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DYSFUNCTIONAL NIGERIAN INSURANCE INDUSTRY: FAILURE OF LAW OR REGULATION?

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Abstract

This work interrogates the reason for the poor performance of the Nigerian insurance industry. The reason for doing this is that there is a strong correlation between insurance and development. The illiterate villager in the remotest part of Nigeria understands the advantages of "pooling" in risk mitigation. A system of coming together to contribute resources into a pool in order to take a small percentage of same to compensate the few members of the group who suffer risks is very much part of the everyday life of the traditional Nigerian society. This is what insurance is all about. Insurance, as we see it today, developed from this rudimentary aspect to the sophisticated business which it has become today. Being that our people are familiar with the tenets of insurance what then is the problem of Nigeria's modern insurance industry that makes it remain at the lowest ebb in terms of performance in the financial services industry? Is the problem that of inadequacy in our law or ineffective regulation? Using the doctrinal method, the study examines both the legal and the institutional framework for insurance business to ascertain what the problem is. Our finding is that notwithstanding some grey areas in the Insurance Act, 2003, the major problem of the industry is failure of regulation. We recommend that the regulator, the National Insurance Commission (NAICOM) be more proactive to enable the industry take its pride of place in Nigeria as is the case all over the developed world.

Keywords: Insurance law, insurance industry, insurance regulation, National Insurance Commission, Nigeria

1. Introduction

Studies have established that there is a direct correlation between insurance and economic growth and development.¹ This is because

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insurance is one of the key players in financial services sector. It stands out as first among equals in this area because of the edge it has over and above other members of the class. Like banking and credit financing service, insurance provides means for investments and financing of projects, but unlike them, insurance is the only means of risk spreading and compensation financing. Insurance is meant not only to cushion the citizens from the effect of the harsh realities of life, but also to enhance the quality of their lives. One thing, which is very certain, is that calamities such as deaths, fire outbreaks, burglaries, accidents, sickness, *etc* must occur but the only uncertainty is when.² Thus, as a risk transfer mechanism, insurance not only affords investors the peace of mind needed to invest but also provides the long term funds to do so. For individuals and families, it acts as a buffer when calamities occur. Hence the loss of the bread winner in a family need not signal the end of the children's education or that the family would from then live in penury.³

From time immemorial till date some form of rudimentary insurance exists in many Nigerian societies.⁴ Under this scheme, tribal associations such as women group, age grades, and social clubs and so on contribute into a pool through dues, levies and donations paid by their members from which a sum of money is presented to any member or his next of kin in the event of a disaster in accordance with the guideline of the association. In the event of death such payments depending on the financial strength of the association, could cover funeral expenses and the immediate financial needs of the deceased family just like a life insurance policy does⁵. Some associations have even been known to give scholarships to children of their deceased members same way children education under insurance policy could ensure that children do not drop out of school in the event of the death of parents. In addition to above some of these associations also assist their member by lending money them to grow their businesses and finance such projects as marriages, buildings, school fees among others. All these go to show that the idea of

¹ BY Iyodo and others 'Effect of Insurance Industry Performance on Economic Growth in Nigeria' in *International Journal of Business and Financial Research* a <www.bluepenjournals.org/ijbfmr> accessed 23 March 2021.

² EL Okiche, 'Consumer Protection and Claims Settlement in Insurance Contracts in Nigeria' i [2010-2011] (6) *Consumer Journal*

³ Ibid.

⁴ MC Okany, *Nigerian Commercial Law* (Onitsha: Africana-Fep Publishers Ltd, 2001) p.662.

⁵ Ibid.

insurance is not alien to the average Nigerian. However, the Nigerian economy has grown so sophisticated that this form of quasi-insurance is no longer able to cope and generally unpopular, hence the need for insurance in its modern form. Having regard to all these benefits of insurance what then is the reason for the dismal performance of the industry in Nigeria? Our research answers this question. The paper is divided into eight parts. Part one introduces the work; Part two clarifies some concepts used while part three gives a historical background of insurance. Legal and Institutional framework are discussed in part four. Part five is an overview of the Nigerian insurance industry; part six compares the situation in Nigeria with three select jurisdictions. Part seven concludes the work while part eight makes recommendations for improvement.

2. Conceptual Clarifications

It is important to explain the sense in which some concepts are used in this work for proper understanding.

2.1 Insurance

There is no universally accepted definition of insurance.⁶ However, we adopt with approval the definition given by Channel J, many decades ago. For him insurance is:

a contract for the payment of a sum of money, or for some corresponding benefits such as the rebuilding of a house or the repairing of a ship, to become due on the happening of an event which event must have some amount of uncertainty about it and must be of a character more or less adverse to the interest of the person effecting the insurance.⁷

Thus, insurance contract is an agreement to pay a sum of money to the insured party or to provide him with some corresponding benefits at the happening of the insured peril.

⁶The situation is compounded by the fact that the major statute, The Insurance Act, 2003, Cap I17, Laws of the Federation of Nigeria (LFN) 2004 (hereinafter referred to as The Insurance Act) which regulates insurance business in Nigeria, does not define the concept.

⁷*Prudential Insurance Co v Inland Revenue Commissioners* (1904) 2 KB 658 at 664, see also *Lucana v Crawford* (1808) 127 ER855, *Charles Chime v United Nigeria Insurance Co Ltd* (1972) 2 ECSR 808 at 811.

2.2 Regulation

It is the practice that in enacting sector specific laws the legislature always provides for the institution, ie the regulatory body responsible for implementing and enforcing the provisions of such laws.⁸ For insurance, the regulatory authority is the National Insurance Commission (NAICOM). It has the responsibility of making sure that the provisions of the law regarding insurance are implemented to the later. So a breached, non-implementation or non-enforcement of the law is simply a failure of regulation. This is the sense in which the word 'regulation' is use throughout this work.

