AFRICA RISING; THE INDIGENISATION OF INSURANCE IN WEST AFRICA,

THE PROS AND CONS OF LEGISLATION AND REGULATION

INTRODUCTION:-

On first sight, my immediate impression about the subject matter for discourse, was that everyone appreciate the Pros and Cons of insurance Legislation and Regulations!. Further the insurance industry is regulated in every jurisdiction. That is why we have NAICOM, GIA, FSA, NANFISA, FSC, among others. These are Regulatory bodies for insurance practice and their main function is to regulate insurance business through prescribed legislation.

However in an effort to pull down the veil or pretend to understand the objective of the framers of the topic, there was a flood gate of possible meaning to the topic.

Thus, the question is, are the framers concerned with:-

- **Legislation and regulations to protect indigenous insurance companies?**
- **Legislation to minimize premium flight? This appears to be the main concern of the subject matter under consideration**

- **Legislation to give monopoly to some selected companies? or**
- **Legislation to promote personal ambitions of some personalities?**

Having reviewed the above indications, it was decided to sub sum all of them as the basis for the selection. We would therefore later address the Pros and Cons of all of them; whiles discounting some as not possible under the political and economic dispensation across the West Africa region.

MODE OF PRESENTATION

The presentation is structured as follows:-

- Historical Antecedents
- Definitions – Legislation and Regulation
- General objectives of Legislation in the insurance sector
- The advantages and disadvantages of Legislation (if any!)
- Trend of Legislations:-
  i. Rules based

ii. Principles or Risk based

- Legislation to protect local insurance market (indigenization policy)
- Legislation to stem or minimize premium flight.

We can at this stage abandon the following :-

1. Legislation to protect some selected statal and parastatal companies and
2. To protect the personal ambitions of some selected individuals.

The first is a dying effort, accounting for the privatization of such preciously icons of insurance business in West Africa such as Naicon, Nigeria RE, State Insurance Corporation (SIC) and possibly soon Ghana RE.

The second, would be impossible with the involvement of multinational and multi lateral institutions in the economy of the various countries in Africa. Some countries however, may give undue advantage to companies owned by people or persons with political connections but not statutory protection.

DEFINITIONS:-

Two words are glaring here and need some explanation.

LEGISLATION:- Black Law Dictionary (Nineth Edition) defines Legislation as :- “a process of making or enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to per this process”

From the above Legislation are meant to be “positive” and not negative . legislation are meant to put an order to a particular way of doing particular things.

The same authority defines Regulations as:- “ the act or process of controlling by rule or restriction”.

It is trite knowledge, that regulations, breaks down legislations to bring about easier appreciations of their import and objectives.

A typical example is the Regulations prescribed by the Insurance Law 2006 (Act 724) to explain some of its sections. This never came to fruition.

In the absence of Regulations, administrative directives, may be issued by the appropriate regulatory institution mandated to enforce the Legislation.

GENERAL OBJECTIVE OF LEGISLATION:-

The indication is not to delve into the realms of the philosophy of Law. The objective is to define the objectives of insurance legislation.

The General objective of insurance legislation is to first protect the financial integrity of insurance companies and second the needs of the customers of the insurance companies. The two are intertwined – insurers exist to sell their services to customers and the customers relate with insurers to purchase their services; in effect they expect some basic services.

The framework for co-coordinating the relationship is the legislative guidance which ensure:-

- Insurers meet certain solvency and prudential requirement
- Certain framework for amicable relationship.

Legislation therefore covers:-

- Licensing and regulation of insurance companies
- Monitoring and preserving the financial solvency of insurers
- Regulating and standardizing insurance policies and products
- Controlling market conduct and preventing unfair trade practices
- Regulating other aspects of insurance business

The above will give details covering :-

- Capitalization – possibly indicating minimum requirements
- Corporate governance – including who can sit on the governing Board among others
- Reporting including – Audit, actuarial valuation and other prudential and reporting requirements
- Solvency – including minimum indications for various bench marks.

The General benefits (Pros) of Legislation and its regulations can be subsumed as follows:-

- Business solvency:- legislation will ensure that the financial solvency of the insurance company is preserved.
- Consumer protection:-legislation protects consumer of insurance business. This is done by defining benefits under some lines of insurance. Legislation further provide protection for consumers by ensuring criminals do not enter the business.
- Protect the State :- insurance provide some benefits which otherwise would have been provided by the State
- Ensuring statutory obligations are met.

