State Intervention and Control of Insurance Business in Nigeria

Thesis for the Degree of Ph.D

by

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FORWARD

The seeds of this thesis began in 1978 during my early career at the University of Lagos. This coincided with the promulgation of Nigeria's Insurance Act which ever since has remained one of my key academic interests.

Most of the thesis was written prior to 1988 and reflects a point of view which I have held for many years. It was with great pleasure that I note the recent decisions of the Nigerian Government to consider moving towards a more free enterprise and less protectionist environment within which the Nigerian Insurance Industry can develop in the future.

This new policy direction is in line with the philosophy advanced in the thesis and I hope that the detailed proposals contained herein will assist in its successful implementation.

John Falegan

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Other contributions appear in footnotes. Apologies are unreservedly offered for ideas which have not been acknowledged.

DECLARATION

This work contains very sensitive official materials which are not yet due for publication. Its circulation should therefore be restricted to single photocopies made for study purposes only.

ABSTRACT

In reviewing the efforts of the Nigerian Government to control the insurance industry in Nigeria with a view to improving the tarnished image of the industry which was a prominent feature of the late 1960's and the early 1970's this study briefly describes the evolution of the control framework, surveys the types of direct control measures and attempts an examination of the control mechanisms.

In the main, these control mechanisms are the supervision of commercial insurance to ensure financial stability and good management, legislation requiring equity shareholding in foreign owned subsidiaries, direct government participation in insurance business, the making of some types of insurance compulsory and a number of miscellaneous measures.

The main contention of the study is that rather than promoting the public image of the industry, government policy in a number of areas is detrimental to competition and efficiency with serious deleterious effect on the optimality of resource allocation in the Nigerian economy.

Given the importance of the insurance industry in any economy ______ the management of pure risk, the transfer and pooling of risk, its role in the financial intermediation process, the provision of funds for investment opportunities, etc, the study focuses on the urgent need to understand its industrial dynamics and formulate appropriate competition or regulatory policies for it.

The study is important, at least from the viewpoint of policy implications particularly as it relates to the efficiency of the Nigerian insurance industry, the aim being to provide a set of detailed estimates to show the relative importance of the various elements of market structure and their implications for the conduct and performance of firms operating in the industry.

Given the limited nature of the data, some parts of the study utilise a multivariate statistical analysis while some other employ a probabilistic model.

LIST OF ABBREVIATIONS

AIO	Africa Insurance Organisations
Africa Re	Africa Reinsurance Corporation
Asian Re	Asian Reinsurance Corporation
CIFT	UNCTAD's Committee on Invisibles and Financing Related to Trade
Continental Re	Continental Reinsurance Company
ECOWAS	The Economic Community of African States
ECO-Re	ECOWAS Reinsurance Corporation
ESCAP	The Economic and Social Commission for Asia and the Pacific
FAIR	Federation of Afro-Asian Insurers and Reinsurers
FPA	Free of Particular average
Great Nigeria	Great Nigeria Insurance Company Ltd.
IIAP	The Insurance Institute of Asia and the Pacific
IIN	Insurance Institute of Nigeria
NIA	The Nigerian Insurance Association
NICON	National Insurance Corporation of Nigeria
Nigeria Re	Nigeria Reinsurance Corporation
OAU	Organisation of African Unity
SPI	UNCTAD's Special Programme on Insurance
TDB	Trade and Development Board
UAC	United African Company
UNCTAD	The United Nations Conference on Trade and Development
UNDP	The United Nations Development Programme
Universe Re	Universe Reinsurance Company
WAICA	The West African Insurance Consultative Association

END MATTER

Chapter 1

Introduction

1.1 Purpose of Thesis

Insurance is the pivot of any economy (Soleye, 1984). It provides against risk by spreading the financial losses of the unfortunate few over the fortunate many. The economic importance of this risk spreading mechanism in the community is that it increases welfare both by providing a feeling of improved financial security and by easing the financial burden of accidental losses (Carter, 1980). As an economy grows, so also insurance grows. Thus, insurance grows concomitantly with the growth and development in the economy.

The purpose of this thesis is to provide a detailed analysis of the evolution (part 1) and efficacy of the regulation (parts 2 and 3) of the insurance sector in Nigeria since 1960.

In order to do this it is important to look at the wider economic structure and policy that exists in Nigeria. In addition there is need to look at the structure and development of the Nigerian insurance industry. It should be recognised that there is a dynamic relationship between the structure of industry and the regulatory environment. In other words, the structure of industry is influenced by regulation, and therefore official regulation has fashioned the shape and development of the industry.

There is a growing literature on the regulation of insurance business in the developed countries (Hindley, 1983). This is not the case in the developing countries because it is a neglected sector. A discussion of insurance regulation in a developing setting can, therefore, not be done except by international comparisons.

It is therefore the contention of this thesis that one cannot evaluate a regulatory system let alone make recommendations without recognising the unique characteristics that prevail in a given country. Even so the thesis does produce insights into the adverse impact of restrictive regulation on the development of a local insurance industry which has implications for other developing countries.

The thesis provides the only detailed analysis of the nature and impact of government intervention in the insurance business in Nigeria. It is also, as far as the author can ascertain, the only detailed analysis of official regulation of insurance in a developing country.

1.2 Need for the study

The two decades following Nigeria's political independence has witnessed the promulgation of laws[1] regulating the business of insurance. These laws are undoubtedly intended to modernize and overhaul the regulation, supervision and control of insurance. In addition, they are aimed at protecting the country's insurance sector against foreign penetration (Nigeria, 1975) in line with the general phenomenon most commonly identified with, but not limited to, developing countries to erect barriers to international trade in services (Shelp, 1976). The increasing concern with insurance and other financial institutions is related to the recognised role of these industries in the capital formation process in generating savings, providing investment funds, and extending credit. Insurance is often viewed as an industry requiring no special expertise and best kept out of the hands of the foreigners.

All these factors translate into national policies demanding, at a minimum ownership and control by nationals and at a maximum, ownership by the state itself. In addition, there is the socio-political value derived from legislation that seeks to provide protection for individuals and national institutions. Hence the overwhelming acceptance of the policy recommendations of UNCTAD (chapter 6) for insurance supervision by the state in the developing countries.

The end of the 1970's coincided with the end of the Second United Nations Decade (UNCTAD, 1983), which placed emphasis on the insurance sector. UNCTAD, therefore , deemed it useful to review, at that crucial point, the situation of insurance markets in developing countries and issued its first assessment from which the following emerged:

> "... Third World insurance markets operate in accordance with up-to-date insurance legislation. How well such legislation is implemented in practice is a different matter; there seems to be some serious problems, due to a certain lack of sufficient political support of insurance supervision on the part of the ministries responsible therefor, as well as to a lack of adequate insurance training of the staff of the supervisory authorities. Bearing in mind the importance to the insured public and to the national economy in general of effective insurance supervision, more efforts should be made to remedy the situation, which prevails in many developing countries" (UNCTAD, 1981).

One consequence of these "serious problems" is that insurance rates are high. A recent UNCTAD report speaks of "... the relatively high insurance costs in developing countries, compared with those in developed countries" and continues:

> "Obviously, high premium rates discourage the public from covering their risks by insurance, particularly in the absence of sufficient awareness of the benefits of insurance. This discouragement causes a contraction of the market, resulting in loss for the insurer... To safeguard themselves, the insurers retain for their net account only a small proportion of the business they write, reinsuring the balance abroad ... Yet excessive reliance upon reinsurance deprives the insurer of his income and prevents him from achieving growth. At the same time it burdens the national economy and the balance of payments with unnecessary transfers of hard currency." (UNCTAD, 1980).

The above assessment by the UNCTAD Secretarial of insurance practice in the developing countries highlights the lapses of their state supervision and control of insurance business. Attention is focused here on Nigeria.

Moreover, a review of official supervision and control of insurance has received little attention, a situation which provides a further justification for the study of government intervention in the Nigerian insurance industry.

1.3 Literature Survey and Analysis

Existing studies are classified into two sections. The first is the literature on insurance regulation in general, followed by that on insurance in Nigeria.

1.3.1 Selected Literature on Insurance Regulation in General

Not much has been published until recent years on insurance regulation in the United Kingdom.[2] Cockerell (1974) blazes the trail. Cockerell's study of insurance regulation is part of a much wider discussion of the relationship between insurance and the state including public policy, taxation and social security. His contention is that there is hardly a country in the world where the operations of insurers are not subject to state regulation and control. The reasons for this are stated to include the need to protect consumers and to foster the local insurance market. Although official regulation is understandable, its hidden cost is met by policyholders having to pay higher premiums than they would under a system of free competition.

Cockerell (1980) is an expansion of the above theme. The motives for state control are expanded to include economic and political factors and consumer protection. Although public involvement in the transaction of insurance business before the nineteenth century was limited, in the twentieth century state monopolies, with their attendant problems of concentration, have been the order of the day in the developing countries.

Shelp (1976) describes the various forms of operation international insurers traditionally employ overseas, classifies the restrictive regulations they encounter, and comments on the justification generally advanced in support of restrictive measures against foreign insurers. Finally, the discussion suggests various alternatives which international insurers might consider in attempting to cope with the restrictions.

Carter and Dickinson (1977) focus on the steps that have been taken by the governments of many developing countries to reduce their dependence upon foreign insurers and reinsurers. First, the economic aims of the governments are mentioned, followed by the types of measures and finally the economic effects of the restrictions on international trade in reinsurance are examined. The analysis, in conclusion, makes a strong case for greater freedom in the flow of international reinsurance.

The implications of these restrictions are considered at some length in Barriers to Trade in Insurance (Carter and Dickinson, 1979). This publication considers in turn the reasons for protectionist legislation, types of restrictive legislation, analysis of the effects, orientation to restrictions and a plea for liberalisation.

Hindley (1982) examines the arguments put forward by the UNCTAD Secretariat for the protection of local sellers of insurance at the expense of local buyers of insurance. He finds them almost entirely devoid of content. Moreover, because direct insurers and state owned reinsurers in developing countries demand reinsurance through international markets, the policies recommended have not had any major impact on the balance of payments of developing countries. Hindley concludes that a withdrawal by the governments of developing countries from the kind of policies advocated by the UNCTAD Secretariat will produce clear gains for their residents.

Finsinger, Hammond and Tapp (1985)[3] is a comparative study of the lightly regulated UK insurance industry and the highly regulated German insurance industry. It concentrates on the life insurance and automobile insurance markets of the two countries and analyses the potential sources of market failure in the supply of insurance services. It examines the effectiveness of different forms of regulation in dealing with instances of market failure as well as their effects on the level of performance of insurance companies, in order to answer the question whether certain forms of regulation impose too high a cost in terms of loss of efficiency.

The study concludes that the German price and profit regulations on insurance companies have caused a serious loss of efficiency without improving the position of insurance consumers. The British insurance regulations on the other hand demonstrate that there are ways of protecting consumers from the adverse consequences of insolvencies without stifling market competition.[4] The lesson of this study is that competitive markets, with adequate safeguards, seem to serve customers better in the long run by promoting efficiency, than attempts to protect policyholders by strict regulations on all aspects of operation.[5]

1.3.2 Literature on Nigerian Insurance

Although there have been many investigations into the way government controls the insurance business in Nigeria, the most authoritative have been those carried out firstly by Reichel (1966 - 70), secondly by the Financial System Review Committee[6] which was set up on 31 March 1976[7] and thirdly by Smith in 1981.

Reichel's recommendations are grouped into four areas - indigenous participation in insurance business including the establishment of the National Insurance Corporation of Nigeria (NICON), the revision of the Insurance Companies Acts of 1964, the enforcement machinery and other miscellaneous matters. First, he made detailed recommendations on how NICON should be allowed to operate on commercial lines rather than on governmental working pattern. He also urged government to promote gradual increase of the participation of Nigerian share capital in insurance companies. Secondly, he urged government to replace without delay the existing Insurance Acts with an insurance legislation which provided for detailed supervision of insurance business (appendix 1). Thirdly, he pleaded with government to form a consultative committee consisting of 5 Nigerians who have contributed to the sound development of the local insurance industry to supplement the work of the Insurance Department. The latter was enjoined to make detailed insurance statistics available to insurance companies and the public; scrutinize large risks emanating from Nigeria and determine the amount which could be kept in the country before giving permission to insure them abroad; examine the feasibility of entering into exchange of reinsurance with neighbouring countries; and sponsor the extension of the present training in insurance at the Faculty of Business Administration of the University of Lagos to include in future, insurance law and insurance accounting and its building up to a possible training centre of insurance for Tropical Africa. Fourthly, he urged government to promote the establishment of a co-operative insurance society which could commence operations with special forms of life insurance.

The Financial System Review Committee's investigation of the insurance industry was part of a much larger enquiry into the Nigerian financial system. In particular it provided the background that led to the formation of NICON in 1969, the promulgation of the Insurance Act of 1976 and the establishment of the Nigeria Reinsurance Corporation (Nigeria Re) as well as Africa Reinsurance Corporation (African Re) in 1977.

Its recommendations were not fully supported with reasons and uncritically accepted the views of Reichel. Firstly, it recommended that the Nigerian interest in all foreign insurance companies both private and public hitherto limited to 49 percent should be raised to 60 percent. Secondly, the national reinsurance corporation should have the choice of first refusal of any reinsurance business from Nigeria before such business was placed on the international market. Thirdly, although NICON should be regarded as the leader of the industry and therefore should take on leadership responsibilities, its monopoly of Federal Government insurance business should be revoked in the light of the further Nigerianisation of the equity of foreign owned insurance companies. Fourthly, there were detailed recommendations on the fiduciary regulation of the industry on the lines suggested by Reichel including the provision that monetary authorities should play a more significant role in determining the rate structure and in formulating investment guidelines for companies operating in the industry (chapter 9.5).

Alasdair Smith undertook research in 1980 to find out whether there were significant effects on international transactions arising from the localisation of insurance in Nigeria. He examined the measures which have been adopted to promote and protect the domestic insurance industry. He argued that a major danger of these measures is that by restricting competition they can reduce the range and quality and raise the price of the products offered to consumers. His conclusion is that the policy of restricting outward and inward investment retards the growth of the industry which other policies (at a significant cost) are simultaneously trying to encourage. "Are the objectives of policy makers sensible?" he asked in conclusion.

Smith cameto Nigeria when the Insurance Act of 1976 was only 4 years old. There were no statistics to back his claims which had to be made on a priori basis. Moreover his focus was on the effects of restrictions. Hence the limitations of this work.

The other studies are journal articles[8] on certain aspects of the insurance industry. Because of this restricted scope, they are not considered sufficiently broadly based for further examination.

The present study will attempt to remedy these deficiencies.

1.4 Methodology Used in the Thesis

This section outlines the scope of the survey and data collection procedure as follows:

1.4.1 Purpose of Survey

The purpose of the survey is twofold, firstly to identify the aims of official regulation and, secondly, to determine its efficacy.

1.4.2 Background Research

The initial phase of the study inevitably involved an exhaustive search for any literature dealing with the Nigerian insurance industry. This source of information includes conference papers of the Insurance Institute of Nigeria (IIN), the West African Insurance Companies Association (WAICA), African Insurance Organisation (AIO), the Federation of Afro-Asian Insurers and Reinsurers (FAIR) and the Third World Insurance Congress. Other sources are the annual seminars of insurance students' associations and their journals, the national insurance seminars annually organised by the Times Leisure Services, the annual Loss Prevention Conference of the Fire Protection Association of Nigeria, the marketing seminars and house journals of insurance companies and articles and supplements on insurance which appear in the daily papers from time to time.

Government investigations of the industry have produced reports[9] which have provided useful insights into the industry. These investigations have become preparatory to the promulgation or revision of insurance legislations.

1.4.3 Selection of Groups and Research Instrument

The literature survey indicated above assisted to show the scope of empirical investigation to be carried out. This involved the selection of groups such as the chief executives of insurance companies, local and London brokers, the major consumers of insurance, consulting actuaries and UNCTAD officials.

The roles of these groups are not always complementary, but are sometimes exclusive. It was therefore expected that the responses would be biased, leading to incorrect interpretation. Hence the need to develop a research instrument, mainly in the form of structured questionnaires for the leading members of the groups (appendices 2 - 6).

1.4.4 Conduct of Field Research

It was necessary to find out industry attitude towards regulation and the areas of the legislation that need to be improved. Hence the necessity to conduct field research utilizing mailed questionnaires and personal interviews (appendix 3). For this purpose the research instruments developed above were used. While the mailed questionnaire survey was utilised to cover a broad spectrum of the constituents of the industry, the personal interviews were conducted in Lagos and the State capitals where insurance offices are located and in London where Lloyd's brokers and consulting actuaries with experience of the Nigerian market operate. Correspondence was opened with the UNCTAD Secretariat located in Geneva.

Because existing data is not detailed to test the efficacy of policy, the empirical aspect of the thesis consist of evaluation of available statistics to supplement empirical findings. However, the questionnaires are the main source of information.

1.4.5 Structure of Questionnaires

In order to achieve the objectives of the study as outlined above, emphasis was placed on two broad groups of variables in designing the questionnaires. The first is identifying the aims of official regulation and the second is assessing the efficacy, impact and effects on the structure, conduct and performance of the industry.

1.4.6 Administration of Questionnaires

An original questionnaire (appendix 2) was tested in a pilot survey and this led to some changes in the wording of the questions. In February 1985 the pilot survey was applied to the leaders of the industry. Although 20 of these practitioners were approached only one of them responded. The respondent, Mr. A. O. Ogunshola, a consulting actuary, is closely associated with academia and was for more than 10 years an associate lecturer in the Insurance Department of the University of Lagos. This is probably the reason for his response which was in fact late in coming. Hence it can be inferred that Nigerian industrialists and businessmen are averse to divulging their business secrets and therefore to filling questionnaires.

Because of this low response, it was decided to administer the questionnaire by interviews. It was however realised that this was going to be a slow and laborious process which it proved to be.

In the middle of February 1986 the researcher was requested by the National Universities Commission (appendix 14) to serve on the 8-man Insurance Investigating Panel which was appointed in January to investigate abuses in the reinsurance activities of insurance companies (chapter 7.7.12). The Committee was inaugurated on 24 February and soon adopted the revised questionnaire (appendix 3) which was considered central to the enquiry. This official investigation of the insurance industry therefore provided the researcher the timely opportunity to administer the questionnaire on all the companies operating on the market. It was an opportunity well exploited for all the companies were compelled to complete the questionnaires.

In addition to those completed by the insurance companies, questionnaires were sent to 10 London insurance brokers, 25 local brokers, 2 overseas reinsurers (appendix 3), 3 Local reinsurers (appendix 4), 50 private consumers of insurance (appendix 5), the Director of Insurance (appendix 6), the Central Bank of Nigeria (appendix 7), 4 overseas actuaries (appendix 8) and the UNCTAD Secretariat (appendix 9). In addition a cross-section of these groups was personally interviewed by the researcher. Five research assistants were employed for a period of 4 weeks to assist mostly with reminders.

Dr. Karl Reichel, the Federal Government's consultant on insurance matters from June 1966 to December 1970 was interviewed in Lagos in September 1979 during his one-week long visit to Lagos in connection with the 10th anniversary celebration of NICON. One major outcome of this meeting is that he agreed to despatch to the researcher copies of his diary during his official duty in Nigeria. The documents have proved to be very valuable in elucidating the problems of the insurance industry in Nigeria.

1.4.7 Analysis of the Findings

Appropriate analytical procedures were developed and incorporated into part 4 of the thesis (chapters 10 and 11).

1.5 Outline of Thesis Structure

The work is arranged in 5 parts. In the first past, the overview of insurance in Nigeria is presented (chapters 2 and 3). Next, the principles and objects of government policy regarding the insurance industry are examined (chapters 4,5 and 6). Then, we take an exhaustive look at the measures which have been employed by the state to monitor and control the industry (chapters 7,8 and 9). Furthermore, we turn our attention to the impact and evaluation of policy (chapters 10 and 11). Finally, we gather the conclusion in the last chapter.

1. 6 Notes

1. See Insurance Companies Act 1961, Marine Insurance Act 1961, Insurance (Miscellaneous Provisions) Act 1964, National Insurance Corporation of Nigeria Act 1969, Companies Act 1969, Insurance Act 1976 and Nigeria Reinsurance Corporation Act 1977.

2. See, however, Hurren (1964).

3. This study was a reaction to the Gower Report (1984) and Government proposals based on it (White Paper, Financial Services in the UK, 1985).

4. See Tapp (1966) also.

5. The same conclusion has been arrived at by Cummins and Harrigton (1987), Finsinger (1983), Ippolito (1979), Joskow (1973), O' Connor and Carlson (1979), Pauly, Kunrenther and Kleindorfor (1986), Samprone (1979), Witt (1973 and 1978). Witt and Miller (1980 and 1981). Witt and Urrutia (1983), etc.

6. See Nigeria (1976).

7. See 1976/77 Budget Broadcast.

8. See Akinkugbe (1976) Akintola-Bello (1985), Anifalaje (1986), Durojaiye (1981), Irukwu (1978), Ojo and Adwunmi (1982), Okigbo (1981), Omoruyi and Demuren (1980), Olawoyin (1985), Oretuyi (1978/79), Oyejide and Soyode (1976 a & b), Ozomah (1972 & 1976), and Smith (1981).

9. See Nigeria (1960, 1964, 1976 and 1986). Also, Reichel (1966 - 70).

PART ONE

OVERVIEW OF THE NIGERIAN INSURANCE INDUSTRY

CHAPTER 2

EVOLUTION OF INSURANCE IN NIGERIA

2.1 Introduction

Following the pattern of economic development perceived by Rostow (1961), the evolution of insurance in developing countries might be considered to pass through three stages before finally reaching the stage of maturity. In the first instance, the insurance industry in these countries passes through a "colonial phase" which is characterised by foreign ownership of the business catering for the needs of a very restricted market basing its operations on foreign laws and practice. The second stage is the "transitional period." During this phase, the national economy develops and so insurance becomes more productive and expands into various fields, accompanying other economic activities. The local business community, becoming conscious of the opportunities of insurance as an investment, penetrates the insurance industry by the formation of new companies. Severe competition ensues, leading to horizontal spread of the limited technical know how. It is at this point in time that government intervenes to control insurance activities. The third stage witnesses the "take-off stage" which fosters the development of insurance business in the light of national planning. During this period local companies take the lead and state-owned companies dominate the market. The final stage is the "period of maturity" which shifts the attitude of business from product orientation to market orientation. During this period a large scale innovation takes place by the introduction of new forms of cover to achieve optimum consumer satisfaction. Instead of restricting their operations to service the commercial and industrial sectors, insurance policies are tailored to fit the individual consumer need (Sequeira, 1975).

This second chapter is intended to find out whether or not the development of the insurance industry in Nigeria broadly follows this pattern. It classifies the evolution of commercial insurance in the country under three major periods: the pre-independence period, roughly up to 1960; the decade following political independence which coincides with the First National Development Plan, 1962-69; and the present stage (since 1970) which witnesses the toughening of the framework of control and represents a radical change in government's attitude toward the control of the industry.

This classification demonstrates not only the usefulness of breaking down the story of a sector of the economy according to the established set of stages - of - growth but also dramatizes the uniformities in the sequence of modernization and the uniqueness of a nation's experience.

2.2 The Pre-independence Period, Up to 1960

2.2.1 Early Era of Insurance: General Agency Period

Although trade has occupied a prominent place in Nigeria's economic activity throughout its recorded history, the concept of insurance in its modern form was not introduced until the late 19th century (Barback, 1964) by the early British merchants who had established trading posts on the West Coast of Africa (Irukwu, 1978). They arranged insurance cover for the trading concerns on the London market. It was not long, in consequence of lengthy and unreliable communications, before some British insurance companies started to appoint merchants with whom they had been connected to act as their general agents with power of attorney to accept risk, issue policies, adjust and settle claims and generally to undertake all insurance transactions on behalf of their overseas principals. These agents consisted initially of expatriate banks and trading companies engaged in the importing and exporting business, and, later Nigerian traders and merchants of reasonable stature (Lijadu, 1981). Some of the notable agents are indicated in table 2.1.