3. Historical Background of Insurance in Nigeria

Modern insurance business as we know it today started in Nigeria with the advent of the British This was done by the British companies appointing agents whom they gave powers of attorney to canvass for insurance businesses, issue cover notes and service claims on their behalf.⁹ With time these agencies transform to branch offices of the parent companies in London. The Royal Exchange Assurance was the first British insurer to open a branch office in Nigeria in 1921. After 28 years, three other insurers, Norwich Union Fire Insurance Co Ltd, the Tobacco Insurance Co Ltd and Legal and General Assurance Society Ltd came on board. By the time Nigeria had her independence in 1960, there were 25 insurance companies in the country with three of them, the Great Nigeria Insurance Co Ltd, the Nigerian General Insurance Co Ltd and the Universal Insurance Co Ltd, being wholly indigenous.¹⁰ Thereafter, the number of insurance companies in Nigeria continued to grow exponentially to the extent that as at December 2005, there were 107 insurance companies in Nigeria.¹¹ However, following the recapitalisation exercise that took place in the insurance industry between

⁸ For examples, National Agency for Food and Drug Administration and Control (NAFDAC) Cap N1 LFN 2004, ss 1 and 2 establishes the Agency and its functions; Nigerian Communications Act, 2003, ss 3 and 4 establishes the Nigerian Communications Commission and charges with the functions of implementing and enforcing the provisions of the Act; Standards Organisation of Nigeria (SON) Act 2015, ss 3 and 4 establishes the standards Council of Nigeria responsible also for implementing and enforcing the law.

⁹ Irukwa (n 6).

¹⁰ Yinka Lijadu, *The Federal Might; A Publication of NICON* (Vol 2 No 3) 3.

¹¹ Tony Iji and others, Special Report on Insurance Leaders in Nigeria' *Financial Standard* (Monday, 30 July 2007) 28.

2005 and 2007 which saw a lot of insurance companies go under, the number reduced to 51, made up of 49 Underwriters and 2 Reinsurers.¹² As at 31 December, 2020, Nigeria has 13 composite insurance companies, 28 that transact general business, 14 life companies and two reinsurers in Nigeria. Other players in the industry include 457 insurance brokers, 34 loss adjusters and many insurance agents.¹³ In addition, there are two Takaful-Insurance¹⁴ companies in Nigeria. Also in 2018 NAICOM licensed GOXI Micro-insurance Company Limited as the first micro-insurance company in Nigeria.¹⁵

However, it was only in 1961 that government came in to regulate insurance business for the first time. Since then, the government has been known to use both legislative¹⁶ and judicial¹⁷ instruments to ensure good insurance practice. Currently the two major statutes that regulate core insurance business in Nigeria are the Insurance Act¹⁸ and the National Insurance Commission Act.¹⁹ Two other statutes on insurance which are sector specific are the Pension Reform Act²⁰ and the National Health Insurance (NHIS) Act.²¹ Being special types of insurance, the law removed them from the purview of Insurance Act and as such they are

¹²EL Okiche 'The Impact of Recapitalization Law on Nigerian Insurance Industry' (2012)1 *Journal of Contemporary Law* 218.

¹³ NAICOM, <<http://www.naicom.gov.ng>>, visited 23/6/2021.

¹⁴ Ibid, This is a form of insurance that is compatible with the principle of the *Shari'ah*.

¹⁵ Ibid, micro-insurance is defined as 'insurance developed for low income populations, low valued policies, micro and small scale enterprises provided by licensed institutions, run in accordance with generally accepted insurance principles, and funded by premiums.'

¹⁶ These are Insurance Company Act No 53 of 1961, Insurance (Miscellaneous) Provision of 1964 , Insurance Company Regulation 1968, Insurance Decree No 59 of 1976, Insurance Decree No 40 of 1988, Insurance Decree No 62 of 1992, and Insurance Decree Nos.1&2 of 1997.

¹⁷ Some of the cases are *Leadway Assurance Co Ltd v Zeco Nig Ltd* (2004) 22 WRW 1 SC on the meaning of claim , *WIC Ltd v Owolabi* , [2002] 499 WRN 102 C A on terms of insurance policy, *Niger Insurance Ltd v AP Ltd* (2005) 17 WRN 105 CA on subrogation rights, *Ajaokuta Steel v Corporate Insurers Ltd* [2004] 41 WRN on the interpretation of s. 50 (1) Insurance Act 1997, *MSC Ltd. v Unipolars* (2001) 43 WRN 153 on utmost good faith.

¹⁸ Note 6 above

¹⁹ The National Insurance Commission Act, Cap.N53, LFN 2010 hereinafter called the NAICOM Act.

²⁰ Cap. P4 LFN, 2010.

²¹ National Health Insurance Scheme Act, Cap 42, Laws of the Federation of Nigeria (LFN) 2004.

outside the scope of this work. Prior to the enactment of the current Insurance Act in 2003, the argument within the insurance industry was that the problem of insurance was lacked of relevant legislation to drive the industry. This is the reason the Act was lauded as a “beautiful piece” of legislation at its promulgation.²² The question is “why has the industry not been able to perform optimally by contributing substantially to the nation’s Gross Domestic Product (GDP)? This paper seeks to answer the poser by raising two questions:

- i. Why has insurance failed in Nigeria?
- ii. What is the way forward in making sure that insurance takes its pride of place in Nigeria in comparison with what obtains in advanced nations?

These questions are answered by examining both the legal and the institutional framework for insurance business to see whether the problem is that of inadequacy in law or non-implementation of the law by the regulatory authority.

There is a dearth of academic literature on insurance failure in Nigeria but some stakeholders in the industry had from time to time proffered some reasons mainly in the pages of newspapers. Most of them finger negative attitude of Nigerians towards insurance as a result of lack of trust in the industry, lack of skilled personnel, presence of touts, ignorance and poor knowledge of insurance services by the populace, lack of innovative products, inadequate deployment of technology in the industry and lack of synergy among players in the industry resulting in such things as rate cutting and high cost of acquiring businesses.²³ For us all these are merely symptoms of the illness of the industry and not the ailment proper. Our study goes to the root of matter by looking at laws regulating insurance practice in Nigeria for a proper diagnosis to be

²² Sola Alabadan, ‘Need to Examine Grey Areas in Insurance Act,’ Daily Independent Newspaper Wednesday, July 23, 2008, C9.