PREMIUM FLIGHT – TO LEGISLATE OR NOT TO LEGISLATE:-

Premium flight, explained as the exit of insurance premium from Africa (as a result of various explicable reasons!), has been of concern to industry leaders, politicians, developmental experts and multinational institutions such as the World Bank.

The press is replete with such concerns:-

“insurance industry loses $750 million to premium flight annually”. Business Day – June 17th 2015.

“The Managing Director of Africa Reinsurance Corporation (Africa RE) Corneille Karekezi has lamented that African insurance operators have been losing sizeable proportion of their premium income to foreign Reinsurers due to lack of financial where withal retain such risks in the continent”

“…. We have problem of skills in specific classes of insurance business in the continent. This is in addition to how capital requirement in many countries, except for a few countries like Nigeria. The very low capital requirement is one of the reasons why many businesses still go out of Africa, just as unhealthy competition remain a challenge as well” – Daily Independent, June 4th 2015.

“Annual premium flight in insurance industry hits N148.5 Billion” – All Africa – August 3, 2013

“Capital inadequacy in the West African insurance industry results in low premium retention and high demand for overseas reinsurance, leading to excessive premium flights running into millions of dollars every year”. – Lydia Bawa – Commissioner of Insurance – Ghana (2015 WAICA Conference Accra).

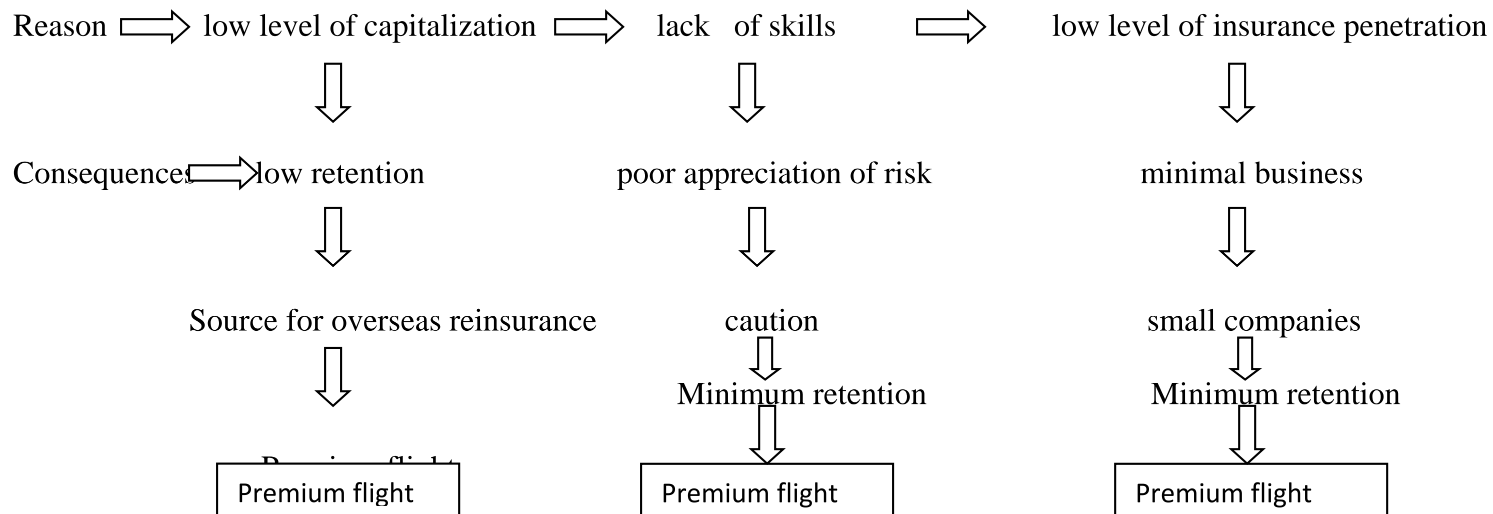
It is significant to note that the African Insurance Organisation (AIO) has recently financed a research into the problem of premium flight from the continent. The understanding is that a draft Report of the Consultant (PWC) has been submitted and it’s being studied.

Apart from the Nigerian press report quoted about which indicated a figure for Nigeria, it is difficult getting a figure for the various countries (and the continent) on the actual figure involved.

Rough estimates, place the total figure for premium flight at about four – five billion United States dollars for the continent for 2013. This means, with the increasing trend in total premium and with the problems identified as causes for the premium flight, not abating, the figures, should be in the region of 6-7 billion dollars presently.