Agents	Principals
Sir Mobolaji Bank Anthony	Law Union
BEWAC	Norwich Union
UAC	Northern Assurance
CFAC	White Cross
ENDB	Pearl Assurance

Source: IIN Conference Papers, Vol. II. (1973).

Table 2.1

Leading General Agents in the Colonial Era

Many of these representatives were so successful that they found it necessary to create insurance departments managed by an insurance specialist recruited locally or by an official sent out by the principal's office. As business developed, the general agents appointed sub-agents like accountants, lawyers, bank managers, motor dealers and the like in other parts of the country. In the case of the larger British insurance companies writing Nigerian business the agency system led eventually to the establishment of branch offices in Lagos and later in some other principal towns, with a network of agencies and sub-agencies throughout the territory (Barback, 1964). Although the general agency system has now disappeared, it was the foundation on which most of the expatriate insurance companies were built (Cadmus, 1973). As a matter of fact the pattern of development of the British insurance companies abroad, from agents to branches,was typical in many countries as in Nigeria (Raynes, 1964).

Whilst at least two British companies were known to have appointed agents in Nigeria as far back as 1900 (Lijadu, 1981), the Royal Exchange Assurance was the first to have a full branch office in Nigeria (Adeyemo, 1972), having established an agency with the lawyers, Irving and Bonnar in 1902 (Farnsworth, 1975). It set up an office in Lagos in 1921 (Nigeria, 1976) under the management of the late George Golding (Farnsworth, 1975) and until 1949 remained the only locally established company with an office in Nigeria (Farnsworth, 1975). Some overseas companies with a long-standing and substantial share of the market preferred to operate through the general agents. For example, as observed above, the Northern Assurance Company established an agency with the UAC. The National Employers Mutual had also appeared on the scene, again through a general agent, looking entirely after the motor insurance of civil servants (Farnsworth, 1975).

During these early days of agencies the insurance market was not an active one. Business consisted of marine cargo insurance for produce exports, a few fire and burglary insurances of personal and therefore non-commercial nature (Lijadu, 1981), bank mortgage security and a few motor insurances for the cautious According to McNestry (1973) it was unusual for any losses giving rise to a claim under fire policies to occur, and such was the state of the market that it took five years to complete the front page of the fire loss register.

The development of the business followed a fairly even course with few outstanding events. However, special impetus for the growth of insurance in this country was provided by the events described below.

2.2.2 Expansion of Insurance and Foreign Branch Establishments

A number of factors contributed to the early growth of insurance business in Nigeria.

First, the Second World War which projected Nigerians out of a colonial backwater into a modern world and became the outstanding instrument of social progress in West Africa (Crowder, 1962); the major factor was undoubtedly the great technological advances made in war time and the subsequent application of these advances to peace time uses, and the need for factories on a war footing to maintain output in the peace (McNestry 1973). Motor transport particularly was greatly increased; machinery sales and exports from Europe and the United States expanded; and communication by air became common practice. People travelled during the war and had effective contact with the current of ideas of the Western World; this led to the opening up of minds to new possibilities. And, after the war, there was a social upheaval leading to the formation of independence movements. In this atmosphere of leaping forward, of novelty and excitement, of energies released from war conditions, there began the idea of industrialisation in this country that continues today (Ogunlana; 1972). The implication of this national awareness for the insurance industry is that pressures were mounted by employees and trade unions for increased welfare benefits (Lijadu, 1981).

Second, government legislation in the forties and early fifties imposing liabilities on the public, for example, the Road Traffic Act of 1945 which came into force on 1 April 1950, and the Workmen's Compensation Act of 1940 (Farnsworth, 1975). The resultant increase in the volume of business led to a wild scramble by the general agents to appoint sub-agents throughout the country (Farnsworth, 1975).

Third, there was the need to finance the marketing of produce. Until a few years preceding Nigeria's attainment of political independence, a large number of the indigenous businessmen, with very few exceptions, were small traders. They were the middlemen between the farmers and the various buying agencies and the large, usually foreign organisations which exported produce overseas. They also had a small proportion of the distributive trade in respect of imported manufactured goods. During the early periods, as now, the banks which advanced them money always insisted on policies of insurance as security for the advances (Ogunlana, 1972).

The combined effect of these developments was to increase the volume of insurance business in Nigeria. This in turn encouraged more expatriate firms to establish branch offices in the place of the general agents and ended the domination of the market by the Royal Exchange Assurance Company for more than a quarter of a century.

In 1949, three companies, the Legal and General Assurance Society, the Norwich Union Fire Insurance Society (now merged with the Guinea Insurance Company) and the Tobacco Insurance Company (Nigeria, 1976), were registered to herald a sudden flood of companies establishing themselves throughout the 1950's (Barback, 1964). However, some overseas companies with a long-standing and substantial share of the market, such as the Northern Assurance Company, had continued to operate through agencies (Barback, 1964).

The domination of the Nigerian market by foreign companies was absolute between 1900 and 1949 (F.A.I.R., 1971). This domination was challenged in April 1955, when the Western Region Production Development Board awarded two insurance scholarships to Messrs Bode Ogunlana and K. A. Onala (Ogunlana, 1980), both of the Royal Exchange and both of whom well repaid their Regional sponsors. In 1959 the Federal Government gave six insurance scholarships (Ozomah, 1980) for two successive years

(Farnsworth, 1975). The recipients of these bursaries, N. A. Adewuyi, S. C. Oguniyi, A. O. Onifade, F. O. Ozomah, B. A. Lawson and O. Lijadu, to name a few, returned home from the United Kingdom to become major names in the Nigerian insurance industry (Lijadu, 1980).

The first indigenous insurance company to be established was the African Insurance Company formed in 1950 (Nigeria Re, 1979-80) by Dr. K. O. Mbadiwe (Farnsworth, 1975). The Nigerian General Insurance Company was incorporated on 21 April 1951 (Nigeria Re, 1979-80) followed by the Lion of Africa Insurance Company in 1952 (Barback, 1964).

The years 1949/50 marked the beginning of a period of expansion in the number of insurance companies operating on the market. In 1960, questionnaires were sent to 59 firms (Nigeria, 1964) operating in the industry. When the Lagos Stock Exchange was established in 1961 some of the insurance funds began to be invested in Nigerian industry for the first time (Barnack, 1964). Statistics on the insurance business for the year, 1960, are shown in tables 2.2 and 2.3.

2.2.3 <u>Insurance Intermediaries: Early Phase</u>

In the intermediaries sector, activities were also taking shape. The first expatriate firm of insurance brokers to establish in Nigeria was C.T. Bowring who arrived in 1955 (Nigeria Re, 1979-80) to handle the Costain's accounts (Farnsworth, 1975). They were soon appointed by the Nigerian Ports Authority to look into the insurance needs of the Corporation and recommended measures for improving their existing policies, which were issued direct to them by the insurance companies (Cadmus, 1973). The job must have been so well done that the government corporations like the Electricity Corporation of Nigeria, Nigerian National Produce Corporation, Nigerian Broadcasting Corporation, etc, soon appointed them as their brokers. In 1957, another expatriate firm of brokers, Glanville Enthoven, appeared on the market with 50 percent Nigerian participation in its shareholding (Cadmus, 1973).

	1960	1961	1962	1963	1964	1965	1966	1967	1968
Income:									
Premiums(net)	307	503	640	1,251	1,834	2,569	3,190	2,860	2,391
Other	4	29	36	239	268	246	351	485	664
	311	532	676	1,490	2,102	2,815	3,541	3,345	3,055
Outgoings:									
Claims(net)	16	44	63	132	203	233	503	515	411
Commission	32	72	80	171	271	279	387	233	289
Expenses	23	73	112	254	337	564	643	447	498
Other	2	4	2	10	12	35	163	625	737
Total	73	193	257	567	823	1,111	1,696	1,820	1,935

Source: Smith (1981)

₦£1 = ₦2

Table 2.2

Life Insurance in Nigeria (£₦'000)

		1960	1961	1962	1963	1964	1965	1966	1967	1968
Net Premium Income:										
	Fire	439	517	608	1,022	1,602	1,331	841	878	736
	Transport	83	79	112	242	264	235	134	157	149
	Motor	2,211	2,529	2,479	2,628	3,496	3,636	3,379	3,145	2,353
	Employer's	138	131	219	179	341	394	334	319	266
	Other	320	423	417	612	621	697	624	723	601
Other Income		70	88	68	107	95	210	340	252	297
Total		3,261	3,767	3,903	4,790	6,419	6,503	5,652	5,474	4,402
Net Claims:										
	Fire	122	171	154	233	436	312	185	212	184
	Transport	42	32	46	111	230	115	65	69	61
	Motor	1,249	1,452	1,420	801	1,489	2,041	1,732	1,695	1,266
	Employer's	95	64	120	56	171	233	165	219	98
	Other	118	169	232	202	255	270	249	299	188
Other Outgoings		1,136	958	1,201	1,603	2,104	2,455	2,983	2,180	3,066
Total		2,762	2,846	3,173	3,006	4,685	5,426	5,379	4,674	4,863

Source: Smith (1981)

₦£1 = ₦2

Table 2.3

Non-Life Insurance in Nigeria (£₦'000)

In the meantime, the Braithwaite brothers, T. A. and B. A., together with Sonny Odogwu were gaining their ACII's in London at their own expense. They returned to Nigeria in 1952 (Braithwaite, 1980) duly qualified, and in 1957 (Nigeria Re, 1979-80) set up their respective broking firms and within a short time were placing the business of, and sharing the commissions, on, all the quasi-government business previously placed by C.T. Bowring. Meanwhile, Chief John Akin-George, and Thomas Insurance Brokers stood by hoping for similar participation (Farnsworth, 1975).

The initial period of the indigenous brokers had problems, since like any new venture, they had to learn by trial and error. They controlled only a small proportion of the market, but the breakthrough came when following the country's independence the Federal Government's corporations' accounts formerly held by the expatriate firms were taken over by the Nigerian brokers (Cadmus, 1973).

It is a matter for regret that some of the indigenous brokers did not live up to expectation in that they adopted poor business practices (chapters 5.4.2 and 9.3.1) and this failure which could be attributed to many factors did tarnish their reputation within and outside the insurance industry. The failure of the brokers in this instance, must have influenced the decision to cut them off from the insurances of all Federal Government corporations and place them direct with the National Insurance Corporation of Nigeria (NICON) when it was formed in 1969 (Cadmus, 1973).

2.3 Transitional Phase: 1961-1969

2.3.1 Nationalism and Economic Expansion

This section looks into the decade following the attainment of independence by Nigeria in 1960.

The struggle for, and attainment of political independence provided the catalyst much needed to accelerate the pace of economic and social development. Despite the absence of a large indigenous capital owning class in Nigeria prior to 1955 (Akeredole-ale, 1978), the period immediately preceding national independence was one of momentum gathering for the entire economy (Lijadu, 1981). The small traders of the pre-independence years had, in partnership with foreign investors, or, in some cases, single-handedly, been transformed into large commercial undertakings (Lijadu, 1985). This situation resulted in an extremely rapid rate of economic development. In this atmosphere of leaping forward, the nation was gripped by a new kind of political and economic nationalism (Lijadu, 1981) and recognised the importance of indigenisation of the commercial and industrial sectors. Thus, the erosion of the domination of insurance services by private foreign investment had begun. The development of the oil industry in Nigeria further helped the rapid industrial growth which consequently produced the need for very specialised insurance services that were previously unknown in the country (Majundar, 1982). The "colonial phase" of the insurance industry was on its way out and the "transitional phase" was emerging.

2.3.2 Control of Insurance Industry: The Changing Pattern

Shortly after Nigeria's attainment of political independence, an increasingly large number of indigenous companies commenced their insurance business. The pattern of ownership rapidly changed from foreign owned companies to indigenous companies. In 1963, there were about 48 foreign owned companies as against 13 indigenous (Barback, 1964) whereas, in 1971 there were 45 indigenous companies as against 20 expatriates operating on the market (Ogunshola, 1973).

During this transitional period special impetus was provided through government intervention in the market. Legislative provisions have imposed various insurable liabilities on the public, for example, the Road Traffic and Workmen's Compensation Acts (section 2.2.2). The Federal and State Governments embarked upon various development programmes and the gigantic reconstruction programmes necessitated by the end of the 1967-70 civil war (Nigeria, 1970). They participated directly in the insurance business by establishing their own companies in order to provide leadership in the insurance market. During the 10 year period, 1960 to 1969, various legislations were promulgated, viz. Insurance Companies Act 1961, Marine Insurance Act 1961, Insurance (Miscellaneous Provisions) Act 1964, Companies Act 1968, Insurance Companies Regulations Act 1968 and the National Insurance Corporation of Nigeria Act 1969 (chapter 7.3). All these actions produced the much needed catalyst for accelerating the pace of the development of the insurance industry in Nigeria.

Statistics on the size of the market and of its different classes for the period 1960-1968 are published in different issues of the Annual Abstract of Statistics. These are summarised in tables 2.2 and 2.3.

The transitional phase, thus, witnessed an increasing adoption of direct control mechanisms, a changing situation which was the inevitable result of the growing belief that effective control of the economy must necessarily accompany the achievement of political independence. Furthermore, official policy, enshrined in the First National Development Plan, encouraged partnerships between foreign private industrial enterprises and the various Nigerian governments, as well as the development of government owned corporations operating industrial concerns (Usoro, 1977). The period of the civil war, 1967-70, particularly witnessed sustained governmental direct control measures of industry. The immediate explanation of this is that the experience of the war and the need for postwar reconstruction jolted the government into tightening up the system of control necessitating the streamlining of the legal framework of the country to facilitate effective and efficient control and management of the economy through administrative action (Teriba and Kayode, 1977).

2.4 The Present Phase (Since 1970)

2.4.1 Economic Development: Public Policy

In the previous stages no policy perceived the ownership and control of industrial enterprise in its aggregate form as being essential to planning nor by implication took cognizance of the difference between the objective of foreign private enterprise and that of the Nigerian economy. In the present take-off phase, these weaknesses are recognised by policy. While, for example, the private sector had hitherto led the public sector in the drive towards industrialisation, policy had bridged the gap between the two sectors. In doing so, foreign private investment could no longer be given unqualified guarantees against nationalisation (Usoro, 1977). Indeed, in this present phase, policy maintains that it is vital for government to acquire and control on behalf of the Nigerian economy, the greater proportion of the productive assets of the country (Nigeria, 1970). "The Federal Government will, therefore, occupy the commanding heights (of the economy) in the quest for purposeful national development" (Nigeria, 1970).

In the Second National Development Plan, 1970-4, industry was accorded "the highest order of national priority" (Nigeria, 1970) because, according to the Plan document, industrial growth had "become a crucial factor in the pace and pattern of Nigeria's general development" (Nigeria, 1977). The fact was also recognised that industry had "moved from the periphery of the country's growth mechanism to a potentially dominant position as an important engine of economic transformation" (Nigeria, 1970).

The document emphasized that government would encourage nationwide equity participation in all industries as a matter of general policy. Shares were to be allocated to the Federal Government, the state in which a particular industry was located, other states and to Nigerian nationals willing to participate in industrial development. The execution of this policy was to be carried out by joint participation with private enterprises (foreign or indigenous) and as occasion demanded, through complete government control or exclusive public ownership of very strategic industries.

The policy of the Federal Military Government to participate in a number of strategic industries was implemented. The first method adopted was by setting up its own institutions; the second was by participating in the equity holdings of viable foreign owned enterprises. Both approaches were adopted for the most sensitive sectors of the economy namely, mining, banking and insurance (Aje, 1978).

2.4.2 Insurance Industry: Public Policy

As regards insurance business, government had established NICON as far back as 1 July 1969 (chapter 8.3). Despite this action, the insurance business was still dominated by expatriate companies. Although there were only 15 foreign owned companies out of a total of 74, they nonetheless still controlled 80 percent of the total insurance business as at 1970.[1] Therefore, in an effort to balance the ownership structure and in pursuance of its policy to indigenise the key sectors of the economy, government decided in November 1973 (Shuwa, 1977) to participate in the equity holdings of all viable foreign owned insurance companies operating in the country. By the end of 1976, government had acquired not less than 49 percent of the shares of each expatriate company except those where there was a substantial Nigerian shareholding (chapter 8.2). As a matter of fact, the range of government participation in these insurance companies was between 44 to 49 percent (Agbaje, 1975). By the provisions of the Nigerian Enterprises Promotions Act of 1977, indigenous participation in the expatriate companies was raised to 60 percent.[2]

Other areas in which government took positive action are in the promotion, supervision and control of the insurance industry. The task of improving the poor image of the industry (chapter 5.3) and of professionalising the business appeared extremely important. This is essential because of the special or peculiar nature of insurance transactions and the responsiblity of government to protect the interest of members of the insuring public against exploitation by unscrupulous insurers (chapter 4.2). The corrective actions which took place included the lawful establishment of insurance companies, brokers and agents. To this end, government passed the Insurance Act of 1976, which laid the foundation for financial stability in all the insurance companies and provided machinery for their effective control and supervision (chapter 7.6). The Act has removed existing anomalies, checked the mushrooming of insurance companies and fostered a high standard of insurance practice in the market. The localisation, by section 46 of the Act, of insurance of imports is a unique feature of this present stage and is aimed at the conservation of Nigeria's foreign exchange on the one hand and at providing a solid boost to the market on the other (Okwor, 1978). Such a step has forced the market to develop adequate manpower with proper expertise to cope with the changed situation (Irukwu, 1979).

Having passed the insurance control law, government ensured its swift enforcement. Plans were quickly devised to reorganise the Insurance Department of the Federal Ministry of Trade, so that the section which had been hitherto understaffed would be able to perform adequately and effectively the functions of ensuring that the insurance companies conduct their business in the best interest of the insuring public and of the national economy (chapters 7.6 and 8.3.2).

One of the most important developments in recent times on the Nigerian insurance market is the growing interest of government in the business of reinsurance. Until recently, foreign reinsurers, mainly from Europe, used to dominate this class of business. Even other parts of the world, especially some Third World countries, established a business tie with Nigeria on account of the country's reinsurance (Majundar, 1982). As an aid to conserve foreign exchange and provide the infrastructure for increased retention of business on the domestic market, government promulgated on 14 June 1977 the Nigeria Reinsurance Corporation Act[3] which established Nigeria Re. A bold step by government in its insurance control measures, the Corporation commenced business on 1 January 1978 (Nigeria Re, 1979). One of the most important changes that took place on the market during this period is the Corporation's new role to accept 20 percent compulsory cessions of all policies of insurance issued by every registered insurer operating on the market apart from participating in the treaties written by the insurance companies (chapter 8.3).

The establishment on 1 January 1978 of Africa Re under the auspices of the Organisation of African Unity (OAU) is another momentous development in the insurance scene in the late 1970's (chapter 8.3). It participates in the treaties of all member companies in Africa to provide extensive local retention capacity (Nigeria Re, 1979).

The present stage has thus exhibited the features of the "take-off phase." The market is greatly boosted by legislative provisions for compulsory insurance; state owned companies have come into existence again, with the indirect effect of boosting the insurance business; new legislation is passed with a view to indigenising the insurance industry and providing a strong financial base for the insurance companies and ensuring a high standard of insurance practice in Nigeria.

As a result of these developments, some progress has been made by the insurance industry during the take-off phase. Smith (1981) reveals "the very visible evidence of a market growing in real terms." This picture is confirmed by table 2.4 which shows an industry growing faster than the whole economy. Between 1975 and 1984, the total gross domestic product (GDP) was growing at an average annual rate of approximately 12 percent while the industry was growing at an average annual rate of 22 percent. When the premium figures and the GDP figures are corrected to take account of the rate of inflation over the period, the real growth rate of the industry and athat of the economy would be considerably lower.

Class of Business	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	Growth Rate 1975–1984 p.a.
Non-life:											
Fire	20.75	26.5	30.6	43.8	54.8	58.9	70.7	88.9	98.3	113.1	+21.18
Motor	49.4	75.9	103.9	113.7	104.7	109.7	135.5	147.8	140.0	152.6	+14.79
General Accident	15.9	32.4	52.9	66.5	70.6	107.6	143.6	134.7	137.4	151.1	+31.21
Marine & Aviation	11.4	19.4	53.3	82.1	65.4	85.2	103.5	117.2	74.1	75.6	+34.32
Total Non-life	97.6	154.2	239.9	306.0	295.4	361.3	453.3	488.6	449.8	492.4	+21.64
Life	25.7	34.5	50.9	65.3	69.1	95.9	121.9	122.8	145.0	165.3	+23.84
Total GPI	123.3	188.7	290.8	371.3	364.5	457.2	575.2	611.4	594.8	657.7	+22.05
Total GDP (Current Prices)	20,957.1	26,655.6	31,283.4	34,002.2	41,974.7	48,538.6	50,658.3	53,859.4	53,347.2	55,249.2	+11.74

Sources: (1) N.R.: Insurance Year Book 1985

(2) Central Planning Office

Table 2.4

Gross Premium Income of Insurance Companies in Nigeria, 1975 to 1984

(Naira Million)

The contribution of each submarket to the gross premium income varies from year to year as table 2.4 shows.

2.5 Conclusion

The evolution of the insurance industry has been considered under three distinguishable phases: the colonial era, the transitional phase and the present stage.

As we witnessed above, the "colonial period" was dominated by European firms which virtually held the monopoly of this sphere of economic activity over the vast continent of Africa and vast sums generated from the business of insurance were transferred to their home-base and therefore unavailable for local investment. There was hardly any effective indigenous endeavour in this field of business and equally absent was any adeqyate local control over the activities of insurance operators. However, the process of gradual but solid development and diversification of the business began after the Second World War.

The second phase witnessed a definition of priorities and, therefore, of the guidelines for sustained government action, the intention of government to enable Nigerian businessmen to control increasing portions of the Nigerian economy became enshrined in the First National Development Plan. There was an increasing adoption of direct control measures which encouraged partnerships between foreign and local investors as well as the development of government companies operating industrial concerns.

In the present phase, policy is focused on indigenising the insurance industry. Hence the banning of exclusive ownership of insurance companies by foreigners, the introduction of compulsory reinsurance with Nigeria Re and Africa Re and the creation of the monopoly of government business by NICON and other state owned companies. Therefore, the distinguishing feature of this stage in the words of UNCTAD (1981) is "near-or-full monopolies of the domestic market, compulsory cessions of reinsurance and discrimination in favour of national companies." This feature including the lack of technical insurance expertise makes the market very dependent on both the underwriting capacity and, even more, the expertise of the insurance markets of the developed western countries.

2.6 Notes

1. See New Nigerian (25/3/70 and 28/1/74).

2. See item 20 of Schedule Two to the Nigerian Enterprises Promotion Act 1977.

3. See Decree No 49 of 1977.

CHAPTER 3

MARKET STRUCTURE IN THE NIGERIAN INSURANCE INDUSTRY

3.1 Introduction

In this chapter, the important aspects of industry structure such as the types and number of firms, the size distribution of firms, the trend in market concentration, the inequality in the size distribution of firms and other important aspects of size of firm structure which are vital for public policy, are examined. The purpose is to demonstrate the relevance of the methodology of the economics of industrial organisation, particularly the market structure framework, to the understanding of the problems of the insurance industry, the conduct and performance of firms operating in the industry and the implications for government regulation of the industry. The contention is that the application of the analytical techniques employed in the economics of industrial organisation does provide a fruitful insight into the economic problems of the insurance industry and the consequences of government regulation of the industry.

The discussion is conducted in three parts. In the first section, the concepts and hypotheses of the economics of industrial organisation are analysed. The second section utilises some of the concepts to explain the structure of the Nigerian insurance industry. The final part draws out the implications of the structural approach for the public regulation of the industry.