²³ See generally Mohammed Kari, Increasing Insurance Penetration through Value Creation, paper presented at a seminar organised by the Chartered Insurance Institute of Nigeria (CIIN) in Ibadan, Oyo state. <<https://allafrica.com/stories/201811190069.html>,> Nike Popoola, ‘Failed Policies, Declining Confidence Slow Insurance Industry’s Growth’ <<https://punchng.com/failed-policies-declining-confidence-slow-insurance-industrys-growth>,> K. Abd-Khalio, ‘Enforcing Compulsory Insurances’ <<https://leadership.ng/2019/02/24/enforcing-compulsory-insurance>> all visited 29 March 2021.

made. Thus our work does not only fill a knowledge gap but also seeks to chart a new course for the industry.

4. Legal and Institutional Framework for Insurance Business in Nigeria

This segment of the work examines the two major²⁴ statutes on insurance business in Nigeria; the Insurance Act²⁵ and the National Insurance Commission Act.²⁶

4.1 Legal Framework

Insurance was regulated for the first time in Nigeria in 1961 by the Insurance Company Act 1961. For the first time, there were requirements for registration with the Registrar of Insurance. The applicant was to supply the classes of insurance to be transacted, margin of solvency and paid up capital.²⁷ The Act was ineffective and frequent breaches occurred.²⁸ Three years later, it was amended by Insurance (miscellaneous provision) Act 1964 which made provision for the investment of insurance funds²⁹. In 1976, both Acts were repealed by what was considered a revolutionary legislation, the Insurance Decree (now Act) 1976 which introduced for the first, the requirement of registration under the Companies Act 1968³⁰ in addition to the registration with the Registrar of Insurance.³¹ It not only raised the minimum paid up capital from N500,000 and N100,000 to N500,000 & N800,000 for life and general business of insurance respectively,³² but for the first time provided for the concept of statutory deposit with the Central Bank as additional security.³³

In 1991, the Insurance Decree (now Act) 1991 came to repeal the 1976 Act. The major innovation of the Act was the provision that

²⁴Other Acts that regulate Insurance are the Motor Vehicle (Third party) Act, 1950, and the Marine Insurance Act, 1961.

The National Insurance Corporation Act, 1969, The Nigerian Reinsurance Corporation Act, 1999 and The Nigerian Council of Registered Insurance Brokers Act, 2003.

²⁵ Note 6 above.

²⁶ Note 19 above.

²⁷ Insurance Companies Act 1967, s 7.

²⁸ *State v Daboh* CCHCJ/11/75 at 1739.

²⁹ Insurance (Miscellaneous Provision) Act 1964, s 9(4).

³⁰ Insurance Act, 1976, 3(1) (9).

³¹ *Ibid.* s 3 (3).

³² *Ibid.* s 8(1).

³³ *Ibid.* s 9.

payment of premium is a precondition for insurance cover,³⁴ the popular “no premium, no cover” slogan. In 1997 two Decrees, Insurance Decrees numbers 1 and 2 were enacted and the 1991 Act repealed. For the first time insurance regulation and supervision were placed on a body corporate with perpetual succession.³⁵ The 1997 Insurance Act re-enacted all the provisions by the earlier Acts in addition to making detailed provisions for the regulation of insurance intermediaries and loss adjusters.

Six years after this, the current Act, Insurance Act 2003, came to replace the 1997 Act. The new Act consolidated all the gains made by all the previous law by not only re-enacting all the provisions necessary for sound insurance practice but in addition, improved on them. It made detailed provisions on classification of insurance business,³⁶ registration of insurance companies,³⁷ share capital,³⁸ modes of operation of insurers,³⁹ including even the modalities of the hiring and firing of Chief Executive Officer of insurance companies.⁴⁰ Most importantly, the Act reiterated the importance of the classes of insurance that it made compulsory⁴¹ and the common law position regarding settlement of claims which it statutorily enhanced to remove the hardship insureds used to face.⁴² The Act also gives NAICOM power to implement the provisions of the Act.⁴³ Stakeholders in the insurance industry who before the enactment of the Act argued that “the industry lacked relevant legislation to make it contribute meaningfully to the nation’s economy” lauded the Act.⁴⁴

However, some grey areas have been noted in the law. For instance, there has been a lot of discontentment over the issue of depositing part of the paid up share capital with the Central Bank of

³⁴ *Ibid*, s 37.

³⁵ The National Insurance Commission (NAICOM).

³⁶ The Insurance Act, 2003, s 2.

³⁷ *Ibid*, ss 3 – 8.

³⁸ *Ibid*, ss 9 – 10.

³⁹ *Ibid*, ss 11 – 29.

⁴⁰ *Ibid*, s 13.

⁴¹ *Ibid*, ss 64, 65 and 68.

⁴² Note 2 above.

⁴³ The Insurance Act, 2003, s 86.

⁴⁴ Note 22 above.

Nigeria which Bank is mandated to pay an uncomplimentary interest rate. The law is that:

- (1) An insurer intending to commence insurance business in Nigeria after the commencement of this Act shall deposit the equivalent of 50 per cent of the paid-up share capital referred to in section 9 of this Act (in this Act referred to as the 'Statutory Deposit') with the Central Bank which pays interest at 5%.
- (2) Upon registration as an insurer, 80 per cent of the statutory deposit shall be returned with interest not later than 60 days after registration.
- (3) In the case of existing companies an equivalent of 10 per centum of the minimum paid-up share capital stipulated in section 9 shall be deposited with the Central Bank.
- (4) Any statutory deposit made under subsection (1) of this section shall attract interest at the minimum lending rate by the Central Bank on every 1st of January of each year.⁴⁵

The question is, why pay interest at minimum lending rate instead of competitive rate? This has been a source of resentment to stakeholders.