FUELLING FACTORS:-

The fuel for the flight can be distilled from the comments of the various market players and the publications:-



MARKET PENETRATION :-

Market penetrating in most West African countries is quiet low and it's below the average for the continent. The table below by PWC, compares the average for Africa with other regions and shows that penetration needs to be improved .

DEPTH OF INSURANCE MARKETS BY REGION, 2012

REGION	TOTAL PREMIUMS (US $ BILLION)	PENETRATION RATE (%)	PREMIUM PER CAPITAL (US $)
Advanced Asia	936.0	11.80	4,387.5
North America	1,393.4	8.03	3,996.3
Western Europe	1,462.7	4.72	2,716.3
Oceania	97.1	5.60	2,660.2
South & Central America	168.7	3.00	281.9
Central & Eastern Europe	72.5	2.01	223.4
Middle East	40.9	1.35	124.0
Emerging Asia	369.4	2.96	101.9
Africa	71.9	3.56	66.4
World	4,612.5	6.50	655.7

Though there is evidence of growth especially with the introduction of micro insurance using technology for distribution, there is still some significant amount of work that has to be carried out.

Quite significant work has been down in countries such as Ghana, Kenya, South Africa and Uganda. Legislation should support the effort at pushing penetration.

This can be done through:-

1. Increasing number of compulsory insurances – Workmen compensation, Group life in addition to motor and fire (in some jurisdictions.
2. Enforcing regulations on existing and prospective compulsory insurances.

The second point is significant as existing regulations are not enforced as exemplified below.

Section 184 of the Insurance Act 2006 (Act 724) provides as follows:-

Insurance of commercial buildings

1. Every commercial building shall be insured with an insurer against the hazards of collapse, fire, earthquake, storm and flood, and an insurance policy issued for it.
2. The insurance policy shall cover the legal liabilities of an owner or occupier of premises in respect of loss of or damage to property, bodily injury or death suffered by any user of the premises and third parties.

3. For the purposes of this section, “commercial building” means a privately owned building to which members of the public have ingress and egress for the purpose of obtaining educational service, engaging in a commercial activity for the purpose of recreation or transaction of business.

Though Fire and Related Perils and Liability insurances are compulsory in Ghana under this Section for commercial entities, not all commercial entities here insurance. Enforcement measures are best feeble or virtually non-existent.

RELATIONSHIP BETWEEN CAPITALISATION AND INSURANCE PENETRATION:-

Capital should be deployed by the insurer. However, a highly capitalized insurer must have a developed market to deploy the resources. Where opportunities for new business or innovation are limited, capital would only be held by companies.

Thus enhance penetration would offer opportunities for deployment.

LEGISLATION:-

The immediate reaction to the figures and concerns expressed is to adopt a knee teeth reaction by:-

i. Strengthening and tightening premium flights
ii. Protectionism through indigenization legislation among others

The words "strengthening and tightening" legislation are used for a purpose. That is, there are some provisions in the existing laws, that, have provisions to minimize or reduce premium flight. A typical provision is found in the Ghanaian regulatory law (Act 724) at Sections 37, 53, 52 and 55 as follows:-

Section 37 – Restriction on Contract with offshore insurer

1. Unless authorised by the Commission, a person shall not enter into a contract of insurance with an offshore insurer in respect of

   (a) Property situate in the country

(b) Liabilities arising in the country, or

(c) Goods, other than personal effects, being imported into the country

2. A person who contravenes subsection (1) commits an offence
3. Nothing in this section affects the validity or enforceability of a contract of insurance entered into in breach of subsection (1).
4. This section does not apply to an insurer that enters into a reinsurance contract with an offshore insurer where the reinsurance contract

(a) Is entered into in accordance with reinsurance arrangements approved by the Commission under Section 53 (1), or

(b) Is exempted from approval by the Commission under section 53 (2).

Section 53 – Approval of Reinsurance arrangements by Commission

(1) An insurer shall have all arrangements approved by the Commission in accordance with the Regulations for the reinsurance of liabilities in respect of risks insured by the insurer in the course of its business as an insurer.

(2) An insurer or re-insurer shall utilize the local capacity available in insurance business originating from the local market before recourse to any overseas re-insurance.

(3) The Commission may, by written notice, exempt reinsurance contracts of a type specified in the notice from the requirements for approval under subsection (1).

(4) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.

Section 52 – Reinsurance statements and documents to be filed

(1) An insurer shall not pay commission to an insurance intermediary that is not licensed under this Act.

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.