3.2 The Methodology of Industrial Organisation

The postulate of the economics of industrial organisation is that every industry or market has certain definable characteristics (Scherer, 1980). These are: the structural features, a pattern of behaviour or conduct of the participants in a market and the performance of the industry or market. Of central interest is the relationship between three features of a market. While the structure of a market or industry is determined by its underlying technology, the hypotheses assert that the structural features of an industry influence the behaviour of firms in the industry and the prices, costs, profits and innovation activity, etc, resulting in its market (Shepherd, 1979 and 1972). The direction of the relationship is not entirely from structure to conduct and performance. Both conduct and performance of firms in the industry can also affect the structure of the market. What then are the attributes of structure, conduct and performance?

3.2.1 Structure - Conduct - Performance Paradigm[1]

Structure represents the relatively more permanent and persistent features of the market environment that are not easily changed by short-run business decisions or the more stable and exogenous environmental forces surrounding the firms in an industry. The basic elements of market structure include the number and size distribution of sellers and buyers, the combined market shares of leading firms creating the conditions of oligopoly, the conditions for entry into the industry, the nature of the product (differentiated or homogeneous, etc), cost conditions and technology and the type and degree of vertical integration which exists.

Conduct or behaviour of firms in the industry refers to the patterns of internal decision making and interactive behaviour that the firms develop. Attributes of conduct cover such factors as: collusion among the competitors regarding price or volume of output; exclusive contracts; and price discrimination. The behaviour of firms in the industry can range from purely competitive or price-taking behaviour by firms constrained by atomistic structural conditions, to the typical maximising behaviour of a single monopolist.

Conduct plays a central role in the determination of market structure. The behaviour pattern chosen by firms is heavily dependent in the short run on the market structure that surrounds them, but with important random components. Conduct patterns, however, can feed back and influence market structure in the long run.

Performance relates to the results of the operations of an industry or market. The most commonly used tests of performance include profit levels or the rate of profit. Low profit rates indicate poor performance because of high management expenses or low demand. Others include the rate of growth of the industry, the flexibility of prices in relation to costs, the size of selling costs in relation to other opportunities for competitive performance, the propensity to innovate, to adopt improvements in technology, and to pass the benefits along to buyers, the utilisation of capacity, and the responsiveness of investment flows to profit opportunities.

These classifications are not watertight. There is considerable overlapping between the indicators. In fact, it may be difficult to classify a particular attribute as belonging to structure, behaviour or performance.

3.3 Market Structure in the Nigerian Insurance Industry

In the light of the above discussion of the structure-conduct-performance framework, it is possible to apply these concepts to explain the structure of the insurance industry in Nigeria. In the main, one seeks to answer the following questions: What types of firm operate on the market? What is the size distribution of firms in the industry? What has been the trend of change, if any, in the size-of-firm structure? What is now the average size of firm? How unequal is the size distribution of firms in the industry? Is entry into the industry by potential entrant firm easy? How important is the barrier to entry into the industry?

The analysis of market structure in the insurance industry excludes the large number of intermediary firms who act as agents and brokers. In 1985, there were about 180 registered insurance brokers and 10,000 licensed insurance agents. However, the analysis will concentrate on the registered insurance companies and exclude the intermediaries. This is not to say they are unimportant in market structure analysis. On the contrary, they can substantially affect the competitive conditions in the industry particularly when one considers the vertical elements of market structure; in particular, the effect of vertical integration on market concentration and hence as en entry barrier (Carter, 1979).

3.3.1 Type - of - Firm Structure

The firms operating in the Nigerian insurance industry can be classified in a number of ways. The first is the way authorisation affects the nature of business written by the companies. Firms operating on the market are currently regulated by the Insurance Act of 1976 (chapter 7.6). Under the Act, the Director of Insurance is given power to issue authorisation to companies wishing to carry on insurance business in Nigeria and able to comply with the requirements of the Act.

It divides insurance business into two main classes[2] life and non-life businesses. Non-life business is further sub-divided into fire, accident, motor vehicle, workmen's compensation, transport and miscellaneous insurance businesses. It is further provided that no organisation shall carry on any class of business unless it is a company duly incorporated as a limited liability company under the Companies Act of 1968, a cooperative insurance society registered under any enactment or law relating to co-operative societies or a mutual insurance company.[3]

Two bases of classification can be derived from authorisation. The first is the function of the firms, that is, the insurance business they write. Thus, it is possible to distinguish between life and non-life companies. According to the List of Registered Insurers issued by the Insurance Department in the Federal Ministry of Finance on 3 June 1985, 4 insurers were authorised to write life only business, 59 non-life business, 21 all classes of insurance business and 1 non-life reinsurance. Table 3.1 shows the distribution of insurance companies over time. In 1969, life only companies accounted for 22 percent of the total number of firms. This percentage has since steadily declined to about 4 percent in 1985. Although the percentage share of non-life companies was 48 percent in 1969, by 1985 it had risen to over 70 percent. As for the composite companies their proportion of the total was 30 percent in 1969, declining to about 25 percent in 1985. It is thus clear that whilst the percentage shares of the life only and composite companies are declining, the group of non-life companies has become predominant (about 70 percent in 1985).

The control law[4] says that life insurance business and non-life business shall be subject to separate application and registration. Traditionally pure life offices have been less common than composite offices, but under current provisions, most new companies specialise in non-life business (usually motor vehicle insurance) because of the lower capital requirement.[5] The present position, therefore, is one where the number of companies which write life only business or which write both life and non-life business is a diminishing proportion of the total number of firms active on the market. However, an indication of the importance of the composite companies in the industry's structure is shown in table 3.2. Of the top ten companies operating on the Nigerian insurance market in 1982 eight are composite companies while the remaining two are non-life companies.

Year	Life	Non-life	Composite	Total
1969	6(22)	13(48)	8 (30)	27
1970	7(16)	26(80)	10(23)	43
1971	6(11)	38(72)	9(17)	53
1972	8(12)	43(66)	14(22)	65
1973	9(13)	44(63)	17(24)	70
1974	9(13)	41(59)	20(29)	70
1975	9(13)	43(62)	17(25)	69
1976	6(10)	37(62)	16(27)	59
1977	6(10)	38(64)	15(25)	59
1978	6(9)	42(67)	15(24)	63
1979	3(4)	48(68)	20(28)	71
1980	3(4)	48(67)	21(29)	72
1981	3(4)	53(69)	21(27)	77
1982	3(4)	60(71)	21(25)	84
1983	3(4)	62(72)	21(24)	86
1984	3(3.4)	64(72.7)	21(23.9)	88
1985	4(4.71)	60(70.6)	21(24.7)	85

Source: Insurance Dept., Federal Ministry of Finance
Figures in parentheses show percentage distribution

Table 3.1

Distriubtion of Insurance Companies by Type of Business, 1969 - 1985

Rank	Name of Company	Class of Business
1.	NICON	Life and non-life
2.	UNIC	Non-life
3.	Royal Exchange	Life and non-life
4.	Great Nigeria	Life and non-life
5.	Lion of Africa	Life and non-life
6.	American International	Life and non-life
7.	Guinea Insurance	Life and non-life
8.	Sun Insurance Office	Life and non-life
9.	NEM Insurance	Life and non-life
10.	Phoenix Insurance	Non-life

*In terms of gross premium income

Source: Nigeria Re's Nigerian Insurance Year Book (1984)

Table 3.2

Top Ten Companies by Size*, 1982

The second basis for classification arising from authorisation is entity, that is, the type of 'person' authorised operate as insurer. All the firms are limited liability companies. National Co-operative Insurance Society of Nigeria and Worldwide Insurance Company, although owned by co-operative societies, are operated like the other insurance companies. Only two of the firms, NICON and Nigeria Re, came into being by Acts of Parliament (chapter 8.1) and between them now (1985) control about one third of the premium income of the industry.

There are other bases for classification. A distinction can be done between indigenous and foreign associated companies. Although the domination of the industry by expatriate companies was absolute up to 1949 (chapter 2.2), by the time of Nigeria's independence in 1960, this monopoly had been broken by the entry of indigenous companies. In 1969, the latter accounted for 22 percent of the total number of firms (table 3.3). Ever since, the percentage has been rising inexorably. In 1969, foreign owned companies constituted 63 percent of the total number of the insurance offices. This virtual domination was completely removed in the 1970's by the indigenisation actions of the government leading to the elimination of exclusive ownership of insurance companies by foreigners (table 3.4).

As well as the distinction between Nigerian owned and foreign owned companies, there are further differences between Nigerian owned companies. Of the 69 Nigerian owned companies operating on the market in 1985, two are owned by the Federal Government, and 14 by the various State Governments (table 3.5). There is a tendency for each government in the federation to own its own insurance company or bank, implying that the number of state owned companies will be on the increase.

Year	Nigerian	Joint	Foreign	Total
1969	5 (18.5)	5(18.5)	17(63)	27
1970	22 (51)	5(12)	16(37)	43
1971	33 (62)	5(9)	15(28)	53
1972	41(63)	13(20)	11(17)	65
1973	44 (63)	14(20)	12(17)	70
1974	47 (67)	16(23)	7(10)	70
1975	46 (67)	16(23)	7(10)	69
1976	40 (68)	15(25)	4(7)	59
1977	39 (66)	20(34)	nil	59
1978	44 (70)	19(30)	nil	63
1979	52 (73)	19(27)	nil	71
1980	53 (74)	19(26)	nil	72
1981	58 (75)	19(25)	nil	77
1982	65 (77)	19(23)	nil	84
1983	67 (78)	19(22)	nil	86
1984	69 (78)	19(22)	nil	88
1985	66 (77.65)	19(22.35)	nil	85

Source: Insurance Dept., Federal Ministry of Finance
Figures in parenthesis show percentage distribution

Table 3.3

Distribution of Insurance Companies by Ownership (1969-1985

Whilst most of the indigenous companies are privately owned, none of the firms operating on the market is publicly quoted on the Lagos Stock Exchange with the result that insurance shares are not widely owned by the investing public.

A final distinction to be noted is that between specialist reinsurers and ceding offices. Of the 85 insurance companies authorised to operate on the market in 1985 only three wholly specialise in underwriting reinsurance risk. The first is the Federal Government owned Nigeria Re which came into being in 1978 to receive the 20 percent compulsory cessions of all policies issued by all registered insurers on the market (chapter 2.4). The second, the transnational Africa Re, similarly established in 1978 and owned by member countries of the OAU, accepts the 5 percent cessions of all treaties written by member companies (chapter 2.4). The third, the Universe Reinsurance Company, a private sector firm, which was licensed to transact non-life reinsurance business on 12 December 1984. The existence of these specialist reinsurers does not however stop the ceding offices from exchanging facultative reinsurance between themselves and placing business above their retentions with specialist reinsurers on the reinsurance market of the world.

3.3.2 Number-of-Firm Structure

The number of firms is a clear indicator of the growth and development of the industry. It also provides evidence of a dynamic market structure. There is no doubting it that the number of firms has increased over the years and, in addition, some of the entrants have grown so rapidly in terms of premium income that many are little smaller than some of the major long-established firms.

Name of Company	Existing No of Directors	% of Foreign Participation		% of Private Nigerian Participation		% of Federal Government Participation		% of State Government Participation	
		%	No of Directors	%	No of Directors	%	No of Directors	%	No of Directors
American International	7	40	3	–	–	49	3	11	1
British American	7	40	3	–	–	49	3	11	1
Crusader Insurance	7	40	3	–	–	49	3	11	1
Guinea Insurance	12	40	5	24.18	3	24.82	3	11	1
Law Union && Rock	6	40	2	9.90	1	39.10	2	11	1
Lion of Africa	6	40	2	45.00	3	4.00	–	11	1
Mercury Insurance	8	10	1	41.00	4	49.00	3	–	–
N.E.M. Insurance	7	40	3	–		49.00	3	11	1
New India Insurance	6	40	2	–		49	3	11	1
Royal Exchange Assurance	9	40	4	2.00		47	4	11	1
Sun Unsurance Office	5	40	2	–		49	2	11	1
UNIC	9	40	4	20		48.80	4	11	1
UNLIC	3	40	3	6.54		42.46	3	11	1
West African Provincial	6	40	2	15.60		33.40	2	11	1

Source: Insurance Dept., Federal Ministry of Finance

Table 3.4

Federal Government Participation in Insurance Companies in 1985

Federal Government Companies	Companies Owned by State Governments
1. NICON	1. Great Nigeria (Odua Group)
2. Nigeria Re	2. Nigeria General (Odua Group)
	3. Bendel Insurance (Bendel State)
	4. Trans Insurance (Oyo)
	5. Lagos State Assurance (Lagos)
	6. Gateway Insurance (Kwara)
	7. Universal Insurance (Imo & Anambra)
	8. Manilla Insurance (Cross River)
	9. Rivbank Insurance (Rivers)
	10. Kapital Insurance (Kano)
	11. Confidence Insurance (Ondo)
	12. Nigerian Victory Assurance (Kano)
	13. Savanna Insurance (Plateau)
	14. Yankari Insurance (Bauchi)

Source: Nigerian Reinsurance Corporation: "Nigerian Insurance Year Book, 1984."

Table 3.5

Classification of Government Companies

Year	Number of Companies	Entry/Exit	Year	Number of Companies	Entry/Exit
1914-48	1		1973	71	2
1949	4	3	1974	77	6
1960	59	55	1975	77	0
1961	35	(24)	1976	70	(7)
1963	44	9	1977	59	(11)
1966	49	5	1978	63	4
1967	67	18	1979	71	8
1968	88	21	1980	72	1
1969	27	(61)	1981	77	5
1970	43	16	1982	84	7
1971	66	23	1983	86	2
1972	69	3	1984	88	2
			1985	85	(3)

Sources: 1. Conference Papers of the IIN

2. CBN Economic & Financial Review,

3. List of Registered Insurers,

Federal Ministry of Finance

Figures in parentheses represent exit from the industry.

Table 3.6

The Number of Nigerian Insurers, 1914 to 1985

Some evidence to support this view is given by table 3.6. The early period, 1914-48, witnesses the existence of only one company operating on the market. This is the Royal Exchange operating as an overseas branch. The period, 1949 to 1968, shows accelerated growth of the number of offices. In 1949, three companies, the Legal and General, the Norwich Union and the Tobacco, were registered to herald a sudden flood of companies establishing themselves throughout the 1950's. Although the number of these companies was 44 in 1963, by 1966 it rose to 49 and in 1968 it swelled to 88 (chapter 5.4).

The flourishing of over 70 companies, unregulated, led to the proliferation of indigenous companies, a situation which prompted the promulgation of the Insurance Companies Regulations in 1968. This set the pace for government intervention in insurance. It was therefore no surprise that the number went down to a bare 27 in 1969 because a number of expatriate as well as indigenous companies wound up their operations owing to the increasingly effective enforcement of the control laws. It did not take a long time for the companies to recover from the shock of government intervention. By 1970, the number had started picking up again reaching 71 in 1973. By 1975 it had climbed to 77.

The domination of the industry by foreign companies continued despite the formation of NICON in 1969 (chapter 5.4). Government, in order to remove this anomaly, decided to indigenise the industry. This action, together with the promulgation of the Insurance Act of 1976, led to the reduction of the number of insurance companies to 59 in 1977 (chapter 9).

Since 1976, the Insurance Department of the Federal Ministry of Finance has exercised stricter control of the insurance industry. This is a result of the wide powers conferred on it by the 1976 Insurance Act. It issues authorisation in respect of different classes of insurance business, and has published annually a list of companies authorised to write different classes of insurance. Using this information, table 3.6 shows the number of companies authorised to write business has shown a continued upward trend over the period 1977-85. Thus, whereas 59 companies were authorised to write business in 1977 by 1984 the number of authorisations had risen to 88 a percentage increase of 49 percent.

The reasons for the increasing number of companies are not far to seek. Firstly, the insurance industry has witnessed very rapid growth in recent years: it has produced an annual growth rate of over 25 percent compared with the nation's gross domestic product expanding at an annual average rate of less than 15 percent (table 2.4). This means that the industry can absorb many more new entrants. Secondly, the restrictive capital requirements of ₦300,000 to ₦800,000 are no longer a disincentive to a rapidly growing capital owning class. Thirdly, the educational and other related barriers have been virtually broken by the opening of more insurance teaching schools in the country.

3.3.3 The Size Distribution of Firms

One basic characteristic of the sizes of firms is their variation, ranging widely from the smallest to the largest. Firms with small shares are usually under competitive stress while those with large shares are likely to face less competitive pressures. Market share is the aim of the firm because the attainment of a significant share of the market is likely to be related to long term profitability. There is an hypothesised relationship between market share and the degree of profitability.

Table 3.7 shows the size distribution of companies in 1978 and 1982. An examination of table 3.7.1 shows that when size is measured in terms of gross premium income, there were in 1978 19 companies whose annual gross premium income was less than ₦1 million. These 19 companies between them earned a total of ₦10.8 million and accounted for about

2.9 percent of the total premium income in the industry. Companies in the size class of 1 million and 4.99 million (23 in number) together accounted for about ₦59 million of the gross premium income which is approximately 16 percent of the total. There were only six companies in 1978 earning over 15 million in gross premium income. These six companies altogether had a combined premium income of about ₦176 million which represents 47.3 percent of the total market. Companies earning between ₦5 million and ₦15 million in premium income were 15 in number and together accounted for 34 percent (₦126.4 million) of the gross premium income.

In terms of total assets, table 3.7.1 shows that there were 11 companies with assets over ₦15 million. These 11 companies had between them about 74 percent (₦314 million) of the total assets of the industry. Eighteen companies with assets less than ₦1 million had between them 2.2 percent (₦9 million) of the industry's total assets.

Size of Firms in Terms of Premium Income (₦'m)	Premium Income		Assets	
	Number of Companies	Amount (₦'m)	Number of Companies	Amount (₦'m)
Less than 1 million	19	10.8(2.9)	18	9.0(2.2)
1 - 4.9 million	23	58.64(15.8)	13	34.3(8)
5 - 15 million	15	126.4(34)	8	70.7(16.4)
Over 15 million	6	175.7(47.3)	11	313.5(73.4)
	63	371.5(100)	50	427 (100)

Source: Nigeria Re (1984)

Figures in parentheses show percentage distribution

Table 3.7.1

Size Distribution of Nigerian Insurers, 1978

This analysis of the size distribution of firms shows the dominance and importance of large (₦5 - 15m) and very large firms (above ₦15) in the insurance industry.

Has there been any change in the size distribution of firms in the industry? An analysis of table 3.7.2 will clearly enable us answer this question. What has happened four years later in 1982? The general pattern is clear. There is a tendency towards the greater importance of the very large firms. Firms earning over ₦15 million in premium income have increased their percentage share of the industry premium income to 60 percent. These firms, 10 in number had a combined premium income of ₦364 million. The proportion of premium income accounted for by the same size-class of enterprises in 1978 and 1982 were 47.3 and 60 percent respectively. The percentage share of premium income by companies in the same size-class of less than ₦1 million, has shown a downward trend from 2.9 percent of the total premium in 1978 to 1.5 in 1982. A similar trend is observable for companies in the other size-classes.

A comparison of the distribution of market shares between 1978 and 1982 shows that the largest sized firm has increased its dominance of the market from 15 percent in 1978 to 20.5 percent in 1982. There is a gradation of market shares. The size distribution tapers down from the largest firm out to a fringe of small ones. The degree of asymmetry varies but there is a great preponderance of the smallest sizes. The skewed distribution is typical.

The skewed size distribution shown in table 3.7 can be explained by a number of factors. The small number of large firms in the industry is explained by their longevity, most of the very largest companies having been in operation since the colonial period. By comparison, the very smallest firms are companies which only recently entered the industry. Where an insurance company is owned by the state or a group of commercial enterprises, it is bound to be large owing to the advantage of bulk-purchase. Examples of these companies (starting as captives) are the Great Nigeria and UNIC. The unusually large size of the leading company, NICON, is explained by government's economic policy which is to control the commanding heights of the economy (chapter 5.5). It is for this reason that government set up this Corporation in 1969 to handle the bulk of all insurances of the Federal Government and its projects. Since the Federal Government is the biggest spender, the biggest employer and the largest buyer of goods and services (Okwor, 1981), it is not surprising that a quarter of the country's insurance business is concentrated in the hands of NICON.

Apart from the use of the amount of annual premium income, there are other ways of measuring the size of insurance offices. These measures include aggregate sums insured in force, new business premiums, the size of the insurance funds, total assets, employment levels, etc. However, it does not really matter which measure of size is used since all measures turn out to be highly correlated with one another. Relative sizes based on sales will not differ markedly from relative sizes measured according to one of those variables. Thus, use of any one variable in describing the distribution of firm sizes will usually give about the same result as another variable.

Perhaps a good indication of the dominance of the large firms is to examine the proportion of the industry's output[6], sales or assets achieved by a small number of firms. This is a measure of concentration and is referred to as the concentration ratio: the commonly used measure of concentration.

Total Premium Income Category (₦'m)		Number of Companies	Total Premium (₦'m)
1.	N/A	10 (11.3)	0.0 (0.0)
2.	0 - 9.99	59 (67.0)	129.3 (21.1)
2.1	0 - 0.99	21 (23.8)	8.3 (1.5)
2.2	1 - 4.99	31 (35.2)	68.4 (11.2)
2.3	5 - 9.99	7 (8.0)	52.5 (8.6)
3.	10 -19.99	13 (14.7)	182.2 (29.8)
3.1	10 -14.99	9 (10.2)	117.9 (19.3)
3.2	15 -19.99	4 (4.5)	64.3 (10.5)
4.	20 -29.99	2 (2.2)	50.2 (8.3)
5.	30 -39.99	2 (2.2)	71.0 (11.6)
6.	40 -49.99	0 (0.0)	0 (0.0)
7.	50 -59.99	1 (1.3)	53.4 (8.7)
8.	60 -69.99	0 (0.0)	0 (0.0)
9.	70 -79.99	0 (0.0)	0 (0.0)
10.	80 -89.99	0 (0.0)	0 (0.0)
11.	90 -99.99	0 (0.0)	0 (0.0)
12.	100 -109.99	0 (0.0)	0 (0.0)
13.	110 -119.99	0 (0.0)	0 (0.0)
14.	120 -129.99	1 (1.3)	125.3 (20.5)

Source: Nigerian Insurance Year Book, 1984

Figures in parentheses show percentage distribution

Table 3.7.2

Size Distribution of Nigerian Insurers, 1982

3.3.4 Concentration in the Insurance Industry

Concentration refers to the combined market shares of the largest firms in the industry. More specifically it is the percentage share of sales, employment or capacity, accounted for by the largest three or four firms in an industry. There are many factors determining concentration and changes in concentration. These include economies of scale, the desire to restrict competition and gain market power, motivations of management, advantages of large-scale sales promotion, 'countervailing power', government intervention in industry and fiscal policy.

Concentration is an important element of market structure. Its effect on market behaviour and performance may be significant. The higher the level of concentration the greater the likelihood of monopoly practices and outcomes. However, certain economic benefits are possible in concentrated industries. Greater concentration may lead to greater economies of scale and faster industrial development. The rate of progressiveness, the propensity to innovate, and to adopt improvements in technology may be greater in industries with high degree of concentration.

Market concentration is a directly observable dimension of industry structure, enabling the reader to grasp the degree of inequality in the distribution of firms by size. Market concentration ratio, as commonly defined, is the percentage of total industry premium (or physical output, employment levels, value added, or assets) contributed by the largest few firms ranked in order of market shares. The easiest to calculate, the top 2, 4, 5, 10 or 20 firm concentration ratio, is most commonly used.

In this section we consider the degree of concentration in the industry at three selected dates and the changing relative position of the leading companies. The simplest picture of the degree of concentration in the industry is given by examining the cumulative percentage of the total premiums received by the top company, the top two companies, and so on. This is done in table 3.8.