Again the Act makes copious provisions 'no premium, no cover',⁴⁶ on premium paid to insurers directly or indirectly through brokers but curiously did not say anything on premium paid to the agent. The presumption is that once premium is paid by the insured to the broker, the insurer is deemed to have received it.⁴⁷ Is it the same with premium paid to the agent? Given the agency relationship in common law and in the absence of a statutory clarification, does the agent operate for the insured or the insurer?⁴⁸ In view of this defect, it is argued that the section should be reviewed by the appropriate authority.

Another area is the issue of code of conduct. The Act provides that 'every registered insurer, reinsurer, insurance agent, insurance broker or loss adjuster shall subscribe to and conform to the Code of Conduct of the insurance profession.'⁴⁹ Is Code legally enforceable? In other words, what is the legal status of Code? Does the insured have any remedies if

⁴⁵ The Insurance Act, 2003, s 10 (1) (2) (3) and (4).

⁴⁶ Ibid, s 50(1).

⁴⁷ Ibid, s 50(2).

⁴⁸ Compare s 54 (2) and (3).

⁴⁹ Ibid, s 79.

he is injured by the breach? Finally, who has the locus to challenge the breach? These questions need answers.

All in all, the Act has been hailed as being insurance -friendly both to the insurer and the insured.⁵⁰ Moreover, the unclear areas do not hinder core insurance business. Be that as it may, it is pertinent to note that two bills (2008 and 2018) in respect of the amendment of the Act have been stuck in the National Assembly.⁵¹

4.2 Institutional Framework for Insurance Regulation

The main institution set up by law to regulate insurance business in Nigeria is the National Insurance Commission (NAICOM).⁵² The Commission is “a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.”⁵³ Its principal object is to ensure the effective administration, supervision, regulation and control of insurance business in Nigeria.⁵⁴ To this end, the Commission shall -

- (a) establish standards for the conduct of insurance business in Nigeria;
- (b) approve rates of insurance premiums to be paid in respect of all classes of insurance business;
- (c) approve rates of commissions to be paid in respect of all classes of insurance business;
- (d) ensure adequate protection of strategic Government assets and other properties;
- (e) regulate transactions between insurers and reinsurers in Nigeria and those outside Nigeria;
- (f) act as adviser to the Federal Government on all insurance related matters;
- (g) approve standards, conditions and warranties applicable to all classes of insurance business;

⁵⁰ Note 33 above.

⁵¹ EO Gam-Ikon, ‘Where is The Insurance Amendment Bills of 2008 and 2018?’ <<https://www.proshareng.com/news/Insurance/Where-Are-The-Insurance-Amendment-Bills-Of-2008-And-2018-/46749>> accessed

⁵² National Insurance Commission (NAICOM) Act, Cap.N53, Laws of the Federation of Nigeria (LFN.) 2010

⁵³ Ibid, s.1 (1) & (2).

⁵⁴ Ibid, s.6.

- (h) protect insurance policy- holders and beneficiaries and third parties to insurance contracts;
- (i) publish, for sale and distribution to the public, annual reports and statistics on the insurance industry;
- (j) liaise with and advise Federal Ministries, Extra Ministerial Departments, statutory bodies and other Government agencies on all matters relating to insurance contained in any technical agreements to which Nigeria is a signatory;
- (k) contribute to the educational programmes of the Chartered Insurance Institute of Nigeria and the West African Insurance Institute; and
- (l) carry out such other activities connected or incidental to its other functions under this Decree.⁵⁵

In addition to the above, the Insurance Act says “Subject to the provisions of this Act, the National Insurance Commission (in this Act referred to as "the Commission") shall be responsible for administration and enforcement of this Act and is hereby authorised to carry out the provisions of this Act.”⁵⁶ From the foregoing we can see that both supervisory and regulatory powers are given to NAICOM. There is a difference between the two even though the both terms are most often used interchangeably. Each of them refers to different levels of intervention. Supervision generally relates to higher level activities such as authorising firms to operate in the market and collecting and analysing statistical returns, while regulation relates to the setting of and enforcing of standard and rules by which firms operate.⁵⁷

Thus, NAICOM has the power to register and grant licences to all operators in the industry which include insurance brokers, insurance agents, loss adjusters, reinsurance and insurance companies.⁵⁸ It not only prescribes the minimum capital requirement for industry but also has an unfettered power to increase it whenever and to whatever amount it deems fit.⁵⁹ Appointment of Chief Executive Officers⁶⁰ of insurance

⁵⁵ s7 (a)-(l).

⁵⁶ The Insurance Act, s.86.

⁵⁷ D. Atkins and I Bates, *Risk, Regulation and Capital Adequacy* (London: The Chartered Insurance Institute, 2007).

⁵⁸ The Insurance Act, ss.3-8, 34-49.

⁵⁹ *Ibid*, s 9.

⁶⁰ *Ibid*, s 13.

companies and even any changes⁶¹ thereof are subject to the approval of the Commission. NAICOM is empowered, through its inspectorate department, to undertake routine and special investigations of operators to ensure that they operate according to the provisions of Insurance Act, the relevant Regulations and Policy Guidelines made pursuant to the Act.⁶² Companies can neither advertise,⁶³ nor innovate and introduce new products without recourse to NAICOM.⁶⁴ Where there are cases of breaches of the provisions of the insurance law and insolvency, the Commission is empowered to suspend an operator from carrying on business, withdraw its licence, take over its management, or even liquidate the company.⁶⁵ All these underscore how wide, unfettered and extensive the oversight functions available to the regulator are. In fact, the powers and authority available to the Commission have been described as ‘stifling,’⁶⁶ yet it had failed to use such wide powers to effectively police the industry.