Section 55 – Reinsurance of risk outside Ghana

(1) An insurer shall not enter into a contract of reinsurance except in the case of a facultative reinsurance arrangement.

(2) Subsection (1) does not apply to an insurer whose licence is restricted to reinsurance business.

(3) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.

It is believed, that such copious provisions aimed at promoting and ensuring premium retention would be found in almost all regulatory laws across Africa. These are supported by other subsidiary legislations and administrative directives such as the various Local Content Legislation covering oil and gas in Ghana and I understand in Nigeria.

Are they solving the problem?

I venture to say NO. Thus promulgation of additional Laws would not help the problems of:-

- Poor and low level of capitalization and consequential low levels of retention
- Paucity of appropriate skills
- Low level of insurance penetration
- Poverty, among others.

INDIGENISATION OF INSURANCE MARKET?:-

This is a system where protection is provided for either a country's insurance market or some selected companies by restricting or preventing foreign capital inflow into the country.

Though, this is no more a common practice other subtle ways and means are deployed to restrict foreign participation in the insurance market in West Africa.

Methods that may be adopted, would involve:-

- Very difficult bureaucratic process towards registration
- Differential minimum capital requirement
- Requirement for indigenization of management.

The objective here, is also to ensure first, the development of the local insurance companies and second prevent capital flow and create job opportunities.

OUTCOME:-

Experience has shown from the past that such efforts comes out with their own problems which would include:-

- Creating a cartel sort of arrangement
- High premiums
- Market accumulation (if no proper reinsurance arrangements are made)
- Poorly run and in efficient companies
- Poor skills levels
- Claims accumulation etc.

It is worthy of note that, indigenization is a dying breed and it is not envisaged that any jurisdiction would legislate to encourage it.

It would be difficult to bypass international obligations such as WTO Rules on monopoly among others.

The argument has been made that legislation to protect local insurance industries has the following advantage:-

- Promote the growth of the country's insurance market
- Flowing from the above, it also lead to the growth of the country's companies and thus higher retention levels.
- Promote business sharing through … placings and co-insurance
- Prevent placings on worldwide covers

However, the above can be countered by such arguments as:-

- The "over heating" of the market
- Poor service delivery leading to inefficient companies
- Little exposure to best international practices.
- Poor levels of capitalization.

FUNDAMENTAL QUESTIONS:-

As part of the continent's growth, should protective and restrictive legislation be used to aid the effort at consistent growth?

The answer would be Yes and No:-

Yes:- there is the need to legislate to ensure:-

- An open, free and liberated environment for insurance business
- An environment that promotes capital inflow
- Skills development through intensive and specialized training
- Co-operation with more developed system
- Growth of domestic players

1. Business thrive where market players understand the intricacies of the business environment. Business thrive where the regulatory environment is flexible and open enough for all to weave through the ….. of procedures. The trend is towards a system that promotes:-

   i. Market confidence
   ii. Finance stability
   iii. Consumer protection
   iv. Reduction of financial crime

This places a lot of responsibility on the Directors and Managers to operate within the defined regulatory guidelines rather than the Regulators holding the stick on them.

REGULATORY TREND:-

The above indications are appropriately found in the British Financial Services Act 2012, which are PRINCIPLE BASED rather than RULES BASED.

To ensure effectiveness the 2012 Act, operates under two (2) institutions:-

i. The Financial Conduct Authority and

ii. The Prudential Regulation Authority

The Regulatory principles under the new statutory regime are:-

i. Promote efficiency

ii. Define role of management

iii. Ensure proportionality

iv. Promote innovation

v. Ensure international characters at financial services and

vi. Ensure fair competition

1. Regulation therefore should not be restrictive and stifling. Ghana, presently is working on its system with similar objectives and to ensure principle based regulations rather than Rules based.
2. Promotion of capital (investment) inflow:-

   A 2012 Report of the World Bank clearly states that most, most insurance companies are just too small. That is absolutely the truth. The level of capitalization of most companies, offer very little opportunity for them to have retention policies that prevent significant outflow.

   The problem is compounded by the significant growth in the economies of the various countries. The whole of the West African coast, is now witnessing something akin to the "Gold Rush", as geological formations indicate oil and gas reserves across the region. Oil and gas, unfortunately is big finance!

   To limit premium outflow therefore, companies need to capitalize and capitalize fast to take advantage of the opportunities offered. No legislation can address the issue of retention. Legislation should rather promote capitalization. Example – Ghana Oil and Gas market retention and commission is not up to 5% of total premium.