Rank of Companies	1978	1980	1982
Top Company	55.03 (14.82)	90.57 (19.81)	125.33(20.50)
Top 2	99.16 (26.71)	135.40 (29.61)	178.68(29.23)
Top 4	144.65 (38.96)	184.71 (40.40)	249.69(40.84)
Top 5	160.17 (43.14)	203.73 (44.56)	277.00(45.31)
Top 10	226.88 (61.10)	281.00 (61.46)	364.22(59.58)
Top 20	296.68 (79.90)	373.28 (81.64)	492.01(80.48)
Total Premiums	371.31 (100.00)	457.22 (100.00)	611.36(100.00)
Total No of Companies	63	70	78

Sources: Nigerian Insurance Year Book, Nigeria Re.

Figures in parentheses represent cumulative percentage of premium income.

Table 3.8

Distribution of Nigerian Insurance Among the Top Companies on the Basis of Premium Income (Million Naira)

During 1978-82, there is a picture of a great degree of inequality in the sizes of firms operating in the industry. The 20 largest companies controlled 80.67 percent of the total gross premium income while less than 20 percent went to the remaining 50 companies. The top company has been the same throughout, namely NICON, whose preeminence is due to its monopoly of Federal Government insurance. The next two positions immediately following have been occupied the UNIC and Royal Exchange Assurance respectively. While there has been some jockeying among the companies for the remaining positions, there is no doubting it that the indigenised foreign subsidiaries dominate the top 5, the top 10 and the top 20 companies respectively. The explanation of this tenacity is their longevity and their international connections and experience.

It should be observed that on the basis of these figures, life and non-life business is less concentrated than life insurance business (tables 3.8 and 3.8.1). A further comparison can be made between life insurance and non-life insurance. The tables (3.8.1 and 3.8.2) show that there is more concentration of business in the hands of the top company as well as the 2 top companies in the case of non-life business. The situation is, however, reversed when the top 4,5,10 and 20 companies are considered. The clear cut feature is that the life business is more concentrated than the aggregate whereas non-life business is significatly less so.

The results depicted in table 3.8 show an increase in concentration between 1978 and 1982. In the first half of this four year period the increase was high but this reduced considerably in the second half. For example, the top company increased its share of the market by 33.67 percent in the first half. By the second half, this increase has been reduced to a mere 3.48 percent.

Rank of Companies	1978	1980	1982
Top Company	12.11 (18.56)	16.86 (19.63)	23.13 (18.89)
Top 2	21.50 (32.95)	28.33 (29.55)	36.97 (30.20)
Top 4	35.14 (53.85)	47.66 (49.71)	63.67 (52.01)
Top 5	40.60 (62.22)	55.81 (58.21)	74.88 (61.16)
Top 10	57.48 (88.09)	84.15 (87.78)	108.51 (88.63)
Top 20	65.09 (99.75)	95.71 (99.83)	122.26 (99.86)
Total Premium	65.25 (100.00)	95.87 (100.00)	122.43 (100.00)
No. of Companies	22	22	23

Sources As in table 3.8

Figures in parentheses are cumulative percentage of premium income

Table 3.8.1

Distribution of Life Insurance Among the TopZ

Companies on the Basis of Premium Income, 1978 - 82

(Naira Million)

Rank of Companies	1978	1980	1982
Top Company	50.86 (16.26)	83.81 (23.19)	115.29 (23.59)
Top 2	95.00 (31.04)	128.64 (35.60)	168.55 (34.50)
Top 4	120.66 (39.42)	168.22 (46.56)	227.44 (46.55)
Top 5	151.96 (49.65)	184.42 (51.04)	244.28 (50.00)
Top 10	201.23 (65.75)	240.58 (66.58)	314.80 (64.43)
Top 20	257.09 (84.00)	302.03 (83.59)	392.61 (80.36)
Total Premium	306.06 (100.00)	361.33 (100.00)	488.59 (100.00)
No. of Companies	56	65	75

Source: As in table 3.8

Figures in parentheses represent cumulative percentage of premium income.

Table 3.8.2

Distribution of Non-life Insurance

Among the Top Companies on the Basis of Premium Income,

1978 - 82

(₦' million)

In seeking to explain this phenomenon, we should note that the insurance industry has been growing rapidly. The aggregate gross premium income of the companies was ₦371.31 million in 1978, ₦457.22 million in 1980 and ₦611.36 million in 1982, representing an annual growth rate of 23.14 percent in the first half and 11.84 percent in the second half of the period. Although the market expanded appreciably in the second half, yet increase in concentration slowed down more appreciably. In the first half only four new companies entered the market whereas in the second half 10 new companies gained entry. This provides prima facie evidence of the absence of insurmountable barriers to entry into the industry. The fact that so many companies entered the industry within a short span of two years emphasizes that the concentration ratios prevailing were being tempered by the comparative absence of serious entry barriers. The inference from all this is that the greater the number of new entrants to the industry the lesser the tendency towards concentration.

The analysis of the changes of concentration is given greater emphasis by examining the top ten companies in 1978, 1980 and 1982. In tables, 3.9, 3.9.1 and 3.9.2, the leading ten firms are ranked in order of industry aggregate premium income, life premium income and non-life premium income.

Table 3.9 indicates at once that the undisputed leaders of the industry are NICON (the top company), UNIC (the second leading company), and Royal Exchange (the third leading company). The second feature is that the indigenised foreign subsidiaries dominate the top ten companies. Thirdly, there is a low rate of turnover since only one company (British American)left the group in 1980. Fourthly, below the level of the three leaders, there has been some jockeying among the companies. For example, Unity Life moved from the fifth position in 1978 to the bottom in 1980 and disappeared from the group in 1982. The Nigerian General left the bottom position in 1978 for the sixth in 1980, but had left the group by 1982 also.

Table 3.9.1 presents a different picture. This is because it mirrors life insurance which is subject to no other government control than fiduciary regulation. What immediately strikes one is that the three industry leaders on the basis of aggregate premium income lose their preeminent positions and are generally pushed down the ladder. Secondly, the foreign subsidiaries continue to maintain their domination of the group. Thirdly, no single company can claim to be the undisputed leader of the group. The changing of positions is evident. There is clearly no doubt that the companies in the group compete with each other.

Table 3.9.2 depicts the top ten companies transacting non-life business in respect of which government control is pronounced. It is therefore no surprise that the pattern revealed is once again in line with what table 3.9 portrays.

Rank	1978	1980	1982
1.	NICON	NICON	NICON
2.	UNIC*	UNIC*	UNIC*
3.	Royal Exchange*	Royal Exchange	Royal Exchange*
4.	Phoenix*	Great Nigeria	Great Nigeria
5.	Unity Life	Lion of Africa*	Life of Africa*
6.	Lion of Africa*	Nigerian General	American International*
7.	American International	Phoenix*	Guinea*
8.	Great Nigeria	American International	Sun*
9.	British American*	Guinea*	NEM*
10.	Nigerian General	Unity Life	Phoenix*

Table 3.9

Top Ten Life and Non-life Companies

Rank	1978	1980	1982
1.	British American*	Great Nigeria	Great Nigeria
2.	Great Nigeria	British American	American International*
3.	American International	Crusader*	African Alliance*
4.	Crusader*	American International	British American*
5.	UNCIC*	African Alliance	Crusader*
6.	NICON	NICON	NICON
7.	African Alliance	The Niger*	Bendel
8.	Royal Exchange*	Nigerian General	Royal Exchange*
9.	United Nigeria Provident	Royal Exchange*	The Niger*
10.	The Niger	UNLIC*	The Universal

Table 3.9.1

Top Ten Life Companies

Rank	1978	1980	1982
1.	NICON	NICON	NICON
2.	UNIC*	UNIC*	UNIC*
3.	Royal Exchange*	Royal Exchange*	Royal Exchange*
4.	Phoenix*	Lion of Africa	Lion of Africa*
5.	Lion of Africa*	Phoenix*	Guinea*
6.	Unity Life	Nigerian General	Sun
7.	Guinea*	Guinea*	Phoenix*
8.	Nigerian General	Unity Life	Law Union*
9.	New India*	Veritas	Unity Life
10.	Law Union*	Law Union*	Nigerian General

Source: Nigerian Insurance Year Book

*Indicates the indigenised foreign subsidiaries

Table 3.9.2

Top Ten Non-life Companies

3.4 Policy Implications

The main lessons of the analysis are as follows:-

First, the study gives us an insight into the nature and structure of the insurance industry in Nigeria. An industry in which firms of different categories operate freely must be regarded as healthy and dynamic. This has rich implications for the growth prospects of the industry.

Second, if we consider the evidence concerning the number of firms in the industry, the rising number of firms might cause us to deduce the industry to have become more competitive rather than less. Indeed, in so far as a large number of firms compete in the industry, then, the industry approximates (at least in terms of the number of firms) more to the perfectly competitive ideal than to monopoly.

Third, in terms of the size distribution of firms, the findings move in a different direction from the competitive model.[7] The size distribution of the firms for 1982 shows considerable skewness. Although the perfectly competitive model makes no presumptions about the size distribution of firms, one of the requirements of the model is that no firm should by its actions influence market price or have a significant share of the market. In terms of the latter the insurance industry in Nigeria clearly contravenes one of the requirements of perfect competition.

Fourth, the industry (in terms of total premium income or assets) is being increasingly dominated by larger firms and there are many small firms existing on the fringe of the market. There is, thus, an increasing trend towards high degree of concentration in the industry and the industry structure is that of a loose oligopoly. The oligopoly group are aware of their mutual interdependence but the interdependence is weak. In fact the existence of very small firms in the industry is a manifestation of the presence of oligopolistic conditions in the industry. This is because the established big firms have in most cases little to gain from the elimination of small firms which account only for a small part of the total market. To the big established firms, the continued existence of many small 'fringe' firms offers conclusive proof that there is no 'monopoly' in the industry, and in any collective representation they will appear as so many 'independent representatives' to support the policy of the leading firm.

Fifth, the turnover of firms, considered in terms of the displacement of the leading firms by newcomers is very low, at least over the sample period. This is evidence of relative absence of competition[8] in the industry inspite of the existence of a very large number of firms in the industry. But the picture of turnover rate within the leading-firms group is that of moderate shifts in market positions or ranks which might be taken as evidence of some competition among the leading firms. The incessant back-and-forth changes in market position further confirms the loose oligopolistic structure of the industry. The changes in market position might be an indication of the difficulty of forming any stable collusive understanding or agreement, since some of the oligipolists could count on the behaviour either of himself or of his friendly rivals.

Sixth, the analysis of the life results demonstrates that this class of business, where government control is limited to fiduciary regulation, shows positive response to competition. This is a particularly instructive revelation, showing that liberalisation of government control measures, such as the removal of entry barriers and other market restrictions, is needed to counter the concentration of the industry.

3.5 Notes

1. The analyses in this section (3.2.1) derive substantially from most of the standard works in the area of industrial organisation. For example, Bain (1968), Caves (1977), Scherer (1980), Shepherd (1972 and 1979), Carter (1979 and 1980), Akintola-Bello (1983) and Needham (1978).

2. See section 2 of the Insurance Act 1976.

3. See section 3.

4. See section 4.

5. See section 8.

6. Output is difficult to measure. Doherty (1976) defines output not as the premium received but in terms of claims payable, that is, price less management expenses and profit.

7. See Nevin (1969), Colenutt (1977), Franklin and Woodhead (1980), Friendland (1957), and Silberston (1972) Richards & Colenutt (1975) among a host of industrial economists.

8. Owing to the operation of the tariff, the competition is non-price.

PART TWO

BACKGROUND TO POLICY FORMULATION

Chapter 4

Regulatory Intervention

4.1 Introduction

The theoretical framework of this study is presented in this chapter. It is arranged into three sections. The first answers the question why regulation exists, the second explains how regulation is effected and the third identifies the benefits and costs of regulation.

4.2 Rationale for Regulation

The focus of regulation is adequate protection for the consumers of insurance (Dunn, 1976) by supervising those who are allowed to conduct business as well as the manner in which they do so. There are three main reasons for this concern.

First of all, the imbalance of information between buyers and sellers of financial services (including, of course, insurance) is a well-known cause of market inefficiency. This asymmetry of information is the reason for the widespread use of insurance intermediaries because the latter, by the nature of their profession, have better information than does the insuring public.

The asymmetry of information between the buyer and sellers of insurance is mutual. Contrary to the general impression, in the formation of an insurance contract, the party who has a better advantage is the prospective insured. Taking life insurance as an example, it is the proposer alone who knows how sound his health is, and the type of illness which killed his parents and some of his close relations, which ailment may also affect his own life. Usually, the proposer calls on the insurer to buy a risk the scope of which he (the insurer) does not know. The legal doctrine of utmost good faith[1] has always asserted the right of the insurer to know the full details of the risk he is called upon to insure.

Since the subject - matter of insurance is under the control of the insured, two problems arise which make insurance a "market for lemons."[2] The first is moral hazard which arises from the fact that once the policyholder has paid his premium, he has no incentive to minimize his losses (Carter, 1980). The second is adverse selection where it is precisely those who perceive themselves to have a high risk who will come forward for insurance. The two problems constitute a source of market inefficiency arising from the imbalance of information between buyers and sellers of financial services.

Next, the market for insurance like other financial markets is vulnerable to the entry of incompetent and fraudulent suppliers on the one hand, and credulous consumers on the other (chapter 5.2). The early history of insurance in the United States and Britain shows many company failures resulting from the incompetence and dishonesty of insurers. In Britain, the need for supervision was recognised in the mid-nineteenth century following the failure of a number of life insurance companies, with consequent loss to the policyholders (Dunn, 1976). Today increasing emphasis is placed on the qualifications, education, and overall competence of the operators of insurance business.

The attraction of insurance business for those wishing to perpetrate dishonest or fraudulent practices emphasizes the fiduciary nature of the business. When an industry is entrusted with vast sums of other peoples money, public control seems appropriate in an effort to prevent insolvencies and to protect the public after an insolvency has been established. It is now acknowledged worldwide that an insolvent company lacks the financial resources needed to meet its liabilities.

The entry of dishonest suppliers and credulous consumers has often resulted in structural problems. Therefore the state has frequently responded by using regulation to screen the suppliers. This intervention has been done to serve the following purposes:

Insurance control laws seek to prevent unfair competition among a insurers. Unless there is government supervision, the maverick insurers are prepared to lower their rates in order to attract the unsuspecting public, a situation which may compel the reputable companies to resort to combative measures leading to lowering the quality of their service (Athearn, 1969).

State regulation protects the public against monopolistic features. The structure of an insurance industry is propitious for competition when entry to the industry is easy, concentration is low, sellers are numerous, the product is largely undifferentiated, and total sales are expanding (Steward, 1969). Therefore, an effective supervisory authority ensures that the structure of the industry is neither monopolistic nor oligopolistic and that the operation of the tariff system does not result in the co-operative exploitation of the consumer.

The public welfare requires the continued existence of insurance companies in which members of the public have invested their funds. An individual buys insurance to protect himself against financial loss that may occur in future. It is essential that the insurance company promising to indemnify the insured for a future loss to remain in business so that it will be able to fulfil its promise. The public interest would not be served by insurers being forced out of the market because of the inevitable loses to policyholders, claimants and shareholders (Emmett, 1978).

Finally, a particular aspect of the market for insurance which has attracted public attention is the vagueness of the details of the contract which are largely more implicit than explicit. The vagueness of the terms of the contracts for insurance that are offered to the consumers is the basis of the poor image of the insurance industry world-wide. Market research studies in the UK show that policyholders do not have a clear picture of the cover sold to them.[3]

This technical nature of insurance makes it difficult for the public to understand its nature. The policyholder is presented with a complex contract which may contain terms, conditions, caveats, endorsements and warranties. Public control is necessary to prevent some insurers from including unreasonable restrictions and exclusions in their contracts.

The implicit presentation of the contract for insurance has caused the latter to be recognised as a business which is affected with a public interest (Bickelhaupt, 1974). The US case In German Alliance Insurance Company v. Lewis[4] held that insurance was a business affected with a public interest, because it played such an important role in other businesses. This meant that it was in the public interest for most activities of insurance companies, including the rates they charged, to fall under the watchful eye of governmental regulatory authorities.

Thus, it can be claimed that regulatory intervention relates to fundamental moral demands and its essence has been titled the "principle of aequum et bonum", the facets of which involve equity, morality, fairness, equality and reasonableness. Equity, for example, implies that policyholders should be treated without unfair discrimination. Reasonableness ensures that the cost of insurance should correspond to its value, or more generally, that the insurer should treat the whole body of policyholders in a reasonable and fair manner (Kimball, 1969).

In the developing countries, insurance control legislation is largely a function of protectionist legislation (Hurren, 1964) created by the excessive domination of the industry by foreign interests (Adeyemo, 1972). This legislative control is also looked upon primarily as a means of exercising very close control over the investment of insurance company funds, resulting in the curtailment of foreign exchange outgo on insurance and reinsurance transactions. Such a measure may eventually lead to the establishment of a sound national insurance and reinsurance market which is an essential characteristic of economic growth.

4.3 Forms of Regulation

The constitution of each country normally empowers the legislature to enact laws on all matters affecting insurance. The statutes, called Acts or Decrees often define the scope of supervision which may embrace some, all or more of the following features - registration or licensing of all existing and new companies; minimum capital requirement; annual submission of accounts and returns; the powers of inspection and intervention by insurance superintendents; and the termination of a company's operation.

These types of regulation are considered in some detail below.

4.3.1 Entry Control Regulation

It is now realised worldwide that an insurer needs financial solidity which is the prospect that the insurer will be able to meet its obligations (Kimball, 1969). For this reason intending insurers must subscribe a prescribed minimum capital at the outset. Minimum capital requirements can vary according to the class of business undertaken, the highest amount being required for life.

Apart from the capital requirement, the intending insurer must meet other legal and technical conditions to be able to obtain the grant of a licence. Hence in most countries insurers are required to submit evidence of the company's legal existence, such as copies of its memorandum and articles of association and its certificate of incorporation; the basis adopted in calculating premium rates; the calculation of technical reserves with supporting statistical data; and reinsurance arrangements.

4.3.2 Solvency Regulation

Theoretically solvency regulation is unnecessary under the close control regime. It is however, necessary to specify solvency standards where the financial system of control is adopted so that the overriding purpose of supervision is achieved.

Solvency standards are usually imposed by means of a prescribed margin of solvency: that is, assets must exceed liabilities by the specified amount. In Australia the margin is 15 percent whereas in the EEC it is the higher of two figures, one based on premium income and the other on claims (Dunn, 1976).

Where solvency standards are specified it has often been found necessary to lay down regulations for the valuation and admissibility of assets. In the UK the Insurance Companies (Valuation of Assets) Regulations of 1976 specify the way in which assets should be valued for certain purposes including that of establishing the margin of solvency.

4.3.3 Information Disclosure Regulation

With the protection of the interest of the insuring public in mind, the state has required insurance companies to make available accounts and actuarial returns on which a view can be formed regarding the financial solidity of the insurer. The U.K. Government was content from 1870 to receive and publish insurers' accounts and returns.[5] Hence the slogan, "freedom with publicity", that is, the facts about the financial position of the insurers being made publicly available, it was left to individuals to choose among them (Cockerell, 1980).

In most countries, supervision of insurance companies involves an examination of the returns which must be submitted to the supervisory authority. These returns comprise some or all of the following information: changes in the constitution of the company; the balance sheet, and other business results; and the basis of rating and the calculation of technical reserves.

4.3.4 Regulation of Insurance Contract Terms and Conditions

Insurance contract laws are aimed at unreasonable policy terms and conditions and therefore take the form of forbidding or prescribing, certain contract terms. Many countries go as far as requiring wordings to be submitted to the insurance superintendents for prior approval. Contract term regulations are frequently applied to private person's insurance, particularly life insurance.

4.3.5 Price Regulation

Price regulation seeks to protect policyholders from both rates which are so low as to jeopardize the solvency of the insurer, and those which produce excessively high premiums. Price regulations are frequently met in the United States, Latin America and Europe. In some countries, notably Western Germany, profit exceeding an agreed narrow margin is returned to policyholders through a compulsory reduction in renewal premiums. Not only are rates of commission often controlled but also a limit is frequently placed on the proportion of premiums that insurers may spend in commission and expenses (section 4.3.7).

4.3.6 Investment Regulation

The regulation of insurance company funds seeks to ensure that there is adequate portfolio diversification and that there is moderation of the capital and liquidity risks (Dickinson, 1971). The particular forms which the regulation takes vary from country to country, but the usual ones frequently met are: restrictions of particular classes of assets that can be acquired; specific limits on the proportion of total assets that can be held in particular classes of financial assets; or limits on the proportion of total assets that can be held in an individual financial asset (Dickinson, 1980).

4.3.7 Regulation of Insurance Intermediaries

The licensing of insurance intermediaries has been adopted in many countries, with requirements as to character, experience and technical education. The aim is to protect the insuring public from undesirable salesmen. Sometimes rates of commission are prescribed by regulation and commission- sharing by the intermediary or premium rebating by the insurer is forbidden (section 4.3.5).

4.3.8 Protectionist Regulation

Complaints about foreign domination of the insurance industry in the developing countries are based on six arguments aired as follows: First, social considerations are not taken into account by firms transacting freely on the insurance market. Second, purchase of foreign insurance and reinsurance entails an undue strain on the balance - of - payments of the developing countries. Third, foreign companies remit investible balances outside the country which are needed by the developing countries themselves. Fourth, foreign insurers make excessively high profits in respect of their business in developing countries. Fifth, it is desirable for residents of developing countries to acquire insurance techniques and expertise and that cannot happen if foreign insurers dominate the market. Sixth, "they (that is, the governments of the developed countries) do it too" (Hindley, 1982).

Whilst the above complaints are made by most of the developing countries, the actual form of protectionism varies considerably. However, Carter and Dickinson (1979) classify the restrictions imposed on insurance trade under the headings of establishment and services business since an insurer may establish abroad local branches or subsidiary companies, or it may underwrite at home the insurance of overseas risks placed by residents of foreign countries. It is evident that fewer restrictions are placed on reinsurance than on direct insurance because of the necessity of diversifying risks on a geographical basis.

The most common restrictions imposed world - wide on insurance supplied on an establishment basis include: nationalisation, domestication of foreign owened companies (chapter 8), discriminatory capital requirements, delayed remittances, discriminatory taxation and immigration regulation and current market practices. The restrictions imposed on insurance supplied on a services basis, on the other hand, are localisation of business, government pressure, exchange control regulations, the development of state reinsurance, the localisation of reserves, and other restrictions placed on non - admitted insurers.

4.3.9 Self Regulation

Although statutes are the main sources of insurance regulation, self-regulation or intra-industry regulation is an important feature of official supervision of insurance in some countries, notably the United Kingdom where Lloyd's of London provides a vivid illustration. The principle of self - regulation is based on the fact that government does not possess the same technical knowledge of insurance as the practitioners do. And there is a vested interest in having a well run industry so that government intervention is undesirable (Gower, 1982).

There are two main methods of self regulation. The first is where a professional organisation acts as a self - regulatory body over the activities of its members while the second is where a professional body promotes the establishment by legislation of an agency to regulate the practice and conduct of its members. Lloyd's is an example of the first method and the UK Insurance Brokers Registration Council is an example of the second method. Following the passage of the Lloyd's Act of 1982, the new Council of Lloyd's would appear to be closer to the second method of self - regulation. It is fair to say that the whole history of Lloyd's is really a study of a unique case of almost totally successful self - regulation in an insurance industry.

4.4 The Benefits and Costs of Regulation

The various types of regulation identified in section 4.3 are available to the state which may adopt some or all of them. Where all or most of them are adopted, then the close control system results. Financial control is, however, primarily concerned with solvency margins and the valuation of assets and liabilities.

