debate the need for the Romanian non-banking financial institutions to implement the corporative governance principles as an important risk management measure, especially related to the operational risk. Corporative governance must be assumed and promoted by the NFI management. This will create solid ethical values, as well as a process control climate through the adoption of the best internal audit and control practices. This is why we believe that part of the Sarbanes Oxley practices and procedures, as it has been mentioned, may bring superior advantages to the organisations that adopt them, thus creating a efficient management of the potential risks that may threaten the corporative life of the NFI's.

Also for the purpose of adopting such governance, a correlation between the management bonuses and the effective due profit obtaining must exist. Moreover, the performances to which these bonuses are correlated must be medium and long-term in order to prove their solidity. At the same time, the surveillance authority, namely the National Bank of Romania, may intervene and decide on the modification of some manager bonus packages that could lead to major distortions in the NFI management.

A weak corporative governance and an environment in which the internal control and audit are rather just needs imposed by the NBR requirements, where the companies' fundamental objectives are the ones for which management bonuses are paid, exposed the Romanian NFI's to operational risks with hardly quantifiable consequences.

We will not be very surprised if important names on the leasing market go bankrupt or, more elegantly, are sold as pieces of the portfolio or even as the NFI itself in a desperate attempt to limit the shareholders' losses, especially those of the large banking players on the Romanian market. The year 2010 appears to be even more difficult …

Notes

(1) "The shadow banking system" is the expression used by Roubini, Nouriel in "The Shadow Banking System is Unraveling", Financial Times, 21 September 2008 to define financial non banking sector in United States.

(2) See Financial Stability Report for 2008 p. 15, National Bank of Romania.

(3) See National Conference of ALB, November 2009.

(4) ALB – Asociatia Societatilor Financiare din Romania - Financial Companies Association in Romania is the largest professional association of non banking financial institutions in Romania grouping the major leasing belonging to banking groups present on the Romanian market as such: UniCredit Leasing, BCR Leasing, BRD Sogelease or Alpha

Leasing, large captive firms worldwide automobile manufacturers Porsche Leasing, RCI Leasing or independent NFI's – such as Ager Leasing or International Leasing.

(5) Joseph Alois Schumpeter (1883-1950) was an Austrian economist. In the neoclassical period, he popularized the term "creative destruction through competition". Schumpeter had an important contribution to the world economy as a pioneer of the theory of economic development (1912). Between 1919 and 1920 was the Austrian Minister of Finance, between 1925 and 1932 received a chair at the University of Bonn, Germany Central Europe Because of the Nazis, he moved to Harvard in the United States, where he taught between 1932 and 1950.

(6) Pricewaterhouse Coopers, "Internal Audit 2012- A study examining the future of internal auditing and the potential decline of controls centric approach" 2007.

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