5. An Overview of the Nigerian Insurance Industry

As at 31 December 2019, Nigeria has 13 composite insurance companies, 28 that transact general business, 14 life companies and two reinsurers. Other players in the industry include 457 insurance brokers, 34 loss adjusters and many insurance agents.⁶⁷ In addition, there are two Takaful-Insurance⁶⁸ companies in Nigeria. Also NAICOM has in 2018, licensed GOXI Micro-insurance Company Limited as the first micro-insurance company in Nigeria.⁶⁹ Regarding operating capital, the Nigerian insurance industry has the highest in Africa. The minimum capital base currently in operation in the industry for the different classes of insurance are 2 billion naira for a company that transacts life business, 3 billion naira for general insurance, 5 billion naira for a composite company and 10 billion for reinsurance company. The industry

⁶¹ Ibid, s 4.

⁶² Ibid, 101

⁶³ Ibid, s 74

⁶⁴ Ibid, s 16

⁶⁵ Ibid, ss 32-33.

⁶⁶ Note 2 above

⁶⁷ NAICOM, <<http://www.naicom.gov.ng>> visited 23 March, 2021.

⁶⁸ Ibid, This is a form of insurance that is compatible with the principle of the *Shari'ah*.

⁶⁹ Ibid, micro-insurance is defined as ‘insurance developed for low income populations, low valued policies, micro and small scale enterprises provided by licensed institutions, run in accordance with generally accepted insurance principles, and funded by premiums.’

contributes less than 1% to the nation's GDP as shown in Table 1 below:⁷⁰

Table 1: Contribution of the Insurance Industry to Nigeria's GDP

YEAR	TOTAL GDP (₦'BILLIONS)	INSURANCE SECTOR GDP (₦'BILLIONS)	INSURANCE CONTRIBUTION TO TOTAL GDP (%)
2014	67,152.79	258.89	0.3855%
2015	69,023.93	272.07	0.3942%
2016	67,931.24	278.76	0.4104%
2017*	68,490.98	270.68	0.3952%
2018*	69,810.02	287.24	0.4115%

*Provisional figures

This dismal performance of the industry has been a source of worry and embarrassment to well-meaning Nigerians and the nation at large. According to the erstwhile Minister of Finance, 'only three million out of 180 million Nigerians possessed insurance policies to protect themselves from uncertainties.'⁷¹ This simply means that about 99% of Nigerians are not insured. Given that traditionally Nigerians are familiar with risk management albeit in a rudimentary form what could be the problem? This becomes even more worrisome when compared to the insurance industries of other African countries, which despite operating with much lower capital bases contribute substantially to their nations' GDP.⁷² Table 2 below depicts the contributions of the insurance industry to the national GDP in selected African countries:

⁷⁰ From Nigeria Bureau of Statistics, <<https://www.nigerianstat.gov.ng>> visited 29 March 2021

⁷¹ K Adeosun, 'Only Three Million Nigerian Have Insurance Policies' <<https://punchng.com/only-three-million-nigerians-have-insurance-policies-adeosun/Punch>> visited 23 March, 2021.

⁷²EY African Insurance Intelligent Centre <<https://www.ey.com/za/en/newsroom/news-releases/news->> visited 23 March, 2021.

Table 2: Contribution of the Insurance Industry to the National GDP in Selected African Countries

Country	South Africa	Malawi	Tanzania	Kenya	Ghana	Nigeria
Total Life Premium in US\$	39,975,000	24,000,000	36,000,000	644,000	199,000	544,000
Non-Life premium	8,666,000	57,000	213,000	819,000	184,000	1,003,000
Insurance Penetration ⁷³	13.9%	1.9%	0.5%	2.4%	1.0%	0.3%
Capital Base in dollars	Risk based 1,200,000 (insurance companies) 1,500,000 R/ins	Life-12,200 Gen. 81,000 R/ins 162,000	463,000 for all companies	No explicit requirement for insurance groups.	3.3 million	12,800,000 19,100,000 68,000,000
Population in millions	54	16.7	4.7	44.9	26.8	177.50

A look at this can show that the South African insurance industry, which despite operating with a much lower capital base contributes substantially to that nation's GDP and has an insurance penetration rate of 13.9% compared to that of Nigeria which is 0.3%.

A very recent report, the 4th Africa Insurance Barometer, a research commissioned by the African Insurance Organisation (AIO) on African insurance industry, launched at its 46th Conference & General Assembly held in June 2019 in Johannesburg, South Africa is even more instructive. The report shows that in spite of the fact that African countries were able to grow premium from \$59.4 billion in 2016 to \$67.7 billion in 2017, it was only the Nigerian market that recorded a negative growth. Total real premium growth was positive in Egypt (9.8 per cent),

⁷³ Insurance penetration refers to the ratio between the values of premiums written in a particular year in a particular country's to the GDP.

Namibia (7.8 per cent) and Morocco (3.0 per cent), stagnant in South Africa (0.1 per cent) and negative in Nigeria (-10.5 per cent).⁷⁴

A look at insurance data from jurisdictions outside Africa will help buttress our point on failure of the Nigerian insurance industry.

(a) The United Kingdom

The UK insurance industry is the largest in Europe and the fourth largest in the world.⁷⁵ In 2017, it contributed £29.1 Billion to the UK economy and it paid the highest in tax to the UK government more than any other sector.⁷⁶ In addition, as of 2016, there were 113,600 direct jobs created by the UK insurance industry.⁷⁷ According to the OECD, in 2018, the insurance penetration of the UK (which is the ratio of total insurance premiums compared to domestic product) stood at 13.1 per cent.⁷⁸

(b) The United States of America

According to the OECD, the insurance penetration of the United States stands at 11.3 per cent.⁷⁹ The US has the biggest insurance market in the world and in 2018; the insurance industry contributed \$564.5 Billion Dollars to the US economy, a total of 2.8percent GDP contribution.⁸⁰ According to the US Insurance Information Institute, the insurance industry created 2.7 million jobs in 2018.⁸¹

(c) India

⁷⁴ The 4th Africa Insurance Barometer, at <https://pulse.schanz-alms.com/africa-insurance-barometer/2019.html>, visited 29/3/2020.