In what follows, the benefits and costs of the main types of regulation are highlighted so as to bring into focus the main areas of comparison between financial control and the close control systems of supervision.

Entry control is commonly met with in the two systems. Since authorisation or licensing can have as preconditions a minimum capital requirement, acceptable credentials for promoters, structure of insurance contracts, set solvency margins, etc, entry control easily succeeds in screening out the mavericks and undesirables and therefore fulfils the social objectives of protecting the consumers of insurance. It can, however, have the effect of constituting a barrier to entry for intending competitors. The higher the figure selected for improving financial solidity the more the deterrent for the emergences of new companies. In countries where capital is not easily raised, a high capital requirement may hinder the development of the local market.

The merit of solvency regulation is that in theory it provides a guarantee of solvency. In addition, it constitutes an early warning system. Given the complexity of establishing definite balance-sheet insolvency at any given point in time, and the fact that an insurance company always has sufficient liquid assets to maintain the appearance of being a going concern, company failures can be experienced. The history of insurance supervision in the UK shows that each legislative reform was preceded by a series of insurance company insolvencies (Dunn, 1976). Hence the case for the establishment of a guarantee fund in states where the financial system of control operates so that each firm contributes a fraction of its premium income to the fund.[6] The guarantee fund spreads the costs of failure among the constituent members of the market and creates the incentive for insurance company associations to monitor the solvency of their members (Finsinger and Pauly, 1986).

The other costs of the solvency regulation depend on how restrictive the rules imposed are. For example, where larger reserves must be held than are necessary in an unregulated competitive market then inefficiency costs will become the result.

Where there is no uniformity in the presentation of information, a comparative study of the accounts of the companies becomes tedious, if not impossible. Disclosure of information to the insuring public is not always useful since not many people have the skill, let alone the interest, to interpret financial statements. On the contrary information provided in a uniformly prescribed form will be very valuable to the initiated.

Contract regulation makes comparisons between companies easy for the consumers. It then becomes easy to obtain premium quotations for a set of standardised policies and this low search cost can contribute to the efficient performance of the market. On the other hand, insurance companies are faced with inflexibility with the result that their innovative ability becomes blunted. Standardisation of policies may also restrict the choices of customers who are not enabled to tailor coverage to their needs.

Whether price control is harmful depends on the precise form of control. If companies are forced to adhere to a standard tariff governing rates and policy cover, then control will severely restrict competition from more efficient insurers. In such a situation, some insurers may withdraw from the market with consequent inconvenience to the insured (Witt, 1973). On the other hand, if controls are not effectively applied to the details of policy cover as well as rates, the insurers are likely to react to rate control by changing the quality and range of the products offered.

Although government control of the investment of reserves should ensure that there is adequate portfolio diversification and that the overall capital and liquidity risks are kept within acceptable limits, this forced approach has the effect of imposing some constraints[7] on the flow of funds which insurance companies have at their disposal. Since insurance companies' investment portfolio decisions are based on equating returns at the margin (with due allowance for risk), then a forced shift in the composition of their portfolios will effectively tax their policyholders. To be more specific, since it is unlikely that the insurance companies will permit their business to suffer, the tax will fall upon policyholders, particularly the purchasers of life insurance.

The merit of regulating insurance intermediaries is the protection of the insuring public against unfair or incompetent advice or selling by intermediaries. But as Gower (1982) observes it is in respect of the vast number of intermediaries constituting a wide spectrum that the most conspicuous weakness of control is to be found.

Control of insurance commission has sought to avoid conflicts of interest on the part of intermediaries on the grounds, for example, that preferential commission level might be inclined to unduly influence an intermediary in favour of one particular insurer. Any regulation which forbids commission - sharing or rebating is difficult to defend. A prospective proposer who knows the insurance he wants and the insurer to approach ought not to be precluded from receiving the financial benefit of eliminating the intermediary.

An effective regulation of insurance intermediaries must seek to meet two different contingencies. The person selling insurance must be either: (a) a truly independent adviser who meets certain minimum standards of expertise, ethics and financial security; or (b) if not independent, is at least answerable to an identifiable insurance company for his acts and omissions in promoting and selling the policy.[8]

Like the other types of regulation, protectionist regulation has its costs and benefits too. As observed by Dickinson (1981) its object is to minimize the foreign exchange costs associated with international insurance transactions. A major danger of this defensive regulation is that by restricting competition it can reduce the range and quality and raise the price of products offered to domestic consumers, thus reducing a factor input into the production of other goods and services in the rest of the economy (Dickinson, 1981: 23 - 26)[9].

The advantage of self - regulation is "that moral persuasion may work at its most powerful and it may be easier to **enlist** high-powered executives to play an active role in regulation" (Gower, 1982). The problem, however, is that it is difficult for any professional body, established initially to protect the interests of the members, to convert into a body also protecting the interests of the insuring public. It can easily be used as an anti - competitive device to preserve the privileges of members and constitute a barrier to entry into the market by intending competitors (Finsinger and Pauly, 1986). Since the use of a government department to enforce the regulations often results in bureaucratic bottlenecks, an independent statutory authority, funded by a levy on all members of the industry, is preferable.

4.5 Conclusion

It is clear from the above analysis that the reasons for regulation in insurance follow from the needs of the consumers; its value to the insurers in limiting competition and securing profitability; and the interests of the state. The consumers of insurance need to be protected against insolvency and other market inefficiencies. The insurers for their part need the good name of an industry which is free from price-dumping and other forms of predatory behaviour. It is obvious that the protection of the consumers is likely to be an important political issue for the state.[10]

The argument against regulation is that market forces, if left to function freely, will ensure the most efficient and innovative ways for meeting the needs of the consumer. Although it is conceded that the buyers of personal insurances need protection against market failure, those seeking insurance against commercial and industrial risks are knowledgeable about their needs and therefore hardly need protection.

Where regulation discriminates against foreign insurers, consumers are obliged to pay higher premiums since protected markets are liable to neglect consumer needs and fail to innovate. As a result, income that could be released for other fruitful developments is locked into less efficient enterprises. This is explained by the theory of comparative advantage (chapter 10.3.2).

Furthermore, even where some degree of regulation is acceptable, the argument may be about whether it should be regulation by the state or self-regulation by those in the industry.

4. 6. Notes

1. See sections 19 and 20, Marine Insurance Act 1961.

2. Akerloof (1970).

3. See Cockerell and Dickinson (1980) and Finsinger, Hammond and Tapp (1985).

4. (1914) 233 US. 380.

5. See the U. K. Life Assurance Companies Act 1870.

6. An example of legislation establishing the guarantee fund is The Policyholders Protection Act 1975 (UK).

7. For details of these constraints see Akintola-Bello (forthcoming), Carter (1979), Dickinson (1979), Carter and Dickinson (1977 and 1979), Falegan (1983). Finsinger, Hammond and Tapp (1985) and Hindley (1981).

8. See Cockerall (1974 and 1980) and Gower (1984). See also Policy Holder Insurance News (25/3/83).

9. See Carter and Dickinson (1979) and Hindley (1981).

10. There are three main reasons for the interests of the state. (1) The state is very keen to encourage people to take out insurance as a way of limiting the cost of protection to the state. (2) The importance of insurance companies as channels for saving and investment is well understood by the state. (3) Insurance has a special contribution to make to the balance of payments, on current account as a service and on capital account as insurance funds are invested locally. Therefore, the state has the obligation to minimise the foreign exchange costs associated with international insurance transactions.

CHAPTER 5

RATIONALE FOR THE REGULATORY SYSTEM IN NIGERIA

5.1 Background to the Insurance Companies Act of 1961 and Its Subsidiaries

Although the objectives of official supervision of insurance in Nigeria can be considered under two broad headings —— consumer protection and the need to establish a viable market —— the backgrounds leading to the promulgation of the two major controls laws[1] are different and for this reason will be examined in turn.

5.2 The Laissez-faire Problem and Banking Crisis

Except in relation to protection of third parties in respect of injuries suffered by them as a result of motor vehicle accidents,[2] there was hardly any attempt made by the Nigerian governments to regulate insurance enterprises prior to 1961. Although it may be argued that the Life Assurance Companies Act of 1870 is a statute of general application[3] and therefore applicable to Nigeria as a first statute directed at controlling insurance companies, as a matter of fact it is doubtful if anyone took notice of its application in the country (Akinkugbe, 1976). It was therefore not until 1961 that the principle of state regulation of insurance was introduced.

Many reasons account for the absence of legislation for such a long time. First, prior to Nigeria's independence on 1 October, 1960, most of the insurance companies in operation in the country were in the main, agency organisations or branch offices of companies incorporated in the United Kingdom and, in so far as the parent companies satisfied the laws of the country in which they were incorporated, the companies and agencies were deemed to have satisfied the requirements in this country (Akinkugbe, 1976). It has therefore been correctly remarked that the colonial governments' attitude to insurance control was based on unbridled *laissez-faire* (Lijadu, 1972). Secondly, the few insurers operating on the market were dominated by expatriates and thoroughly understood and practised the practised ethics of insurance. Thirdly, reforms in the field of commercial law in general were seldom in the priority list of the then colonial power. It would probably have needed a major crisis, such as the banking crisis of the early fifties, for the colonial government to introduce some form of direct control over the activities of insurance companies (Olawoyin, 1971).

The free enterprise situation though prolonged was bound to be arrested because it was leading to the proliferation of insurance companies. With only one company — the Royal Exchange — dominating the market up to 1948 (Ogunshola, 1975) the number rose to four in 1949 (Barback, 1964). By 1960 it had risen to 59 (Ogunshola, 1973). When the Lagos Stock Exchange was established in 1961 some of the insurance funds began to be invested in the Nigerian economy for the first time (Barback, 1964).

While these developments were taking place, the eyes of government were focused on the banking sector of the financial market. As it was with insurance business, the colonial government's attitude to commercial banking was also based on uncontrolled laissez-faire (Nigeria, 1970). In the early fifties, however, a number of indigenous banks, like the Trust Bank and the Nigerian Farmers Bank crashed and went into liquidation causing ruin to the business of many Nigerians (Olawoyin, 1971). These failures spurred government to step in with a series of regulations to rationalise the procedure for the establiment of commercial banks, a situation which hitherto had been rather chaotic. Through a succession of legislation culminating in the Banking Act of 1969 the banking business in Nigeria has now been put on a better footing (Nigeria, 1970).

One lesson of this intervention in commercial banking was not lost on government. The growth and importance of insurance business as witness the developments mentioned above was gaining public attention. It was obviously necessary to regulate it in order to avoid the disasters that took place in commercial banking. As a matter of fact there were other reasons for state regulation of insurance in Nigeria.

5.3 Poor Insurance Practice and Government's Development Objectives

There were also other reasons for state regulation of the insurance industry.

First, complaints about the performance of the insurance companies were brought to the attention of government. Within ten years of the enactment of the first legislation to regulate motor vehicle insurance business in Nigeria, there were widespread complaints of undue exploitation of the masses by the insurance companies as well as undue delay before claims were settled in cases of accidents (Nigeria, 1960). The government set up a Committee in 1960 to investigate the complaints (Nigeria, 1960). One consequence of this outcry in respect of insurance business was the passing of the Insurance Companies Act of 1961 (Aje, 1978), the main objective of which was to protect the insuring public from the insolvency of insurance companies or their failure to provide an acceptable standard of service at a reasonable price. The insurance business like the banking business requires the confidence of the public. The system of licensing insurers to transact insurance business, whereby applicants have to satisfy the supervisory authorities as to their solvency, and financial and business integrity, was aimed at ensuring the protection of the public from incompetent and fraudulent operations of insurance companies (Carter and Dickinson, 1979: 12 - 14).

Secondly, in the absence of a national social welfare scheme, an increasing number of people were gradually appreciating the value of life insurance in providing against the hazards of death and old age.

After the Second World War, the insurance industry received a considerable boost as it is usual with a post-war period.

The advance in commerce and industry and the widespread use of money had brought many changes and created new needs in the country. The desire for a better standard of living and provision of security for dependants against the increasing risk to life which accompanies rapid commercial and industrial developments was now more pronounced than ever before and the need to insure against risks better appreciated. The expectations of policyholders would be dashed if the premium income of insurance companies which constitute the bulk of the guarantee fund held in trust for them and shareholders of companies were not administered on sound insurance principles.

Thirdly, government wished to avoid unnecessary loss of foreign exchange (chapter 4.3.8). This was the reason behind the Insurance (Miscellaneous Provisions) Act of 1964, which was promulgated by parliament to regulate the investment of insurance funds and prevent the premium income generated in Nigeria from being invested by insurance companies in foreign countries (chapter 7.4).

Fourth, there was the desire to build up a local insurance market by protecting indigenous insurers from foreign competition (chapter 4.3.8). The domination of the Nigerian insurance market by foreign companies at the time of independence was unacceptable on patriotic grounds. This was why in the White Paper published on the Report of the Motor Vehicle Insurance Investigation Committee, the Federal Government in 1960 fully accepted the Panel's recommendation to give encouragement to the formation of more insurance companies (Nigeria, 1960). It was therefore no surprise that the Insurance Companies Act of 1961 provided inter alia, that for the future, only a company locally incorporated under the Companies Ordinance of

Nigeria and registered with the Registrar of Insurance could carry on insurance business in the country (chapter 7.3.1).

Fifth, there is the objective that funds generated by insurance operations are channelled into the local capital market. If there was no government legislation or policy directly or indirectly influencing the direction of insurance company investment, in a situation where financial infrastructural facilities are inadequate, insurance companies would be persuaded to invest their funds on the sophisticated capital market of the advanced countries where returns on investment may be higher (Dickinson, 1980). This was clearly the case in Nigeria in 1961 when insurance companies were accused of "investing their surplus capital —— in such foreign places like England, Germany, Australia, New Zealand and so on" (Nigeria, 1961). The control of the investment of insurance funds is therefore a means of retaining in the country a substantial source of funds for investment through the capital market in government securities, equities, industrial and debenture stocks, mortgage loans and real property (chapter 7.5 and 7.6.3.6).

5.4 Insurance Act 1976: Reasons for Enactment

5.4.1 The 1961 Insurance Companies Act: Deficiencies and Poor State Control

The Insurance Act of 1976, repealed the Insurance Companies Act of 1961 and the subsidiary legislation, the Insurance (Miscellaneous Provisions) Act of 1964, for a number of reasons.

First, the 1961 Act, as well as its subsidiary, was patterned on the British model, which aimed at ensuring freedom and publicity to the business (Wiltshire, 1980) rather than providing the machinery for an effective control and supervision, implying that the British system was full of loopholes and inadequate provisions (Okwor, 1976). Generally, what the law required of a prospective insurer was evidence of compliance with the capital requirements as well as a margin of solvency and that the business would be run on sound insurance principles. The law certainly did not ensure that the promoters and directors of insurance companies were men of good character to obviate the situation whereby fraudulent people operated an insurance company which the law openly licensed to go on defrauding the unwary public. As a result a good many incapable entrepreneurs took advantage of the situation and formed insurance companies without financial stability which is an essential factor not only to the insurers but to their clients.

Secondly, despite the inadequacy of the previous legislation, the machinery set up to enforce the laws was not effective (chapter 9.3.3). The supervisory agency was not equipped sufficiently to enable it to carry out its functions effectively, presumably because the authorities did not realise the implications (Nigeria, 1970). The Presidential Speech to the 1973 Annual Conference of the Insurance Institute of Nigeria complained that the Office of the Superintendent was so poorly staffed that it resulted in ineffectiveness (Akinkugbe, 1976). It was not surprising that a lot of lethargy was shown in the enforcement of the existing law. For instance, the prosecution of Daboh[4] (chapter 7.4) was not started until 1975 (Akinkugbe, 1976) some five years after the irregular registration of his company, the Nigerian States Assurance Corporation Limited, was effected. The charge was for offences against the criminal code. It never occurred to the supervisory authority to prosecute under the Insurance Companies Act of 1961. As a matter of fact it has now been established that Daboh would not have been prosecuted for any offence but for the fact that he ran foul of the then rulers of the country (Akinkugbe, 1976).

Because of this complacency on the part of the supervisory authorities other dishonest individuals did not even bother to attempt a fraudulent registration. They just opened their offices displaying very conspicuously the names of their companies. They sent out their canvassers to the unwary members of the public who bought what they believed to be cheap policies but which were no policies at all. Daboh operated the Nigerian States Assurance between 1967 and August 1970 without the company being registered as an insurer contrary to section 6 (i) of the Insurance Companies Act of 1961 (Akinkugbe, 1976).

Experience in Nigeria has demonstrated beyond reasonable doubt that the supervisory authorities not only lack officials with expertise and knowledge of insurance production and sale but are subject to red tape and are therefore slow in performing their functions (Reichel, 1966-70). It is therefore true to say that where the supervisory authorities are unable to carry out the tasks for which they are set up, the resulting distortions are likely to render the law inoperative (chapter 7.7.3) and the objects of the legislation are then frustrated (Lijadu, 1972).

Thirdly, the deficiencies of the 1961 Act (chapter 9.3.2) coupled with the inability of the supervisory authorities to enforce its provisions (chapter 9.3.3) encouraged the proliferation of insurance companies, a process which received its impetus in the years 1949/50. As indicated above (chapter 2.2) the number of companies to which questionnaires were sent by the Federal Office of Statistics in 1960 was given at 59. By 1963 the number had declined to 44 (Ogunshola, 1972) presumably, because of resentment generated by the domestication philosophy introduced by the 1961 Act. In 1966 it rose to 49 (Nigeria, 1962), and in 1968 the number had swollen to 88 (Nigerian, 1962). In 1973 the number went down again to 71 (Ogunshola, 1972) because a number of foreign owned as well as indigenous companies wound up their operations because of the increasingly effective enforcement of the control laws. In 1975 the number reached 75 (Okigbo, 1979).

The flourishing of over 70 insurance companies, unregulated, created problems. Some unscrupulous insurers still operated; claims were at best unduly delayed and at worst avoided; premium rates rose without regard to underwriting ethics; agents and brokers had a field day; public disillusionment was complete so much so that the insurance industry was viewed with suspicion and its practitioners classed into a fraternity of legally protected frauds. Increased government intervention was inevitable (chapter 9.5).

Fourth, the proliferation of insurance companies forced them to compete with one another. Although competition has beneficial effects in insurance markets (Carter & Dickinson, 1979), the Nigerian insurers indulged in vicious competition by charging very low premiums in order to attract business at all cost. The result was that such companies did everything in their power to avoid the payment of any claims that were made by the insured who suffered loss in respect of the subject matter of the insurance. A good case therefore existed for regulations to, (a) increase the paid-up capital of insurers with a view to discouraging proliferation; (b) prohibit premium rate cutting by requiring insurers to keep to agreed minimum tariff rates, excluding external competition by prohibiting the placing of insurance abroad; and (c) seek to curtail the number of insurers in view of limited availability of skilled manpower resources. More reasons abound for more government legislative intervention in the insurance industry.

5.4.2 Insurance Intermediaries: Poor Business Practice

Prior to the promulgation of the Insurance Act of 1976 there was no state supervision of the insurance intermediaries. Although insurance brokers and agents render important services to the insured and insurer alike, these intermediaries, to a great extent, accounted for much of the problems faced by the unsuspecting public in relation to their insurance business. By their shortcomings they did a lot of damage to the insurance industry. It was common knowledge that many agents appended to their names "XYZ Insurance Agency" or "Insurance Brokers" (Ozomah, 1972). Some agents and "brokers" even held themselves out in certain quarters as insurers. Some dubious intermediaries defrauded the public by misappro-rpiating the premiums collected from their clients (Okwor, 1978). Some of the indigenous brokers did not live up to expectation and this failure which could be attributable to many factors, tarnished their reputation within and outside the insurance industry. It has been suggested in certain quarters that the failure of the brokers in this instance must have influenced the decision to cut off all intermediaries from government insurances and place these risks direct with NICON (Cadmus, 1975).

There is, therefore, a good case for consumer protection by the supervision of these brokers and agents.

5.4.3 The Problem of Marine Insurance

Lastly, there was the need to develop the marine and aviation business in Nigeria. Prior to the promulgation of the 1976 Act, the marine and aviation business was poorly developed owing to a number of constraints such as lack of manpower, expertise and reliable statistics, low underwriting capacity and a limited number of homogenous exposure units making it difficult to predict probable loss. Many nations exported their goods into the country with banking and insurance services which were tailor-made to ensure complete transfer of all desirable benefits to the exporting countries regardless of whether alternatives were available in Nigeria. It was, therefore, necessary to begin to build up the local market by the indigenisation of insurance of imports with the aim of conserving the country's foreign exchange on the one hand and providing a solid boost to the market on the other. Such a step has forced the industry to develop the adequate manpower with proper expertise to cope with the tremendous volume of business that emerged (Okwor, 1976).

5.4.4 The 1976 Insurance Act: Main Provisions

Departing from the *laissez-faire* philosophy of the Insurance Companies Act of 1961, the Insurance Act of 1976 adopted the extremes of the close control system of supervision. Whilst repealing the Insurance Companies Act of 1961 and its 1964 subsidiary, it re-enacts some of their provisions. It then goes on to introduce revolutionary measures like steeply increased share capital, the statutory deposit, etc (chapter 7.6).

5.5 Development Problems and Economic Nationalism: Government's Economic Policy[5]

In developing countries government policies towards private foreign investment are generally shaped by two principal factors, namely foreign domination of the economy and the resultant development of political and economic nationalism. These factors as they relate to Nigeria are briefly examined.

5.5.1 Patterns of Entrepreneurial Activities during the Colonial Era

The colonial administration adopted a *laissez-faire* policy towards the operations of multinational enterprises whose predatory and exploitative orientations, inherent tendency to resist and hamper local industrialisation and determination and deliberate efforts to retard the growth of indigenous entrepreneurship (Akeredole-ale, 1975), heavily shaped Nigeria's economic history for well over a century. Although these enterprises were to operate within the framework of government regulations, in actual practice government regulation of business activities was virtually absent (Aje, 1978). Economic power was concentrated in large expatriate enterprises, the biggest of which was the United African Company (UAC) itself a subsidiary of the giant Unilever Company with headquarters in the United Kingdom. By late 1930's the UAC controlled over 40 percent of Nigeria's import-export trade; and by 1949, it controlled 34 percent of merchandise imports into Nigeria and purchased on behalf of the Nigerian Marketing Boards 43 percent of all Nigerian non-mineral exports (Enuenwosu & Nemedia, 1980). Expatriate dominance was also evident in the fields of banking, shipping, mining and insurance (Nwankwo, 1980).

This foreign domination of the economy was further accentuated in 1946 by the publication of the "Ten-Year Programme of Development and Social Welfare for Nigeria", a programme which was intended to aid the growth of indigenous entrepreneurship directly through the granting of loans to Nigerian owned enterprises. For several reasons, foreign companies, especially those who had already established interests in Nigeria, responded more effectively to the new opportunities advertised through the publication of the Programme than did indigenous business-men. By 1949, they became dominant in the commercial life of the country. According to Bauer (1954) as much as 95 percent of the import trade in Nigeria was then in the hands on non-Nigerian firms. This is because they had virtually monopolized the lucrative war-time trade in controlled imports, thanks to the "principle of past performance" (Akeredole-ale, 1976), by which the Colonial Government had chosen to distribute import licences. A Nigerian Association of

African Importers and Exporters (Aje, 1978), with members scattered all over the country, was formed in 1942 and had fought unsuccessfully to obtain for its members a share of the trade in scarce imports. Similarly the enormous trade surpluses derived from the immediate post-war boom in the export trade had gone largely to the licensed produce-buying foreign merchant firms and to the statuory Marketing Boards, not to the indigenous businessmen. Much of the proceeds from farm exports were kept away from the Nigerian farmer by the Marketing Boards and retained in Britain in the form of British securities. These retained surpluses amounted to £120 million by 1954 and stood at £238 million by 1961[6] (Helleiner, 1966). Since commercial banking in Nigeria was also controlled by foreign capital, the same foreign firms which had accumulated enormous surpluses in the boom also had the surer access to credit facilities not only with the banks and suppliers in Western Europe but also with banks in Nigeria. In these circumstances it was not possible for a large indigenous capital-owning class to emerge in Nigeria between 1949 and 1955, and so foreign capital again already had an edge over indigenous capital in the exploitation of the even more extensive entrepreneurial opportunities of the period since 1955.