3. Skill development and co-operation:-

   Technical knowhow must be promoted even if necessary through legislation. Skill development must move hand in hand capital injection. Skills would be developed through co-operation with more developed systems.

4. Development of Domestic Industry :-

This is related to capitalization. However, regulation should ensure that clear timelines are set for growth through capitalization.

Such timelines and related capitalization should have medium to long term indications.

Ghana, proposed an enhancement of minimum capital from GH¢5million to GH¢15million about 2-3 years ago. The objectives cannot be outlined here. However, it is significant to state that, opportunities offered by Oil/Gas was one of the fuelling factors. Implementations dateline is January 2016.

At the time the Guidelines were given, the cedi exchanged for 1 USD at about 2.5, so the minimum level of capitalization should have been about USD6,000,000.00.

Prior to commencement of the new minimum capital requirement, the dollar to cedi, now exchange at almost 1USD to GH¢4!

The implementation of such policies if to be effective, should set timelines that first recognize the effect of inflation and second, the appreciation of values of assets.

If that is not the case, whatever legislation and regulations put in place, would not stem premium overflow. Timelines, should lead to the winding down of companies that do not meet the capitalization and development requirements. Thus, companies should be encouraged to merge and acquisitions should be encouraged.

Let us look at the number of insurance companies in Ghana and Nigeria .

	Ghana	Nigeria
Non-life	27	29
Life	18	15
Composite	-	12
Reinsurance	3	2

Total premium for 2014 for the two countries:-

	Ghana (GH¢)	Nigeria (N)
Non-life	667,593,000 ($171,177,692)	302,000,000
Life	579,968,000 ($148,709,744)	($128,510,638,298)
(At current exchange rate)		

Compare to Morocco, one of the largest insurance market in Africa, with 16 insurance companies and with total income 3-4 times that of Ghana .

Therefore legislation should encourage larger and more efficient companies. That is what would stem premium flight.

No :- if legislation and Regulation are meant to:-

i. Protect domestic insurance market and companies

ii. Protect inefficient companies

EXAMPLE OF NIGERIA:-

The largest economy in Africa, have had two recapitalization within the last 13-15 years in - 2003 and 2005.

The graph below indicates the effect of the effort of consolidation through regulations under the Insurance Act 2003 which provide the statutory authority under Section 86. Section 86 of the Act, empowers the Regulator (NAICON), amongst other numerous powers to "be responsible for the administration and enforcement of the provisions of Act" as well as empowering it to register insurance companies and to increase the amount of minimum share capital requirement as circumstances may demand." The minimum capital requirements under the two efforts and the outcome in terms of number of insurance companies were as follows:-

YEAR	**LIFE (N)**	**NON LFE (N)**	**REINSURANCE (N)**	**NO. OF COMPANIES**	**REDUCTION**
2003	150M	300M	350M	103	14
2005	2 BILLION	3 BILLION	10 BILLION	49	54

Note the following:-

- The timeframe for the review was short and therefore effective in terms of the negative effect of inflation etc.
- The percentage increase was significant and consequently make room for a longer period for the next enhancement.
- The huge reduction (52.4%) in the number of companies. This created opportunities for mergers and acquisition and friendly take overs etc.

The Nigeria model need to be sustained with periodic enhancement to take advantage of the growth of the economy and the huge premium flight in the oil and gas sector. The model creates room for higher individual premium retention levels and higher market capacity. (offered by the aggregation of the individual reduction levels).

The model need to be adopted by the other countries where minimum capital requirement are too low and end up being overtaken by inflation, depreciating currencies.

The number of companies operating, mainly with individual ownership (issue of ego) are just too many for the size of the economies we are talking about.

The end result if consolidated through higher capital requirements is not encouraged, is the premium flight which is of concern to all.

CONCLUSION:-

We have tried to address the issue of legislations and regulations as a basis for the rise of the African Insurance industry. The general indication is that legislations and regulations have a place in the general development of the insurance industry in Africa. Further, it is the view that, legislation must be positive by creating an enabling environment that would promote and encourage market players to invest. Further, legislations and regulations should act as a catalyst to stem premium flight and not meant to protect local industries nor prevent foreign companies from investing in the various insurance market. Experience shows that restrictive laws that offer protection rather in the long run stifle proper growth of indigenous companies. Competition should be encourage to strong better capitalized companies as this would foster growth.

Legislation should help Africa to rise by being positive, progressive and flexible. Not restrictive, monopolistic, protectionist and retrogressive.