⁷⁵ Association of British Insurers, UK Insurance and Long Term Savings Key Facts (December 2019) https://www.abi.org.uk/globalassets/files/publications/public/key-facts/key_facts_2019_spread.pdf accessed 29 March 2020.

⁷⁶ Ibid see also Statistics Research Department, 'Insurance Industry in the United Kingdom-Statistics and Facts' <https://www.statista.com/topics/4511/insurance-industry-uk/> accessed 29 March 2020.

⁷⁷ Ibid.

⁷⁸ OECD, 'OCED Stats' <https://stats.oecd.org/Index.aspx?QueryId=25444> accessed 29 March 2019.

⁷⁹ Ibid.

⁸⁰ US Insurance Information Institute, 'Insurance Industry at a Glance' <<https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/introduction/insurance-industry-at-a-glance>> accessed 23 March, 2021.

⁸¹ Ibid.

Even though insurance penetration in India is low and stands at about only 3.69 in 2019⁸² it cannot be compared to Nigeria's situation. However, the insurance industry is still one of the biggest in the world and it is expected to grow to up to \$220 billion by 2020.⁸³ In 2019, the total life and non-life premium paid out stood at over \$18 billion dollars.⁸⁴

6. Lessons from Other Jurisdictions

Having come this far, we can now address the question of what the problem of the Nigerian insurance industry is. We would look at South Africa to find out what it is doing right that we are getting wrong to enable us reposition our nation's insurance industry. The reason for choosing South Africa is not far-fetched. First, its insurance market is by far the most developed in Africa and one of the most developed in the world.⁸⁵ In 2016, its insurance penetration which is the highest in Africa stood impressively at 13.9 per cent;⁸⁶ some studies put it even higher at 16.99 per cent.⁸⁷ According to Price Waters Coopers, in the same 2016, the South African industry was the 19th most advanced in the world and accounted for 0.89% (\$42 Billion) of the total world markets.⁸⁸ In comparative terms, Nigeria in 2016 was ranked 71 in the world and had a penetration rate of a mere 0.30%.

The current law in South Africa is the Insurance Act, 2017⁸⁹ which took effect in July 2018.⁹⁰ Before the commencement of the Act,

⁸²India Brand Equity Foundation 'Indian Insurance Industry Overview and Market Development Analysis' <<https://www.ibef.org/industry/insurance-sector-india.aspx>> 29 March 2020.

⁸³Ibid see also Ashwin Manikandan, 'Insurance Sector in Need of Positive enablers, say Industry Leaders' *Economic Times of India*, (16 December 2019) <<https://economictimes.indiatimes.com/industry/banking/finance/insure/insurance-sector-in-need-of-positive-enablers-say-industry-leaders/articleshow/72764825.cms?from=mdr>> last visited 2 April, 2021.

⁸⁴Ibid.

⁸⁵Ibid 13.

⁸⁶OECD, 'OCED Stats'< <https://stats.oecd.org/Index.aspx?QueryId=25444>> accessed 29 March 2021.

⁸⁷ PWC, Ready and Willing, the African Insurance Industry Poised for Growth' <<https://www.pwc.co.za/en/assets/pdf/south-african-insurance-2018.pdf>> accessed 23 March, 2021.

⁸⁸Ibid.

⁸⁹ Gazette copy at <www.gpw.online.co.za> accessed 29 March, 2021.

the Long-Term Insurance Act (LTIA) 1998 and the Short-Term Insurance Act (STIA), 1998 were in operation. The 2017 Act has now replaced and combined many parts of both Acts.⁹¹ Both the old laws and the new law, which is merely a consolidated legal framework for insurance, are basically same with the Nigeria Insurance Act. The major difference between the Nigeria and the South African insurance industries is the regulation of the industries. This is the conclusion of PWC which says that “Compared to the rest of Africa, the South African insurance market is highly competitive and more mature, with diversified multi-channel distribution models, helped by strong institutions and a sound regulatory environment.”⁹² Under the old dispensation, Financial Services Board (FSB) regulated the whole insurance industry. There is need to note that it was under the old regime of regulation, akin to our own regulation that the phenomenal growth of the South African market happened.

With effect from 1 April 2018 following the enactment of the Financial Sector Regulation (FSR) Act, there is now “a sophisticated system of financial sector regulation known as ‘Twin Peak’ system.”⁹³ The Act establishes two regulatory agencies to oversee insurance and other financial services which are. The Prudential Authority (PA) responsible for regulating banks, insurers, cooperative financial institutions, financial conglomerates and certain market infrastructures⁹⁴ and the Financial Sector Conduct Authority (FSCA) responsible for market conduct and consumer protection.⁹⁵ The South Africa’s insurance industry is now said to be “growing at an unimaginable speed”⁹⁶ as a result of these changes.

⁹⁰ Claudia Jackson, ‘Insurance and Reinsurance in South Africa: Overview’ <[https://uk.practicallaw.thomsonreuters.com/1-5052026?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/1-5052026?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> 29 March 2020.

⁹¹ Ernie Vyver and Nicolle Britton, ‘South African Insurance Bill Signed into Law’ <https://www.clydeco.com/insight/article/south-african-insurance-bill-signed-into-law?utm_source=Mondaq&utm_medium=synd>, accessed 23 March 2021.

⁹² Note 88 above.

⁹³ Financial Services Board ‘Understanding the FSA Act’ *Twin Picks Newsletter*, Iss 2 <<https://www.fsca.co.za/TPNL/2/understanding.html>> accessed 23 March 2021.

⁹⁴ The Prudential Authority at <https://www.prudentialauthority.co.za/>, accessed 29 March, 2021.

⁹⁵ The Financial Sector Conduct Authority (FSCA) < <https://www.fsca.co.za/>> accessed 29 March, 2021

⁹⁶ Note 87 above.