Although many Nigerians did establish relatively successful firms, the consolidation of private foreign capital was assured by a number of factors. First, most educated Nigerians with considerable innovative capacity had stayed out of business, leaving indigenous confrontation with foreign capital to those who were less educated. Therefore, politically motivated nationalism found slight expression in business activity from the start. Second, Nigerians failed to marry political and economic nationalism from the start so that the Nigerian nationalism that eventually emerged is essentially a bourgeois kind of economic nationalism. This means that state apparatus has been used to secure more and more material concessions from private foreign capital for the privileged few ___ the bourgeois indigenous political elite and top bureaucrats to whom power passed at independence, plus a small number of well-connected Nigerian businessmen. This explains why all efforts were made to ensure that the boat of the neo-colonial economy was not rocked too much. Third, the problem of diversionary internal politics has lent unintended support to foreign monopoly capital over the period. The Nigerian political elite were manoeuvred by the colonial masters into a position in which constitutional debates for sharing out political power and slender national economic facilities blinded them to the real issues of economic freedom. Political power was not understood to be a means of realizing that freedom. Fourth, the Nigerian Government did not understand that there are costs associated with private foreign investment. The open economy policy which such illusion inspired has contributed greatly to the entrenchment of foreign capital in the country. All along, but especially between 1957 and 1966, the Federal and Regional Governments continuously assured prospective foreign investors of a friendly business climate and of the security of their investments and extended over-generous incentives to various categories of innovating ventures (Nigeria, 1958 & Asiodu 1967). Finally, operational advantages and strategies were used by the private foreign investors to consolidate their position. Their superior management skills and experience, the "principle of past performance" which placed them at cumulative advantage over indigenous competitors for commercial contracts, their dominant position within and ability to manipulate the social world of business in the country, their firm control over the internal sources of commercial credit, their specially favourable relationships with external suppliers and other external sources of credit and their status as parts of international business corporations; all contributed to the rapid expansion of foreign companies while some of them also made it possible for foreign monopoly capital to suppress indigenous entrepreneurial activities and stifle indigenous entrepreneurial ambition (Morris, 1968).

The stage was clearly set for government intervention.

5.5.2 New Orientations to Private Foreign Capital

As at 1958 industry was still regarded as being primarily the affair of private enterprise and few conditions if any were imposed upon foreign investors. The same philosophy of open private enterprise economy was upheld in the 1962-68 Development Plan. The retention of the various incentive measures formulated during the colonial regime and the appreciable guarantees of protection to foreign investment indicate the continued belief in the important role foreign capital and skills could play in furthering the course and pace of economic development of the country. On the other hand, statements and policies on nationalisation, Nigerianisation, and several aspects of the regulation of foreign businesses in the country indicate also that economic nationalism had assumed an important status among the socio-economic objectives of the government.

The Nigerian independence constitution provided for adequate compensation in cases of compulsory acquisition of private enterprises. But the early policy on nationalisation restricted such exercise to only public utilities (Proehl, 1965). The Nigerian National Shipping Line, the Nigerian External Communications and the Nigerian Airways were created after independence out of nationalised properties. There was a call from the more militant and radical national leaders for a more broadly based policy on nationalisation. For instance, the Leader of Opposition in the Federal House of Representatives, Chief Obafemi Awolowo, urged Nigeria to follow the example of India, Burma, Ceylon, Thailand and Indonesia which had nationalised and yet found that foreign investors flocked to them(Nigeria, 1961). However by 1961 the government affirmed that it had no plans for the nationalisation of industry beyond the public utilities that were already nationalised (Shipping, Airways, Railways, Power, Utilities and Marketing Boards). The government did not succumb to the pressures for a wider scale nationalisation because it was convinced that such a policy could not successfully be implemented owing to overwhelming constraints on human and material resources. Thus on the policy of nationalisation, the Federal Minister of Finance, Chief Festus Okotie-Eboh moved, and the House of Representatives adopted in 1961 the following motion which,

> "resolves that the nationalisation of industries and commercial undertakings beyond the extent to which public utilities: Shipping, Airways, Railways, Power, Communications and Marketing Boards are already nationalised is not in the best overall interest in Nigeria; welcomes the review of company and other legislation now being carried out by the Federal Government and other measures to ensure such undertakings are conducted in the best interest of Nigeria; welcomes the increasing participation by Nigerians in the ownership and direction of such undertakings; and deplores irresponsible statements on nationalisation which have recently been made in Nigeria and overseas" (Nigeria, 1964).

The Federal Government policy then became Nigerianisation instead of nationalisation. The policy involves essentially the idea that, (a) Nigerians should displace as rapidly as possible expatriate employees and managers in Nigerian business enterprises and (b) the removal or dilution of foreign interest from the commanding position they occupied in the Nigerian economic life to be vigorously pursued.

Owing to pressures, firstly from Nigerian traders (Aje, 1978) resentful of expatriate dominance in the distributive trade and transportation and secondly from opposition leaders clamouring for a more dynamic economic policy, the open economy policy of favouring industrial development by the private sector began to weaken and official interest in increasing indigenous control of the economy emerged. As a result, official regulation and control of foreign business assumed a new dimension.

In order to establish a business in Nigeria, the foreign investor requires the consent of the government. The alien entrepreneur usually can obtain a visa for 28 days on the first occasion and subsequently a resident alien status. By 1961/62, permission was no longer to be granted to the foreigner to establish retail trade as such business activity became reserved for Nigerians and therefore closed to new foreign entrants (Proehl, 1965). The Exchange Control Act of 1962 subjected all foreign investments to the control of the Minister of Finance. Under the Act, prior permission of the Minister is required for (a) transfer of profits, (b) repatriation of capital, (c) new foreign borrowing, (d) transactions in securities and (e) compensation deals (Proehl, 1965). As a rule, however, permission was freely granted. As long as the alien investors satisfy the authorities that they have settled their due tax liabilities, repatriation of profits is generally permitted. The Immigration Act of 1963 requires the alien businessman to seek permission from the Ministry of Internal Affairs before setting up a business or practising a profession in the country. When the business is established, control is exercised through the regulation of the number of expatriate employees the foreign entrepreneur can bring in. The alien is generally not permitted to acquire an interest in land without government permission (chapter 8.6.6). As Proehl (1965) aptly put it,

> "the Federal Government can effectively channel, encourage, inhibit, or forestall the initiation and, to a lesser degree, the continuation of economic activity by the alien, through the control of the entry and stay of personnel, the repatriation of his money, the act of incorporation and the provision of tax benefits" (Proehl, 1965).

Nigeria had thus entered a phase which witnessed a stronger official interest in increasing indigenous control of the economy. Therefore it was emphasized in the 1962-8 Development Plan that that objective was to be pursued by helping Nigerian businessmen to rise to the occasion (Nigeria, 1962).

By 1968, beginning from the promulgation of the Companies Act of that year (chapter 8.1) the government had started to adopt a less subservient attitude towards the orthodox principle of the free-enterprise economy. For example, it was made clear (especially in the 1970-4 Plan) that the public sector would be required to enable the country to gain firm control over her economic destiny and to make planning more meaningful, and that the government would nationalise private enterprises in the future where that course of action became necessary in the national interest (Nigeria, 1970). The Indigenisation Act of 1972 which was completely modified in 1977 represents a summation of these policy changes. The Nigerian Enterprises Promotion Act of 1977 affects all businesses which are listed on one of the three schedules. Those on schedule 1 must be wholly owned by Nigerians, while 60 percent or 40 respectively of those on schedules 2 and 3 must be in the hands of Nigerians. Schedule 1 includes most service activities such as advertising, estate agencies or laundries and simple industries such as bakeries or clothing manufacture. In particular it includes all retail trade (except large supermarket chains), all distribution (except of motor vehicles, machinery and spare parts)and wholesale distribution of locally manufactured goods. Schedule 2 includes banking, insurance, construction, distribution of technical goods, motor vehicles and imported goods and many manufacturing industries such as paints, rubber and plastics products and most industries based on local raw materials including petroleum and timber. Schedule 3 contains the more sophisticated manufacturing industries and all businesses "not elsewhere specified."[7]

The intention of the 1972 and the 1977 Acts is first to heighten the pace of indigenisation and second to limit foreign investment to those businesses where it is still necessary to import expertise. They also represent the first serious attempt by government to deal with the problem of foreign domination of the economy. This section of this chapter concludes by identifying the rationale for this increasingly radical orientation to private foreign investment on the part of the Nigerian Government.

Two major reasons are identified. First, Nigeria's economic difficulties since the mid-1950's and the way they were explained and second, the lessons in self reliance forced upon Nigeria's political class by several national experiences and events, especially during the decade beginning in 1962.

The economic difficulties which inspired economic nationalism and a new orientation to private foreign investment had to do primarily with the country's balance of payments position after 1955 and with the efforts of the governments from 1955 to 1966 to boost indigenous business.

The history of Nigeria's balance of payments problems dates back to 1955, especially to the worsening terms of trade, caused by the cessation of the export boom induced by the Korean War, and by the escalation of imports, explained in part by the 1955 —— 1960/61 Development Programme. But the difficulties had also been attributed to the general rise in the cost of private foreign investment, especially through the repatriation of profits, capital, and capital gains; to the decline in the inflow of private foreign capital; and to the dwindling and the progressivetightening of conditions of official aid flows into Nigeria. One of the immediate effects of these difficulties was, therefore, to focus the attention of articulate public opinion and of policy-makers on Nigeria's relations with the rest of the international community, with respect to the prices of agricultural produce, the nature and problems of import dependence and, most particularly, the orientations and activities of private foreign investors in Nigeria (Akeredolu-Ale, 1978).

Like Nigeria's balance of payments problems, deliberate government efforts to stimulate indigenous entrepreneurship also date back to the mid-1950's. As several studies[8] have shown, such efforts achieved very little. And again, even though the failure of these various measures was seen as resulting from capital shortage, inadequate managerial skill, and negative socio-cultural and motivational characteristics of the world of private indigenous entrepreneurs, it was also attributed in large measure to the dominant presence and restrictive activities of private foreign investors in the economy. In particular, the foreign owned commercial banks which dominated the credit system had demonstrated a strong unwillingness to help indigenous businesses to rise.[9] The other foreign owned companies had utilised their several other operational advantages to restrain the establishment and inhibit the growth of indigenous firms, first in the distributive trades and, subsequently, in other spheres as well.

Many factors have combined to force the lessons in self-reliance on the Nigerian political class. Among these are the substantial shortfall in the expected foreign contribution in the 1962-8 Development Plan, the increasing cost to Nigeria (and to other underdeveloped countries) of her dependence on foreign capital, the escalation of restrictions on migration from the poor to the rich countries of the world, the anxiety to avoid the political embarrassments to Nigeria (and to Africa) which are bound to arise from the crystallization of foreign economic dominance in the country, and, finally, the belt tightening experience which Nigeria had undergone in the 1967-70 civil war.

The foregoing difficulties and lessons represented what pressures there were on the Nigerian Government to review the role of foreign capital and private foreign investment in the economy. But, for three possible reasons, the political class could have ignored these pressures (Akeredole-ale, 1978). First, there was the pressure on the part of the public upon the government to take action on indigenisation, thanks to the promissory nature of the politics of independence, heightened by the more world-wide revolution of rising expectations. Secondly, enlightened public opinion capitalised on the country's economic difficulties and relentlessly pressured the government to tighten its control over the economy and curb the excesses of foreign monopoly capital in the country. Finally, the kind of intervention which such radical opinion demanded had become fashionable. The notions that control over the national economy must pass into the hands of the country's own citizens and that, in the absence of a group of indigenous entrepreneurs, large and experienced enough to takeover, the government must take the initiative, had already gained ground and had been put into practice by a large number of Third World countries, including many in Africa.[10]

Thus it can be said that the new orientations to private foreign investment in Nigeria have been produced by a concatenation of historical forces to which the country and its political leadership had to adjust. The private foreign investors themselves, the international community of foreign monopoly capital to which they belong, and the governments of their home countries have been the dominant actors in that history. It is they, through their prolonged exploitative orientations and activities, their lack of sensitivity to the new and legitimate aspirations of the Third World economies, who have defined the present international relationship between foreign capital and the underdeveloped economy. At last, Nigeria, like many other Third World countries, seems to have concluded that the net short-term economic benefits of the relationships go to the home-base of foreign monopoly capital, and that even if such net short-term economic benefits went to her, it would still be imprudent in consideration of long-term economic freedom to continue to allow her economy to be dominated and controlled from outside.[11]

5.6 Notes

1. These are firstly the Insurance Companies Act 1961, the Insurance (Miscellaneous Provisions) Act 1964, Insurance Companies Regulations 1969 and the National Insurance Corporation of Nigeria Act 1969 and secondly, the Insurance Act 1976 and the Nigeria Reinsurance Corporation Act 1977. Their provisions are summarised by Ozomah (1972 and 1980).

2. The Motor vehicles (third party insurance) Ordinance 1945, Cap 139, makes it obligatory for vehicle operators to insure their legal liability for causing the death of or bodily injury to third parties.

3. Interpretation Act, Cap 59, Laws of The Federation of Nigeria and Lagos 1958.

4. See The State v. Daboh and Mordi (CCHCJ/11/75, p. 1739).

5. The analyses in this section (6.6) derive substantially from the existing literature. For example, Akeredole-ale (1975) and 1978), Teriba and Kayode (1977), Enuenwosu and Nemedia (1980) and Aje (1978).

6. Sessional Paper No. 24 of 1945.

7. See the Nigerian Enterprises Promotion Act 1977.

8. See Schatz (1964), Kilby (1969).

9. Nwankwo (1980) however debunks this view.

10. Among them Ghana (under Nkrumah), Guinea, Mali, Somalia, Sudan, Zambia, Uganda and Libya.

11. Nigeria's rejection of the IMF loan (Guardian, 13 December 1985) is a testimony to this determination. Ironically, however, the national debate which led to the decision to reject the loan has opened up the eyes of government to the opportunity costs of government participation in industry. (See Daily Times of 28 November 1985). In an editorial comment, The Punch of 8 January 1986 observed on "Budget 86: Privatisation and Commercialisation:"

" For too long government parastatals have constituted a waste pipe to the whole economy. At the inception of this administration the Chief of General Staff came up with startling revelations of the extent of waste the economy had had to endure because of the inefficient management of the various parastatals. According to him ₦23 billion had been sunk into these organisations in the past six years. This figure is made up of ₦11.4 billion equity, ₦10.4 billion as loans and ₦1.3 billion guaranteed naira loans. In addition, ₦11.5 billion had been spent on these establishments as subventions within the same six-year period. Amazingly, the returns from these investments has been abysmally low, averaging 10 percent or less."

Chapter 6

Policy Recommendations of UNCTAD for the Insurance Industry

6.1 Introduction

This chapter looks at the regulatory environment. It is important to examine the policy recommendations of UNCTAD because of their major influence on the development of insurance regulation in the developing countries. In addition, the broad philosophy as well as the critique of the recommendations is essayed. Finally, the insurance - related projects of the UNCTAD Secretariat are highlighted.

6.2 The Origin of UNCTAD

Recognising that universal peace and prosperity are closely linked, and that the economic growth of the developing countries will also contribute to the economic growth of the developed countries (UNCTAD,1983),the United Nations General Assembly in 1964 convened a conference on trade and development (UNCTAD, 1983). The conference was a first attempt to develop a global strategy of international economic relations, and as it progressed the participants realised that a continuing effort would have to be sustained if any meaningful success would be attainable. This resulted in a resolution calling for the conference to be convened periodically (currently at intervals of four years), and for a Secretariat to be created to concentrate effort on the problems of development in the developing countries.

UNCTAD's principal organs[1] are the Conference itself, the Trade and Development Board (TDB) and the UNCTAD Secretariat. The first two organs are representative, reflecting the countries forming its membership,[2] whereas the third is administrative in character. The Conference, which meets every four years, is the supreme body of the organisation and is responsible for carrying out the main functions entrusted to it by the General Assembly of the United Nations. Continuity of work between Conference sessions is assured by the Trade and Development Board, which has six main committees - Commodities, Manufactures, Invisibles and Financing related to Trade, Shipping, Transfer of Technology and Economic Co-operation among developing Countries as well as a special committee on Preferences. The Committee on Invisibles and Financing related to Trade (CIFT) is responsible for insurance and reinsurance issues among other areas. And within the UNCTAD Secretariat, the Special Programme on Insurance (SPI) is answerable for the insurance - related requests of the CIFT.

UNCTAD's work in insurance in aimed at assisting developing countries to establish and strengthen their national insurance markets and improve the terms and conditions of insurance and reinsurance which they will continue to purchase from the international community (Buol, 1976). To accomplish these goals, the governments of member countries of UNCTAD have adopted the UNCTAD resolutions in support of several types of state involvement (section 6.3). These include indigenisation of insurance operations, state participation in insurance, expansion of regional cooperation, etc.

6.3 UNCTAD Resolutions

The UNCTAD philosophy for state control of insurance is enunciated in the UNCTAD resolutions of 1964 and 1972 respectively. The 1964 resolution formalised the belief that "a sound national insurance and reinsurance market is an essential characteristic of economic growth."[3] This resolution (appendix 10) called upon developed countries to (a) give their full cooperation to the developing countries to encourage and strengthen their national insurance and reinsurance markets; and (b) give and increase the technical assistance and training facilities which they provide. The resolution further stipulates that technical reserves and guarantee deposits of insurance and reinsurance companies or institutions should be invested in the country where the premium arises and called on developed countries to encourage such investment by removing all obstacles to the achievement of this aim.

The 1972 resolution (appendix 10) was addressed more to the developing countries and invited them to take a series of measures geared to promoting two objectives. The first was the need to minimize, to the extent feasible, the dependence of developing countries on international insurers and reinsurers. The second was the realisation that total independence of foreign insurance and reinsurance markets was not feasible and, therefore, efforts should be made to secure the most appropriate terms and conditions at the lowest cost commensurate with the risks involved.

The resolution specifically called for the following: First, developing countries should take steps to enable their domestic insurance markets to cover insurance operations generated by their economic activities, including their foreign trade. Secondly, these countries could achieve these objectives by establishing and strengthening their domestic insurance and reinsurance organisations. Thirdly, they should take steps to ensure that technical reserves accruing from insurance and reinsurance operations carried out in their countries are invested locally. Fourthly, foreign companies operating in the developing countries should utilize the insurance servies available locally. Fifthly, developing countries should establish closer co-operation between their insurance and reinsurance institutions on a regional or sub-regional basis. Sixthly, the governments of the developed countries should increase the technical assistance and training facilities which they provide to the developing countries in order to assist in developing their domestic insurance and reinsurance systems.

Many miscellaneous resolutions were passed by the CIFT. As far back as 14 April 1967, it commended the recommendations of the Expert Group on Reinsurance to the attention of governments of member states of UNCTAD. On 13 July 1973 it invited developing countries to consider the adoption of the measures suggested in the study by the UNCTAD Secretariat on reinsurance problems in developing countries. Other studies carried out by the UNCTAD Secretariat on topical issues, such as marine cargo insurance, insurance education, co-operative insurance, insurance of large risks, etc, were similarly commended to member states (appendix 10).

6.4 Apologia of UNCTAD Resolutions

The apologists of UNCTAD are those personages who are connected with the UNCTAD Secetariat in Geneva either on a consultancy basis or as full-time staff. They are mostly of European and Asian stock and seem to hold a liberal view in international relations.

Malinowski (1971) traces the economic relationship between the developing countries and the metropolitan powers up to the Second World War (chapter 2.2) when the former expressed the desire to advance on the economic front. One major consequence of this development has been a steady deterioration of the balance - of - payments of these countries, causing them to appraise their foreign exchange outflows. Hence their adoption of the 1964 resolution to set up their national institutions.

The merits of this approach are two fold. First, insurance ensures the mobilisation and channeling of domestic savings and the short-term accumulation of funds (chapter 4.3.8). Second, any savings that can be realised in their foreign exchange outflow are vital for those suffering an adverse balance-of-payment position (chapter 4.4).

These objectives are expounded by Ripoli (1976), who as Malinowski does, cited examples of protectionist policies in the insurance sectors of developed countries such as the United States, Japan and members of the EEC.

6.5 Internal and External Criticism of the Recommendations

It is fortunate that the UNCTAD Secretariat is candid about the limitations of their recommendations (chapter 1.2). No two insurance markets in developing countries are identical. This is due to the great diversity in the political, economic and social environment in which these new national markets have evolved (UNCTAD, 1981). This means that what is suitable for one market may not be suitable for another. It is therefore no surprise that in some cases the application of the resolutions has improved the total retention capacity of the market, whereas, in others, all that has been achieved is the shifting of reinsurance from one company to another (Habib-Makar, 1982) while the residual business going abroad remains essentially the same (Malinowski, 1971).

A priori, a market operated by fledgling indigenous companies usually needs a bigger international reinsurance supply than a market operated by direct multinational insurance concerns whose risk bearing potential is naturally substantial (Ripoli, 1974). The multinational insurance concerns, because of their huge risk bearing capabilities, are better able to provide cover for the increasingly large industrial projects that are springing up in developing countries (Carter and Dickinson, 1979).

Emerging competitive markets (such as Mexico and Singapore) which have shunned the UNCTAD recommendations have reaped the rewards of healthy competition. Not only have their policyholders been left with a free choice of their insurers but the markets have been spared disruptive upheavals and a heavy overseas reinsurance drain of currency (Wilmot, et al, 1976).

The lesson of the limitations of the UNCTAD recommendations is that foreign technology imported into a traditional culture is only subject to government regulation at an opportunity cost, leading to unintended results (chapter 1.1).

In the light of the above UNCTAD is changing its views and modifying the recommendations. This is inevitable owing to the problems of implementation experienced from country to country and the results of the academic studies which have been assessing the recommendations.

UNCTAD's concerns with the localisation of business however remain unchanged. This means that there are continuing weaknesses in their modified recommendations since they underplay a concern for consumer protection which is the focus of regulation.

6.6 The Activities of the SPI

To assist the developing countries in achieving its objectives, the SPI undertakes studies, provides technical assistance and participates in and organises training and educational activities. Furthermore, the SPI regularly follows current insurance issues that may be of importance to the developing countries. Some of the major undertakings are discussed below.

6.6.1 SPI Research Studies

At the request of the CIFT, the SPI has prepared and published a growing list of studies which has been made available to member governments and which can be purchased from the United Nations in New York. "Establishment of a Unified International System of Insurance Statistics" provides a model for setting out a statistical format and reporting system in insurance. "Insurance Legislation and Supervision in Developing Countries" explains the effects which legislative action may have on the development of the insurance industry. "Reinsurance Problems in Developing Countries " examines the problems found in most developing countries, and in particular the inadequate reinsurance planning resulting in a strong dependency on foreign reinsurers. "Marine Cargo Insurance" suggests a number of measures to reconcile the international nature of marine insurance with the interest of developing countries. "Insurance Education for Developing Countries" determines the need for education in developing countries and suggests an approach to meet this need. The purpose of "Insurance of Large Risks in Developing Countries" is to highlight the considerable difficulties connected with insuring large risks and propose different ways in which the available experience and capacities of the entire national markets could be mobilised, among which the strengthening of the local technical and financial resources of the local companies and the availability of sufficient reinsurance facilities on a stable basis are of importance.

Two studies were prepared on the subject of motor insurance, namely "Problems of Motor Insurance in Developing Countries" and "Problems of Developing in the Field of Motor Insurance." The first study highlights the conspicuous place of motor insurance in the insurance markets of the majority of developing countries and then suggests ways of managing this class of insurance. The second study analyses the socio-economic problems caused by motor accidents and discusses the commonly found elements in national packages and indicates where they are found or not found and the merits and demerits of including or excluding them. For its part, the study on "The Promotion of Life Insurance in Developing Countries" analyses the social and economic role of life insurance in developing countries and highlights the numerous ways in which life insurance could aid development by contributing to social stability, by reducing the financial burden on the state, of caring for the aged and those made financially destitute because of death of the bread - winner and by mobilizing domestic savings.

Under the title, "Review on Developments of Insurance in Developing Countries", there is a biennial review of insurance and reinsurance development in developing countries with particular emphasis on the evolution of their national markets.

As requested by CIFT at the various sessions, the SPI is pursuing research in various areas such as insurance schemes through which developing countries could cover losses arising from natural catastrophes, the impact of "captive" insurers on the insurance markets of developing countries; case reports; alternative legal systems for the compensation of motor accident victims; possible fiscal measures applicable to insurers and policyholders that developing countries could adopt to render life insurance policies more competitive and flexible; possible new investment approaches for life insurers; a model for the compilation of motor insurance statistics; etc, etc (UNCTAD, 1983).

6.6.2 Technical Assistance

In addition to the conduct of research work, the SPI assists governments of developing countries individually or collectively in their development efforts through technical assistance. A request for assistance always emanates from the government itself. This assistance at the individual government level has included advising governments on the feasibility of establishing and strengthening national insurance and reinsurance organisations. The SPI has also been requested at various times to draw up or revise existing insurance legislation appropriate to the needs of the country. Some of these technical assistance operations are underway, while others are under preparation (UNCTAD, 1983).

Regional assistance has been rendered in such activities as drawing-up the agreement establishing both the Africa Re and Asian Re. The structure and mode of operation of these two regional reinsurance institutions are therefore similar. Both were established after many years of negotiations among governments and also between governments and insurers. The headquarters of Africa Re is in Lagos and that of the Asian Re is in Bangkok. The corporations began operations in 1978 and 1980 respectively. The governments of the countries which are members of either the Africa Re or Asian Re undertake to give them at least 5 percent of the reinsurance business ceded abroad in the form of reinsurance treaties (chapter 9.3.3).

The SPI has also sponsored meetings of insurers and insurance controllers in Asia and the Pacific, Africa, the Arab region and Latin America. Also, it participates in symposiums organised by regional institutes. For example, the SPI assisted the Economic Community of West African States (ECOWAS) in drawing-up a Protocol establishing an inter - African insurance card covering motor vehicles third party liability when the insured vehicle is passing through the territories of the parties to the Protocol, such cover to provide at least the same guarantees as those required by the laws in force in the territory of each of the parties (Ozomah, 1979).

In partnership with the United Nations' regional economic commissions, the SPI has held a series of meetings of insurance commissioners (or other government agencies in charge of insurance supervision) for countries in Asia and the Pacific, Africa and Latin America. These were the first regional meetings ever held for insurance supervisory officials. Although the purpose was merely to provide a forum through which they could become acquainted, exchange views and experiences, and generally improve their knowledge of the supervisory function, in every case the results went much further. In all three regions the participants adopted resolutions to form regional associations, and the objectives expressed in the resolutions were remarkably similar. In the first place, it was expected that the association would provide a continuous forum for sounding out ideas, as well as a clearing-house for information on important developments. In the second, it was felt that they would serve as a natural framework for harmonizing systems of insurance statistics, legislation and regulation (Buol, 1976).

These technical assistance projects typically are funded through the United Nations Development Programme (UNDP) or the international aid agency of a developed country. Through the funds provided by such grants the SPI has established programmes of insurance and actuarial science in two African Universities. It has also provided expert assistance for the writing of insurance legislation in over a dozen countries (Buol, 1976).

6.6.3 Education and Training

The SPI is involved in insurance training and education activities. For example, the SPI, with the cooperation from the Economic and Social Commission for Asia and the Pacific (ESCAP) and UNDP, has offered a general insurance course in Manila. This course, now of three months' duration, is intended for middle-level insurance managers of insurers from developing countries of Asia and the Pacific region. The course is conducted under the auspices of the Insurance Institute for Asia and the Pacific (IIAP) and was offered in 1982 and 1983 (UNCTAD, 1983).

The SPI also conducts specialised seminars of one or two week's duration. These seminars deal with specialised topics of direct interest to insurers or insurance regulators of developing countries. For example in 1983 a seminar on the Government Interest in the Supervision of Reinsurance was held in Singapore.

In addition to the above activities, the SPI provides assistance to national or regional insurance training institutions. At the regional level the SPI provided assistance in establishing the West African Insurance Institute (Chapman, 1983). The Institute was established in 1978, with UNDP financing, at Monrovia (Liberia) by the five English speaking countries of West Africa (Ghana, Gambia, Nigeria, Liberia and Sierra Leone). The aims of the Institute are to provide vocational training to the staffs of insurers and government insurance supervisory agencies; and to act as a centre for the compilation of technical and statistical insurance data and to render technical assistance to member states (chapter 9).

6.6.4 Impact of UNCTAD on the Insurance Markets of Developing Countries

The fact that the domestic insurance sector had emerged very rapidly from the colonial era to the transitional and take-off stages all within a period of a quarter of a century is a testimony to the vigorous activities of the SPI.

In the colonial period the typical market consisted of locally licensed agencies or branches of foreign insurance companies (chapter 2.2). These foreign agencies and branch offices handled most of the domestic risks emanating from these markets, except that large and complex lines of business cover were obtained directly from abroad. Owing to the absence of a genuine domestic industry and of insurance legislation, foreign insurers and reinsurers operated relatively unfettered by local regulation or competition. This resulted in major outflows of currency, with the result that relatively small insurance funds were available for local investment and, hence, development. Many of the foreign agencies, branches and companies placed little emphasis on developing any technical and managerial insurance skills among the local population (chapter 4.3.8).

That the situation began to change as the developing countries began to realise the importance of insurance operations to their national economics and to their development efforts is no coincidence. The politicisation of the resolutions of UNCTAD and CIFT as well as the impact of the studies and activities of the SPI formed the basis for change, which was very rapid.

The resolutions concerning the control of the insurance industry were translated into action first through enactment and enforcement of stricter insurance regulation and control. A more orderly market then ensued. Insurers were required to be licensed prior to conducting the business of insurance. Direct insurance abroad was often prohibited, if local insurers could accommodate the risk. Insurers were required to maintain technical reserves on local business in the country. Next, the control of insurance by nationals took place through the establishment of domestic insurance companies. Foreign insurers ceased to operate as agencies and branches, instead, acquiring shares in domestic companies through majority or minority participation.

Measures were also taken to secure a large volume of business for the national market by requiring local cover of certain risks, for example, on transport insurance of imports. It may be recalled in this connection that UNCTAD resolution 42(111) urged that "domestic insurance markets of developing countries should cover the risks generated by the economic activities of the countries concerned, including their foreign trade" (section 6.3). In accordance with this strategy many developing countries have enacted laws making it obligatory for all imported goods to be insured locally.

Governments of developing countries have also taken action in the field of reinsurance. Two major SPI studies on reinsurance (section 6.6.1) established guidelines for action at the company, market and regional levels for maximizing retention and for national reinsurance planning. As a result of UNCTAD's initiatives and encouragement two important regional reinsurance institutions exist and several regional and sub-regional pools have been established.

In the area of insurance education and training, a number of developing countries have established national training institutes, as well as regional institutes. In addition to the above tangible results, some intangible benefits have accrued, namely that the various meetings of the CIFT have served as forums for discussion. The CIFT has also been the catalyst that encouraged developing countries to cooperate with each other and also to seek common grounds for action. Furthermore, the result of this interchange was to increase awareness and confidence of insurance personnel in developing countries themselves. This in turn, resulted in a better negotiating balance between insurers of developed countries and those in developing countries.

UNCTAD is obviously the basis of these historic changes.

6.7 Notes

1. For detailed information see United Nations, 1980 and Hagnani, 1978.
2. Currently there are 166 members, including some countries that are not members of the United Nations itself, but which are interested in the well-being of the developing countries.
3. See UNCTAD Resolution A.I.V. 23.

PART THREE

POLICY INSTRUMENTS AND IMPLEMENTATION

CHAPTER 7

FIDUCIARY REGULATION IN NIGERIA

7.1 Introduction

The purpose of fiduciary regulation is to protect policyholders against the dishonesty and incompetence of insurance operators. It is therefore universally accepted that the special features which distinguish insurance from other goods and services make government regulation of insurance transactions desirable (chapter 4.2).

7.2 Historical Background

In Nigeria there were no insurance control laws until 1961. Until this date, the only laws in operation were general company laws[1] and the law requiring third-party motor insurance. From 1961 onwards a number of insurance laws have appeared as follows:

7.2.1 Insurance Companies Act 1961

The aim of this Act was to provide fiduciary regulation of the companies in operation. It made provisions for registration as distinct from incorporation and demanded certain standards of solvency and disclosure of information.

7.2.2 Insurance (Miscellaneous Provisions) Act 1964

The control Act of 1961 made no provisions for the control of company investments. This anomalous situation was corrected by this Act, which provided that every insurer should invest at least two-fifths of its previous year's premium in Nigerian securities.

7.2.3 Insurance Act 1976

The aims of the 1976 Act are to regulate the operations of insurance companies, brokers and agents and to make it compulsory for the insurance of imports to be placed with local insurers. It repeals the 1961 control Act as well as its 1964 complement

In addition to the above laws, there is a miscellaneous category that are worthy of mention. The Marine Insurance Act providing a basic legal framework for marine insurance was passed in 1961. The Companies Act of 1968 compelled all existing foreign companies to incorporate locally. The Insurance Companies Regulations of the same year required existing insurance companies to apply for registration in the Register and submit returns on their financial position to the Registrar of insurance (chapter 9.3.2.1).

7.3 Insurance Companies Act 1961

7.3.1 Registration

The Insurance Companies Act of 1961 introduced the necessity for registration as distinct from incorporation by providing that "no insurer shall commence or carry on insurance business in the Federation unless the insurer is registered for the purpose of this Act."[2] However, where a company was already carrying on insurance business, it should apply within three months for registration as an insurer.[3]

Application for registration should be made in the prescribed form and accompanied by such other documents as the Registrar required.[4] Before registering an applicant as an insurer the Registrar must be satisfied.

(a) "that the class of business is or will be conducted in accordance with sound insurance principles[5], and

(b) that the margin of solvency is adequate, and

(c) that the applicant being a body corporate operating outside of the Federation is duly constituted under the laws of the country in which the head office of the applicant is situated, and that the paid up capital is not less than £50,000 or that the applicant being a body corporate, constituting and operating solely in the Federation, has a paid-up capital of not less than £25,000, and

(d) that in the case of the applicant being an association of underwriters, the requirements of this Act as to association of underwriters are provided for in the regulations of the association, and that if constituted outside of the Federation, the association was duly constituted not less than five years before the date of application for registration under this Act and is lawful in the country of origin, he shall register the applicant as an insurer and notify the insurer in writing accordingly. Notice of the registration shall be published in the Gazette."[6]

The would-be insurer must submit a formal application to the Registrar.[7] If the latter was not satisfied that the applicant had met the above conditions, he could reject the applicant for registration and give notice in writing of his intention to reject the applicant.[8] (An aggrieved person was given a right of appeal).[9]

7.3.2 Margin of Solvency

A solvency standard for the companies operating on the market was imposed. Firstly, the assets of a local non-life company must exceed its liabilities by at least ₦50,000 or 10 pereent of its premium income for the preceding financial year (whichever was greater). Secondly, the assets of a local composite insurer must exceed its liabilities by at least ₦100,000 or 10 percent of total premiums. In addition to this, the liabilities of such a company under its unmatured life, industrial and sinking fund policies must not exceed the amount of its life insurance fund. Thirdly, the margin of solvency imposed on a local insurer carrying on insurance business within and outside the Federation, or only outside the Federation is exactly double the above figures.[10]

7.3.3. Principal Office and Principal Officer

There is provision that an insurer should maintain a principal office in the Federation, appoint a principal officer and notify this information to the Registrar in writing.[11] If the insurer changed the location of its principal office or appointed a new principal officer, the insurer should, within 21 days of the change of location or of the appointment as the case may be, give notice thereof to the Registrar in writing.[12] (See sections 7.6.3.1).

7.3.4 Accounts

The Act provided that an insurer should, within six months after the end of each financial year of the insurance business of the insurer, notify the Registrar in writing of any change during that year any matter prescribed for the purpose of the Act.[13] It is similarly provided, inter alia, that an insurer should, within such six months also prepare and furnish to the Registrar, in the prescribed forms, a certificate as to the solvency of the insurer, signed in the case of a life insurer, by an actuary; a balance sheet duly audited showing the financial position of the insurer at the close of that year together with a copy of the relevant profit and loss account. The insurer must also furnish a certified copy of the revenue account in respect of life insurance business, if any, carried on by the insurer in that year and such other documents and information relating to the relevant accounts and balance sheet (including copies of reports on the affairs of the insurer for the financial year as submitted to the policyholders or shareholders of the insurer) as the Registrar from time to time might require.[14]

The Registrar was given powers to direct that the accounts or balance sheet submitted under section 12 of the Act be amended. The Registrar could himself effect the amendment and inform the insurer of the particulars of the amendment. He could reject the account or the balance sheet as not having been prepared as prescribed.[15] There was a right of appeal by an insurer against the Registrar's amendment of an account or balance sheet.

The accounts of an insurer could be audited only by an Auditor approved by the Registrar. An audit must be carried out annually.[16] (See sections 7.6.3. 4/7/8).

Any statement issued by an insurer containing its authorised capital must be followed by its paid-up capital and any statement about its subscribed capital must be followed by its paid-up capital.[17]

7.3.5 Winding Up

There was provision that an insurance company could be wound up by the High Court for inability to pay its debts. In this regard, the provisions of section 134 and 136 of the Companies Act[18] had effect as if the petition was one presented under the Companies Act[19] which provide for winding up in cases, *inter alia*, of default in delivering statutory reports to the Registrar, inability to pay debts, failure in certain cases to meet a creditor's demand note, or to satisfy execution or other process, or the court after a consideration of any contingent or prospective liability of the company is satisfied that the company is unable to pay its debts. If the value of the assets of an insurance company did not exceed the margin of solvency as defined in section 4 of the Act the company would be deemed to be unable to pay its debts.[20] (See section 7.6.9).

7.3.6 Cancellation of the Certificate of Registration

The Act empowered the Registrar to cancel the registration of a registered insurer if the Registrar was satisfied that the class of insurance business of the insurer was not being carried on in accordance with sound insurance principles; or that the insurer's margin of solvency was inadequate; or that the insurer had ceased to carry on the insurance business in the Federation; or that the insurer, in writing, requested the cancellation of registration or that a judgement obtained in any court in Nigeria against the insurer remained unsatified for thirty days.[21]

The Registrar, in exercise of his functions under section 9, was obliged to notify in writing the insurer of his intention to cancel such insurer's registration. The insurer had a right of appeal within 60 days of the date of such notice.[22] An insurer whose registration had been cancelled was normally given 12 months of grace within which such business must be wound up.[23] The period could in special cases be extended by the Federal Commissioner for Trade. (See section 7.6.4).

7.3.7 Amalgamations and Transfers

The Act precluded any local insurer from amalgamating with any other insurer carrying on long term business or workmen's compensation insurance business and also from transferring to or acquiring from any other insurer any such insurance business or any part of any such insurance business unless the transaction was sanctioned by the High Court,[24] which for that purpose has the same jurisdiction as those it possesses under the Companies Act of 1968.[25] (See section 7.6.8).

7.4 Evaluation

The Act was patterned on the British model which was designed to ensure freedom and publicity to the business rather than provide the machinery for control and supervision as it is the case in most of the E. E. C. member countries, India, Japan, Brazil and Mexico, to name a few examples. In this laissez-faire situation, it was not surprising that the low capital requirement of ₦50,000 for registration coupled with the relatively lax pre-registration conditions was responsible for the mushroom growth in the number of insurance companies.

Thus, it was possible for an applicant, with one or two experienced insurance men and ₦50,000 deposited with a commercial bank, to apply for and be registered as an insurer. Experience has shown that by arrangement with the commercial banks such deposits could be withdrawn after obtaining the certificate of registration. In the event of cancellation of the insurer's certificate of registration, there was usually no financial backing against financial liabilities.

This lax pre-registration condition is demonstrated by The State v. Daboh and Mordi (Akinkugbe, 1976). The accused persons conspired together to obtain registration as an insurer of the Nigerian States Assurance Company by falsely pretending that the company had a credit balance of ₦50,000 in its account with the Bank of the North. Daboh was the Executive Director of the insurance company while Mordi was the Manager of the bank.

This case illustrates how Nigerians either blatantly disregarded the control law or operated on its fringe.

(The other inadequacies of the Act are reported in chapter 9.3.2).

7.5 Insurance (Miscellaneous Provisions) Act 1964

The Insurance Companies Act of 1961 made no provisions to control the investments of insurance companies,[26] even in a situation where the latter were hardly investing their funds locally (chapter 5.3). This deficiency was remedied by the Insurance (Miscellaneous Provisions) Act of 1964, the sole purpose of which was to provide for the investment of insurance funds in specified Nigerian investments.

The Act prohibited the payment of compensation under an insurance contract in respect of local risks, unless the person paying the compensation was a Nigerian company.[27] This provision would appear to restrict the insurance of local risks to Nigerian insurers (section 7.6.2.1).

It was stipulated that every insurance company transacting non-life insurance business should invest at least 40 percent of its premium income during the immediately following financial year in Nigerian investments.[28] These investments could be realised to meet abnormally large claims, but should be made good within a period of 30 days.[29]

There was provision that life contracts on Nigerian citizens should be issued by Nigerian companies in Nigerian currency [30] (chapter 8.1.1).

This was intended to limit the amount of foreign exchange that would have been expended in paying life premiums abroad. However the remittance of reinsurance premiums on life contracts to reinsurers abread was allowed. The entire life fund must be held in Nigerian investments.

"Nigerian investments" was defined as

(a) stocks, notes, bonds and other securities issued by the government of the Federation or a Region;

(b) stocks, shares and debentures issued by a body corporate established directly by a law in force in Nigeria, or issued by a Nigerian company;

(c) rights to receive payments by way of interest or dividend which have accrued due in respect of any such securities ...;

(d) moneys standing to the credit of any current or deposit account maintained with a branch situated in Nigeria of a licensed bank within the meaning of the Banking Act;

(e) moneys standing to the credit of any deposit account maintained with a person who is carrying on business in Nigeria as a building society ...;

(f) an estate in fee simple absolute in possession in land in Nigeria ...;

(g) rights to be paid a loan which is absolutely secured by a first mortgage of such an estate ...;

(h) rights to receive payments by way of premium which have accrued due under contrancts of insurance made in Nigeria;

(i) right to be repaid a loan made in Nigeria to any person in consequence of his being a person who has undertaken to make payments by way of premium under a contract of endowment insurance ...;

(j) property of such other descriptions, if any, as may be prescribed."[31]

These investments were to be distributed as follows: For a general company, 10 percent of the investment must be in government stocks and/or securities and not more than 4 percent in real property. As for life companies, 25 percent of the investments must be in government stocks, notes, bonds and other securities and not more than 10 percent in real property.[32] (See chapter 7.6.3.6).

The 1964 Act has set the pace for government direction of insurance company investment by imposing restrictions on particular classes of assets that could be acquired and specific limits on the proportion of total assets that could be held in particular classes of financial assets. Since many of the securities were not available in the capital market, the companies were not able to find avenues for much of the funds generated from insurance. No wonder the investment of the funds was not optimal as table 7.1 shows. The rigid policy of restrictions has the effect of prolonging itself (Dickinson, 1980) and still lingers on today. (For more evaluation see chapter 9.3.2).

Financial Assets	1968	1969	1970	1971	1972	1973
Government securities	13.59	17.23	14.50	17.70	20.63	21.26
Stocks, shares and bonds	24.65	19.21	20.46	15.08	13.36	12.57
Mortgages & policy loans	11.21	16.51	16.31	12.09	13.73	11.88
Cash & bills receivable	47.75	44.41	43.98	49.11	40.95	41.55
Other assets	2.80	2.64	4.75	6.02	11.33	12.74
Total assets	100.00	100.00	100.00	100.00	100.00	100.00

Source: Insurance Dept., Federal Ministry of Finance

Table 7.1

Percentage Distribution of Investment by Insurance Companies in Nigeria (1968 to 1973)

7.6 Insurance Act 1976

Now we turn to a discussion of the 1976 Insurance Act.

There are two periods covered by this thesis: (1) the period before the 1976 Insurance Act, and (2) the period immediately after the 1976 Act, at least so far as the available data permits. The 1976 Act has been used as the dividing line simply because the Act, it is generally agreed, marks an important milestone in the historical development of the insurance industry in Nigerian. It was not until the promulgation of the 1976 Act that what is now known as the insurance industry in Nigeria emerged. Adopting the close control system of regulation (chapter 4.4) the Act contains wide ranging provisions dealing with ownership structure, minimum entry requirements, regulations concerning reserve requirements, the management of insurance funds, the filing of returns and the supervisory rolls of the Insurance Department of the Federal Ministry of Finance and Economic Planning and such other provisions as may affect the structure, the behaviour and overall performance of insurance business in Nigeria.

7.6.1 Scope of Supervision

The provisions of the Insurance Act of 1976 apply to all insurance business and insurers except:

(a) a friendly society with no share capital and provided the society does not employ any agent to sell insurance policies to non-members;

(b) a pension fund; and

(c) any other insurer based outside Nigeria who is engaged solely in reinsurance business with an insurer licensed under the Act.[33]

Under the Act, insurance business is classified into life insurance and non-life insurance business. The latter is further sub-divided into:

(a) fire insurance;

(b) accident insurance;

(c) motor vehicle insurance;

(d) workmen's compensation insurance;

(e) marine, aviation and transport insurance;

(f) miscellaneons business not falling under any of the above-mentioned classes of insurance business.[34]

The above classification notwithstanding, any part of an insurance business may be treated as belonging to a particular class of insurance business and the reinsurance of liabilities under an insurance policy is treated as an insurance business of the class to which the insurance policy would have belonged if it had been issued by the reinsurer.[35]

7.6.2. Conditions for Commencing Business

7.6.2.1 Establishment

In all countries any concern proposing to carry on any supervised class of direct business whatsoever is required under the insurance laws to have an establishment in the country concerned (section 7.4). Hence the Insurance Act of 1976 provides that no person shall carry on any class of insurance business in Nigeria except:

(a) a company duly incorporated as a limited liability company under the Companies Act of 1968;

(b) a co-operative insurance society registered under the law relating to co-operative societies; and

(c) a mutual insurance company.[36]

However, an establishment is not required in order to undertake reinsurance business in excess of the 20 percent compulsory cession to the Nigeria Reinsurance Corporation of Nigeria.[37]

7.6.2.2 Licensing

The grant of a licence is subject to a number of conditions. These are legal, financial and professional conditions.