It is instructive to note that the South African insurance industry does not have a high capital base requirement.⁹⁷ For one South Africa operates a “risk base” regime. This means that the share capital requirement of every company depends on the risk it tends to underwrite. Currently to underwrite the highest risk, an insurer and even a reinsurer in South Africa need a capital base of 1.5million dollars only as against Nigeria’s whopping sums of 19.1 and 68 million dollars for insurance and reinsurance business respectively. As if this is not enough, NAICOM is currently beefing up the minimum paid up by at least 200% bringing the capital of composite insurance and reinsurance to 18 billion naira (\$58,631,922) and 20 billion naira (\$65,146,580) respectively as against South Africa’ 1.5 million dollars.⁹⁸

It is submitted that this is one of the major reasons the Nigeria industry is dysfunctional. First very high capital base whittles down core insurance business. To raise the outrageous amount needed to capitalise, money is source from the capital market. Of course shareholders who invested in the insurance companies want returns on their investments. This puts pressure on operators who, in order to give satisfy the investors veer into other areas considered more lucrative. Thus investment income, instead of premium income is now the priority of insurers. This vindicates the erstwhile chairman of the Nigeria Insurance Association (NIA), Odukale, who, in the early days of the consolidation exercise warned that “the new capital base will force insurance companies to focus more on investments to the detriment of insurance practice.”⁹⁹ Conversely in South Africa operator concentrate on classes of insurance that impact on the citizens such as motor accidents, life and health among others to grow their premium.¹⁰⁰

Secondly the regulator in Nigeria always insists on uniform share capital for every insurer instead of risk-based capitalization which is the model used in South Africa. Here companies capitalise based on the risks they want to underwrite. The reason given by NAICOM for the high capital is that it will enable Nigerian companies partake in the nation’s oil and gas sector by taking advantage of the local content policy of the

⁹⁷ Note 74 above

⁹⁸ Ibid .

⁹⁹ Prince Cookey, ‘Consolidation Train Moves to Insurance Industry’ *Financial Standard* (Monday, 30 January 2006) 15.

¹⁰⁰ Note 92 above

federal government. Must every operator insure oil and gas risks? Some companies should be allowed to have their clientele among small income earners just as is happening in South Africa where some insurers have their capital base as low as \$1.2 million and expand their energy on middle and low income earners. This makes for healthy competition leading to innovative products from operators and hence deeper insurance penetration. The Nigerian model leads to the opposite. All the insurance companies concentrate on chasing oil and gas businesses to the detriment of the individual who actual needs these insurance policies. No wonder insurance penetration is ridiculously low in Nigeria.

Another evil of high capital requirement is that the Nigerian industry prices itself out of the market. After each recapitalisation, companies which could not meet the high capital requirement usually go under with the attendant loss of employment.¹⁰¹ This has earned the regulator the name “undertaker” amongst stakeholders. Flowing from this, because insurance and reinsurance especially are international in nature foreigner take advantage of the situation (with naira being so weak) to invest Nigeria giving rise to capital flight further reducing the contribution of insurance to the nation’s GDP.

So many other aspects of ineffective regulation by NAICOM abound but we shall point out just a few more. In spite of the enormous powers given to the Commission, its presence is not adequately felt in the industry. For instance, it is not known that the Commission has proceeded against any broker who did not remit premium collected to the insurer within the time stipulated by the Act.¹⁰² The Act stipulates that “[W]here an insurance business is transacted through an insurance broker, the insurance broker shall, not later than 30 days of collecting the premium paid (sic) to the insurers collected by him.”¹⁰³ This is an offence punishable variously and could even lead to the cancellation of the broker’s license.¹⁰⁴

Again, the Commission has failed in driving the enforcement of the five classes of insurance made compulsory by the law in Nigeria. These are; Third Party Motor Insurance,¹⁰⁵ Insurance of Public Buildings

¹⁰¹ Over 30 companies went under after the 2005 recapitalisation exercise, note 2, 220

¹⁰² Insurance Act, 2003, s.50 (2).

¹⁰³ Ibid, s 41(1).

¹⁰⁴ Ibid, s 41 (2)-(4).

¹⁰⁵ Ibid, s 68.

and Buildings under construction,¹⁰⁶ Health Care professional Indemnity,¹⁰⁷ Group Life Insurance,¹⁰⁸ and Employer's liability.¹⁰⁹ In addition to these, no person is allowed to transact an insurance or reinsurance business in respect of life or property classified as domestic business with a foreign company.¹¹⁰ With the population of Nigeria estimated at over 200 million, the number of vehicles (defined by the Act to include tricycles and motor cycles) on our roads and number of public buildings (which include every conceivable building)¹¹¹, one could only imagine the amount of "unearned" premium in the Nigerian insurance industry. It has been estimated that the nation loses NI trillion annually as a result of non-enforcement of these insurances.¹¹² Enforcement of the five classes of insurance made compulsory by law is one of the strengths of the South African market.¹¹³ This has led to South Africa, with a mere population of 56 million people, controlling 71.7 % of the entire Africa insurance market.¹¹⁴

The Regulator has failed to use the humongous powers given to it by the law to enforce international best practices and ensure that insurers conform to the standard of insurance practice the world over. A few examples will suffice. It is trite that the primary obligation of an insurer is the payment of genuine claims. Unfortunately, most Nigerian individual policy holders do not get their claims paid. This again is the effect of weak and ineffective regulation by the Commission. NAICOM

¹⁰⁶ Ibid, ss 65 and 68.

¹⁰⁷ Health Care professional Indemnity Act s 45.

¹⁰⁸ Pension Reform Act, s 9 (3).

¹⁰⁹ Employee Compensation Act, 2010.

¹¹⁰ Insurance Act, s.72.

¹¹¹ Public building" is defined as Public building" includes a tenement house, a hostel, a building occupied by a tenant, lodger or licensee and any building to which members of the public have ingress and egress for the purpose of obtaining educational or medical services, or for the purpose of recreation or transaction of business, s 65(2).

¹¹² K. Abd-Khalio, 'Enforcing Compulsory Insurances' <<https://leadership.ng/2019/02/24/enforcing-compulsory-insurance>> accessed 23 March, 2021.

¹¹³ Global Legal Group, 'Insurance and Reinsurance in South Africa' <<https://iclg.com/practice-areas/insurance-and-reinsurance-laws-and-regulations/south-africahttps://iclg.com/practice-areas/insurance-and-reinsurance-laws-and-regulations/south-africa>> accessed 23 March, 2021.

¹¹⁴ Atlas Magazine, Insurance News Around the World, <<https://www.atlas-mag.net/en/article/the-insurance-market-in-africa-2016-2017>>, accessed 23 March 2021.

has never wielded the big stick given to it under the Act.¹¹⁵ If it had ever cancelled the license of any company for refusal to pay claims, it will not only send a strong signal to operators, but will also act as a strong advertisement that the industry has “repented of its sin” and also permanently cure the apathy and lack of trust in the industry of the populace.

NAICOM has failed to rid the Nigerian insurance industry of quacks 23 years after inception. This does not happen in developed economies. The genesis of the problem of toutting in the industry is that from inception, insurance used to be an all comers affair as there was no government regulation until 1961. People used to collect money in the name of premium with no intention of fulfilling the obligation of claims settlement.¹¹⁶ Many people came to regard insurers as fraudsters. With NAICOM set up to police the industry, one would have thought that this would have stopped. It is disheartening that so many years after inception, illegal and unregistered insurance companies still abound in the society especially at motor licensing offices. They collect ‘premium, without ever intending to pay any claim.

7. Conclusion

Risks and uncertainties of life are everyday realities of human existence and these constitute a source of tension to the average human being. As no human being thrives in tension, people seek ways of at least reducing these risks if they cannot be eliminated entirely. This is where insurance, the only means of risk transfer mechanism, comes in to create the peace of mind needed to make life more meaningful. No wonder insurance is so popular in saner climes. As a matter of fact, this social function of insurance is even more important than its economic function. This is why in decrying the ineffective standardization in the Nigerian industry a commentator says, “[T]he benefits of standardising, indeed, go beyond generating more premium but puts insurers in a much better position to respond to claims and contribute more to the expansion of our national economy through creation of more jobs and protection of our collective wealth.”¹¹⁷ This is what development is all about. Being that most

¹¹⁵ Insurance Act, s 8(1) m.

¹¹⁶ Note 2 above .

¹¹⁷ EO Gam-Ikon, ‘The Benefits of Standardizing the Insurance Industry <<https://www.proshareng.com/news/INSURANCE/The-Benefits-of-Standardizing-the-Insurance-Industry/45334>> accessed 23 March, 2021.

Nigerians are already at home with the tenets of insurance as shown by the great patronage enjoyed by *isusu* and thrift schemes, the only thing needed for insurance to thrive is the upping of regulation by NAICOM which will ensure the enforcement of the provisions of the Act. When this is done, all other problems such as lack of confidence in the industry, lack of skilled personnel, inadequate deployment of information technology, lack of innovative products, presence of touts, among others already identified as mere symptoms¹¹⁸ will be things of the past.

8. Recommendations

Our findings show that the problem of the Nigeria insurance industry is that of regulation rather than that of law. The regulator must shelve every aspect of increasing the minimum capital base of the industry for now as this is not the problem of the industry. Data has clearly shown that a high share capital base is not synonymous with insurance penetration.¹¹⁹ Besides, huge capital requirement defeats core insurance business.

The most important preoccupation of NAICOM should be how to deepen insurance penetration in Nigeria. In this regard enforcement of the compulsory insurances is key. Also, the regulator should aid operators in innovative products and services creation by producing precise guidelines for product development rather than having every single request submitted to it and operators having to wait for months or even years for approval.¹²⁰ Creation of awareness at grassroots through aggressive public education and massive publicity in the motor parks, markets, churches and media should be embarked upon. Once the general public knows that insurance is not just to satisfy the law but to protect them, the story will change. Again, the Commission must take active steps to rid the industry of quacks Nothing stops NAICOM from organising constant and sustained raids at motor licensing offices across the nation. There is no gainsaying the fact that the moment one or two of these fake insurers are prosecuted the rest will know that it is no longer business as usual. This is where NAICOM needs to partner and synergise with the various industry operators in order for the nation to benefit from various self-regulatory policies put in place by other stakeholders.

The Regulator must ensure that insurance operation complies with laid down procedures for insurance practice through constant monitoring as provide

¹¹⁸ 23 above.

¹¹⁹ Note 72 .

¹²⁰ The Insurance Act,s.2(5)&(6).

by the law. For instance, routine inspection of all insurance institutions in Nigeria once every 2 years is a provision of the law.¹²¹ By doing this diligently, companies which do not render their financial statements, cut rates or indulge in other unethical practices would be detected.

NAICOM should stop acting as a toothless bull dog by being more proactive. It needs to purge itself of always engaging in policy somersault like it did in the suspended Tier Base Minimum Solvency Policy, State Insurance Producers, and Bancusure to mention but a few. Policies must be well thought before they are made public. Also, because NAICOM is a going concern, the importance of sustainability of policies cannot be overemphasised. A case in point is the Market Development and Restructuring Initiative (MDRI) aimed at ensuring the enforcement of the compulsory insurances in the country which was not effectively sustained.¹²²

Finally, insurance practitioners who are the major players in the insurance industry should be represented in the board of NAICOM as this will make for effective partnership. The Board,¹²³ as presently constituted has nobody representing the interest of insurance operators thus practitioners do not make any direct input on matters concerning them. This is unlike what happens in other jurisdictions. In South Africa for instance, insurance Practitioners and policy holders are represented in the board of the Financial Service Board (FSB) the regulator of insurance in that jurisdiction. We call for the amendment of the NAICOM Act in this regard.

¹²¹ The NAICOM Act s. 31 (1a).

¹²² Ebere Nwoji 'NAICOM to Relaunch MDRI Initiative' <<https://www.thisdaylive.com/index.php/2016/07/20/naicom-to-relaunch-mdri-initiative/>> accessed 23 March 2021..

¹²³ The NAICOM Act, s 2.