The Act provides that no insurer shall commence or carry on insurance business in Nigeria unless the insurer is registered in accordance with the provisions of the Act.[38] All the insurers carrying on insurance business at the time the Act comes into effect are expected to apply within three months for registration. Otherwise they are obliged to cease operations after the expiration of six months from the coming into operation of the Act, unless they are duly registered to continue the particular class or classes of insurance business in respect of which application has been made by the insurer.[39] It also gives seven or more persons, who have subscribed to a memorandum of association and otherwise complied with the requirements of the Act, the permission to form and register a mutual insurance company, the aim of which is to use the profit derived from their operations to reduce the cost of insurance undertaken by its members.[40]

A separate registration must be obtained for life and non-life business repectively. Application for registration must be made to the Director of Insurance on a prescribed form.[41] The applicant must attach to the application form some documents including the table for premiums, the memorandum and articles of association, a certified copy of the certificate of incorporation and the names and addresses of the directors, etc.[42]

A minimum paid-up capital of ₦300,000 in respect of companies wishing to transact non-life insurance business, ₦500,000 in respect of life business, and amounts not less than ten times the above amounts in respect of reinsurance business.[43] This means that a composite company requires a minimum of ₦800,000 issued and paid-up capital. The Federal Commissioner for Finance may, by order published in the Federal Gazette, increase the amount of the share capital.[44]

The share capital otherwise known as "statutory deposit", must be deposited with the Central Bank of Nigeria and kept deposited therein until after registration when the Director of Insurance may permit the release of 50 percent of the amount so deposited, as working capital. The balance remains deposited as long as the company continues in insurance business. Where, however, the application for registration is not successful, the full amount of the deposit is notwithstanding refundable.[45] A further relief is guaranteed by the Act to permit the withdrawal of up to a further 25 percent of the deposit on application to meet a substantial loss which the company would not otherwise be able to meet. However, the amount so withdrawn must be replaced within 30 days. The statutory deposit is not regarded as assets held by the insurer but is available in the event of the cancellation of its certificate of registration or of the winding up of the insurer for the discharge of the liabilities arising out of the policies of the insurance business transacted by the insurer and remaining undischarged at the time of the winding up.[46]

In addition to the above financial conditions, the applicant for registration as an insurer must satisfy the following additional conditions:

(a) that the class of insurance business will be conducted in accordance with sound insurance principles;

(b) that the applicant is duly established under the applicable law;

(c) that the statutory deposit has been paid to the Central Bank;

(d) that the arrangements relating to reinsurance treaties in respect of the classes of insurance business to be transacted are adequate and valid;

(e) that the proposal forms, term and conditions of insurance policies are in order and acceptable;

(f) that there is at least one competent and professionally qualified person to man each department of insurance business;

(g) that the directors and shareholders have not been involved in or been found guilty of fraud; and

(h) that the name of the applicant is not likely to be mistaken for the name of any other insurer.

If the Director of insurance is satisfied that the above conditions have been met by the applicant, he is obliged to register the applicant as an insurer by issuing a certificate of registration and notifying the insurer in writing accordingly. A notice of the registration must be published in the Federal Gazette. If however the Director is not satisfied that the registration conditions have been met he shall give notice in writing to the applicant to reject the application.[47]

Where an applicant is denied registration, he must be notified in writing and he may appeal to the Federal Commissioner against the rejection. If the appeal fails, the fact of failure must also be published in the Federal Gazette and in such other manner as to ensure publicity.[48]

7.6.3 Supervision of Registered Insurers

It is, of course, the function of the supervisory authorities to verify that the concern remains solvent and conducts its business in accordance with the laws and regulations. This implies consideration of legal, accounting, technical, equitable and economic matters. The supervision of the business of a registered insurance concern therefore involves first the inspection at the place of business, either merely to verify the information given in the returns or to inspect the whole of the concern's business affairs and, second, examination of the returns which must be submitted to the supervisory authorities.

7.6.3.1 Registration Office

Every insurer must have a principal office to which all communications and claims may be addressed. The situation of the principal office and any change thereof must be notified to the Director of Insurance within 21 days. Where the insurer is incorporated under the Companies Act of 1968, its registered office under that Act must be the same as its principal office under the Insurance Act. It is an offence to function as an insurer without a principal office[49] (section 7.3.3).

7.6.3.2 Appointment and Vacation of Office of Chief Executive

The Director must be notified in writing of an intention to appoint a particular candidate as the chief executive of the insurance company. The notice of intention is to be counter-signed by the prospective appointee. It must contain his academic, professional administrative qualifications and the detailed career history.[50] No appointment can be made until the Director confirms in writing that there is no objection. If he objects to the appointment, the insurer and the prospective appointee can appeal to the Commissioner.[51] Any appointment in contravention of the Act renders the insurer and the chief exective so appointed liable to a fine of ₦10 for each day of contravention.

If the chief executive is relieved of his post, the insurer must give the reasons, and if he resigns, he must state the reasons for his resignation. In either event, he must prepare a report on the state of the business. The insurer must then inform the Director of the vacation of office and send a copy of the out-going chief executive's report to the Director within 21 days. Non-compliance carries a fine of ₦500 upon conviction.[52]

7.6.3.3 Insurance Policies

All insurance policies and subsequent changes in them must be approved by the Director of Insurance. This means that where standard form insurance contracts are not used by an insurer, then every policy, certificate, contract, rider, clause, warranty or endorsement or deletion therefrom must be individually submitted for the approval of the Director. Where, however, standard form insurance contracts are used, then, only six copies need be submitted - the six standard printed forms will serve as prototypes while their facsimile copies may subsequently be validly disseminated to the public by the insurer as if they also have been individually approved by the Director. Further-more, it would appear that where an insurance company has secured the requisite approval and it does not intend to vary any of the terms in the insurance documents later, it may not seek the Director's approval again until it may become necessary owing to the introduction of new terms. Policies issued in contravention of the Act are voidable at the instance of the insured and the insurer is liable on conviction to a fine of ₦2,000.[53]

7.6.3.4 Records

The insurer must keep at its principal office the memorandum and articles of association, the names and addresses of shareholders, the names and addresses of policyholders and a register of claims, indicating the date of claim, the names and addresses of the claimants and date of rejection of claims. In cases of rejection, the register must show the reasons for the rejection and where there is litigation the decision of the court thereof. There must be a register of investments, assets and reinsurances ceded. Other records are the cash books, current account books and a register of open policies in marine insurance. In respect of life insurance the insurer must keep a register of the insured under group policies, loans on policies, cash surrender values and of lapsed or expired policies. Non-compliance would on conviction attract a fine of ₦500.[54] (See section 7.3.4).

Furthermore, every insurer must keep separate account books for each of life and non-life insurances. The fund for one type of business cannot be applied to discharge the liabilities arising from the other type of business. On the one hand the life fund shall consist of a sum which is not less than the mathematical reserves while, on the other, general funds consist of the reserve for unexpired risks and reserves for outstanding claims.[55] (See section 7.6.3.5).

7.6.3.5 Reserves

Every insurer is expected to set up and maintain the following technical reserves in respect of life and non-life business:

(a) reserves for unexpired risks;

(b) reserves for outstanding claims; and

(c) contingency reserves to cover fluctuations in securities and variations in statistical estimates.

The reserves for un-expired risks in general business other than marine insurance shall not be less than 45 percent of the total net premiums; however, this figure is increased to 75 percent in the case of marine business. The reserves for outstanding claims represent the amount of all outstanding claims in addition to 20 percent of the estimated figure for outstanding claims incurred but not reported at the end of the previous preceding year. The contingency reserves are not expected to be less than 3 percent of total premiums or 20 percent of net profits (which ever is greater) provided they are allowed to accumulate until they reach the minimum paid up capital or 50 percent of the net premiums (whichever is greater). In life insurance the insurer is expected to maintain a general reserve fund which is made up of the sum of the net liabilities on policies in force at the time of the actuarial valuation and a contingency reserve which equals one percent of premiums or 10 percent of profits (whichever is greater) and which shall be allowed to accumulate until it reaches the amount of the minimum paid-up capital.[56]

7.6.3.6 Investments

The current law, which has repealed the previous enactment on investments,[57] requires all assets in respect of insurance business transacted in Nigeria to be invested in Nigeria.[58] Under the Insurance Companies Regulations of 1968 and the Insurance Act of 1976, such assets are to be invested in the stocks of the Federal and State Governments and semi-government bodies, equities, mortgage loans on real estate, industrial debentures and unsecured loans, Treasury Bills and Treasury Certificates and cash on deposit account. In addition, the companies are required to invest at least 25 percent of their funds in government securities and not more than 10 percent of the funds in real property. (See chapter 7.5).

7.6.3.7 Annual Returns

Not later than 31 May, each insurer must submit its annual returns, namely audited balance sheet, profit and loss account and revenue account for each class of insurance business. The life insurer must in addition submit an abstract of the report of the actuary, the valuation report and a table of premiums, policy reserve values and guaranteed surrender values.

On receipt, the Director may call for additional information and may require the insurer to correct or rectify any deficiencies. Failure to produce any required document or to give additional information is punishable by a fine of ₦2,000.[59] Failure to submit the annual returns is also punishable by the imposition on conviction of a fine of ₦1,000.[60] No insurer is allowed to declare and pay any dividend until the Director has expressly confirmed in writing that its annual returns are in order.[61] After receiving the Director's notification that the returns are in order, the accounts must be published in at least one newspaper with wide circulation.[62] (See section 7.3.4).

7.6.3.8 Audit

The balance sheet, the profit and loss account and the revenue account of every insurer shall be audited annually by an auditor approved by the Director and no auditor shall be approved if he is an employee, manager or director of the insurer. At the end of the audit, the auditor shall certify whether or not he has obtained adequate information from the books and records: the books of the insurers have been properly kept and the affairs and transactions of the insurer have been correctly recorded; the accounts and balance sheet are in accordance with the information given to him for the purpose of his audit; the accounts and balance sheet are in accordance with the applicable provisions of the Act and the balance sheet and the profit and loss account, respectively, give a true and fair view of the financial position of the insurer.[63] (See section 7.3.5.)

7.6.4 Cancellation of the Certificate of Registration

The Director of Insurance can cancel the certificate of an insurer if he is satisfied:

(a) that the class of insurance business is not being conducted in accordance with sound insurance principles; or

(b) that the technical reserves in respect of unexpired risks and outstanding claims are inadequate; or

(c) that the insurer has ceased to carry on business for at least one year; or

(d) that the insurer has applied in writing for the cancellation of its certificate of registration; or

(e) that a judgement debt obtained in court of competent jurisdiction against the insurer remains unsatisfied for 30 days; or

(f) that the insurer is carrying on simultaneously with insurance business any other business which is detrimental to the insurance business of the insurer; or

(g) that the business of the insurer has been transferred to or amalgamated with the business of any other insurer; or

(h) that the insurer has refused to submit to an examination of its books; or

(i) that the insurer has failed to comply with the provisions of section 19(4) of the Act; or

(j) that the insurer has failed to maintain adequate and valid reinsurance treaties; or

(k) that the insurer lacks expertise; or

(l) that the insurer has persistently failed to comply with any enactment relating to reinsurance in Nigeria; or

(m) that the net assets of the insurer are below the minimum paid-up capital and the capital has not been made good within the time stipulated by the Director; or

(n) that the insurer persistently fails to pay claims promptly; or

(o) that the insurer has failed to set up the special reserves prescribed in section 17(1) of the Act; or

(p) that the insurer has established a branch office or branch offices without the approval of the Director; or

(q) that the insurer acts in any manner without the approval of the Director in cases where the Act requires such approval; or

(r) that the insurer has been wound up or otherwise dissolved, or has gone into liquidation.

Before exercising his power of cancellation, the Director shall notify the insurer of his intention and the insurer may appeal to the Commissioner. Where no appeal is lodged, the Director shall cancel the certificate and publish the fact in the Federal Gazette.[64] On cancellation, the insurer must apply to the court for a winding up order under the Companies Act of 1968.[65] (See section 7.3.6).

7.6.5 Insurance Intermediaries

The Insurance Act of 1976 draws a distinction between the insurance intermediary who acts as an agent representing the insurance company or companies and the insurance broker who holds out himself as giving independent advice to his client and on the cover most suited to his needs.

7.6.5.1 Insurance Agents

Insurance agents are salesmen employed to sell insurance policies and are not normally required to possess sound knowledge of insurance. Hence they are required to be licensed before they can transact business. Application[66] for licence must be made to the Director of Insurance and be accompanied by a letter of appointment as an agent from each insurer[67] and a licence fee of ₦100.[68] If the Director issues a licence, he must publish the same in the Federal Gazette. The licence entitles the holder to act as an agent for theinsurer or insurers named therein. The Director cannot licence as an agent a minor, a person of unsound mind or a person who had, prior to the date of his application, been convicted by a court of any offence involving criminal misappropriation of funds or breach of trust or cheating.[69] The licence is renewable every year on the payment of ₦25[70] and presentation of a certificate from each insurer concerned that the accounts of the preceding year had been settled.[71]

The insurer must maintain a register of agents indicating the date of commencement and termination of agency. An agent must pay or transfer to the insurer premiums collected by him within 15 days of receipt thereof. Any contravention is punishable by ₦100, ₦200, and ₦500 for a first, second and third offence respectively. On the third conviction of the agent, however, the Director of Insurance must revoke his licence and thereafter he cannot be licensed as an agent again. An agent without a valid licence is liable on conviction to ₦500 fine or imprisonment for two years or both, and in addition, he must refund to their rightful owners all moneys collected by him while so acting. An insurer who recklessly or knowingly transacts business with an unlicensed agent is liable on conviction to a fine of ₦1,000 and the court may order the insurer to refund all moneys collected by the agent.[72]

7.6.5.2 Insurance Brokers

Insurance brokers accept no share of a risk but are responsible solely for the placing of insurance and the subsequent servicing of it. In addition, their help may be needed at the time of a claim. In law, an insurance broker is primarily the agent of his principal, the policyholder, although at certain times, as with the collection of premiums, he also acts for the insurers. Like the insurance agents, they too are licensed by the Director of Insurance. The latter can only approve an application it he is satisfied that:

(a) the applicant has the prescribed qualifications;[73]

(b) the applicant has unlimited liability; and

(c) the applicant has deposited on a fixed deposit basis ₦25,000 with the Central Bank of Nigeria.

If the Director is not satisfied with any of the matters mentioned above he must notify the applicant in writing of his intention to reject the application. The applicant may appeal to the Commissioner against the decision.[74] The fact of registration[75] must be published in the Federal Gazette and the certificate is valid for one year but is renewable on the payment of ₦100[76] and presentation of a certificate from each insurer concerned that the accounts of the preceding year have been settled. This certificate is an inducement to the prompt and faithful discharge of the obligations under the Act.

The certificate may be cancelled or renewal refused if the broker has:

(a) knowingly or recklessly contravened the provisions of the Act;

(b) made any material false statement for the purpose of obtaining a licence;

(c) been found guilty by a court of competent jurisdiction of fraudulent or dishonest practices including misappropriation of clients' money; or

(d) materially misrepresented the terms and conditions of any policy or contract of insurance which he has sold to clients or seeks to sell to prospective clients.

Before cancelling or refusing renewal, the Director must notify the broker or his intention in writing and the broker may appeal to the Commissioner against the cancellation or the refusal to renew.[77]

Every licensed broker is required to maintain, at all times, a professional indemnity insurance of not less than ₦50,000 or 25 percent of his annual brokerage income during the preceding year, whichever is the greater. He must pay or transfer to the insurer every premium collected by him within 30 days of receipt thereof.

Any contravention is punishable on conviction by a fine of ₦500, ₦1,000 and ₦2,000 for the first, second and third offence respectively. In addition, the licence must be revoked and the broker or persons constituting the firm cannot by himself or themselves or in conjunction with any other person or body be licensed again as a broker under the Act. It is an offence punishable with ₦5,000 to function as a broker without a licence. Any insurer who knowingly or recklessly transacts business with an unlicensed broker is liable on conviction to a fine of ₦5,000. The court may in either case order the broker or the insurer to refund the moneys involved to their rightful owners.[78]

A broker must keep separate records of all his business transactions with insurers registered under the Act and those outside Nigeria. He cannot, however, enter into any insurance contract with any person outside Nigeria without the prior approval of the Director of Insurance. Any contract entered into in violation of the Act is void.[79] In order to ensure compliance with the Act, the Director, may, at any time, authorise an investigator to conduct any examination of an agent or a broker and, he may by notice in writing request him to produce any document or information relating to any insurance business negotiated or solicited by him.[80]

7.6.5.3 Commission

The Insurance Act of 1976 regulates the rates of commission payable to insurance agents and brokers respectively. The maximum rate payable for motor vehicle, workmen's compensation, contractors' "all risks" and engineering insurance is 10 percent while the maximum commission payable for other non-life insurance business is 15 percent. The rate of commission can only be altered with the approval of the Director. It is an offence to pay or receive any commission in excess of the stipulated rate. The penalty for contravention is ₦1,000 fine plus an amount equal to such excess commission.[81] No part of the commission may be offered as a rebate for the purpose of inducing any insured to renew or take a policy of insurance.[82]

7.6.5.4 Adjusters

According to the provisions of the Act brokers include adjusters. All references to brokers in the Act shall be construed to include adjusters. An adjuster means any person or body who for money or other valuable consideration acts for or on behalf of any insurer in adjusting claims arising from insurance contracts or policies or in negotiating for or effecting settlement of claims in connection with any such transaction.[83]

7.6.6 Machinery for Control

7.6.6.1 Administration and Enforcement

The Act provides for the appointment of a director of insurance, a deputy director of insurance and such other officers as are necessary for the administration and enforcement of its provisions. Any power vested in the Director may be exercised by the Deputy Director and any other public officer duly authorised by the Director or Deputy Director.[84] The Act also provides for the appointment of a chief actuary and other actuarial staff to assist and advise the Director of Insurance in respect of actuarial matters and such other matters as the Director may delegate to him.[85]

7.6.6.2 Powers of Investigation

The Director of Insurance is empowered once in two years to investigate the affairs of a registered insurance company for the purpose of satisfying himself that the provisions of the Act and any relevant regulations are being compiled with. The investigator has power to check the cash in hand, books of accounts, records and registers, verify the investments and statutory reserves and the legality or otherwise of any insurance transaction.[86]

If the report is unfavourable, the Director may suspend the insurer from undertaking new business for a specified period with a view to enabling him to rectify any deficiencies.[87] If the insurer is unwilling or unable to rectify the deficiencies, the Director may appoint an interim manager to manage the affairs of the insurer. Refusal to submit to the investigation or refusal to funish necessary information for the purposes of the investigation can lead to the cancellation of the certificate of registration.[88]

On the appointment of the interim manager, the latter has powers to restore the viability of the insurer and specifically he has authority to:

(a) collect all moneys and debts due to the insurer;

(b) enter, in the insurer's name, into any pending legal proceedings against the insurer;

(c) preserve the assets of the insurer;

(d) exercise staff discipline; and

(e) review previous management decisions.

The insurer will normally bear the incidental expenses of the interim manager who is placed under the supervision of the Director of Insurance to whom all periodic and other reports must be made. If the Director is satisfied that the interim manager has restored the affairs of the insurance company to a sound position, he may terminate his appointment. Where the continuation in business of the insurer would be hazardous to the policyholders, the Director of Insurance shall terminate the appointment of the interim manager and cancel the certificate of registration of the insurer.[89] Unless the insurer is a company being wound up by the court, the Director is empowered to proceed to appoint a receiver to immediately take charge of its assets and to collect and gather in all other assets due to the insurer and administer same as expeditiously as possible for the benefit of the policyholders and creditors. Thereafter the receiver shall apply to the court for the winding up of the insurer in accordance with the provisions of the Companies Act of 1968.[90]

7.6.7 Miscellaneous Provisions

7.6.7.1 Settlement of Claims

The current regulation reproduces the provisions of section 10 of the Motor Vehicle (Third Party) Insurance Act of 1958[91] and goes on to provide that when a claim in respect of a motor accident is made in writing, the insurer must, if he accepts liability, settle it within 90 days of receipt. If, however, he is denying liability he must inform the claimant in writing within 90 days of notification of claim.[92] Police reports are not required in some situations. Where only one person in involved in an accident, a statement of the facts by that person together with a statement by one witness constitutes sufficient evidence of proof of claim. Where more than one party is involved in the accident, each party must deliver a statement of the facts to the insurer or insurers and if the alleged facts do not differ in any material particular they constitute sufficient evidence of proof of loss. Police reports are however necessary where death occurs or there is serious bodily injury.[93]

7.6.7.2 Insurance of Imports

Insurance of all imports into Nigeria must be effected with a Nigerian registered insurer (chapter 8.4). Any contravention is punishable by ₦2,000 fine plus an additional fine equal in amount to the total commission received by the broker in the transaction. Where a broker, however, satisfies the Director of Insurance that from the exceptional nature of the risk it is not reasonably practicable to effect the insurance with an insurer registered under the Act, the Director may authorise in writing a broker to effect the insurance with insurers outside the country.[94]

7.6.7.3 Premium Rates

No insurer can make any general increase in the rates of premium without the prior approval of the Director of Insurance.

Any contravention can lead to suspension of business for a specific period or cancellation of the certificate of registration. Furthermore, the insurer must refund any excess premium to the insured. The insurer is, however, free to appeal to the Commissioner against the decision of the Director to refund any excess payment.[95]

7.6.7.4 Rating Committee

The Commissioner is empowered to set up an ad-hoc committee called the Rating Committee. The Committee consists of a representative of the Federal Ministries of Finance, Trade and Economic Development, two representatives of the Accident Insurance Association of Nigeria, one representative of the Nigerian Insurance Association and not more than three other persons appointed by the Commissioner.

The functions of the Rating Committee shall be to:

(a) examine and determine reasonable and adequate premium rates chargeable for similar risks in any class of insurance business or part thereof, having regard to past, current and prospective claims experience of insurers and also the nature of the risks;

(b) group risks by class for the purpose of ascertaining minimum and maximum rates chargeable therefor;

(c) ensure that rates are non-discriminatory except in accordance with well established customs and rules of the trade;

(d) consider factors that should be taken into consideration in fixing rates and premiums;

(e) examine and consider applications for general increase in rates and premiums with a view to making recommendations thereon having regard to general anti-inflationary measures prescribed by the government; and review insurance commissions from time to time.[96]

7.6.7.5 Loans

Insurers are prevented from granting loans to any officer of the insurers except loans on life policies issued to such persons by the insurer and loans normally forming part of the terms and conditions of service of the officer. Every insurer who grants and every officer thereof who receives any loans in contravention shall be guilty of an offence and on conviction liable to a fine of double the amount of such loan.[97]

7.6.8 Amalgamation and Transfer

No registered insurer engaged in life insurance business or workmen's compensation insurance may amalgamate with or transfer to any other insurer any such business or part thereof except with the approval of the Federal Revenue Court. Notice of intention to make an application to the court must be published in the Federal Gazette and a copy served on the Director of Insurance at least three months before the making of the application.

The terms of the amalgamation or transfer, the balance sheet, actuarial reports in respect of life business and a report of the proposed amalgamation prepared by an independent actuary must be kept at the principal and branch offices for inspection by the shareholders and policyholders.

The court may approve the arrangement if there is no sufficient objection but it cannot sanction the application if not less than one-fifth of the policyholders insured by the insurer object to it. Even where the arrangement is approved no policyholder is deprived of his claim against the original insurer unless he has signed a written document abandoning his claim and accepting thereof the liability of the new insurer.

After the completion of the amalgamation or transfer, the insurer must send to the Director its balance sheet, terms of the amalgamation, deed of agreement, the actuarial reports and a declaration as to the payments made under the amalgamation or transfer. It is also provided that the transferring insurer shall not be licensed anew to undertake the same class of business transferred until after the expiration of five years from the issue of the sanction of the court.[98] (See section 7.3.6).

7.6.9 Winding Up

Not less than 50 policyholders, each such policyholder having a policy that has been in force for at least three years, may present a petition for the winding up of an insurer under sections 209 and 210 of the Companies Act of 1968. In addition the Director of Insurance may present a petition for a winding up on any of the following grounds, namely that:-

(i) the insurer has failed to comply with section 7 (1) of the Act;

(ii) the insurer having failed to comply with section 7 (1) has continued such failure or contravention for a continuous period of six months after notice of such failure or contravention has been served on him by the Director;

(iii) the insurer's registration has been cancelled under section 7(2);

(iv) it appears from the insurer's annual returns or from the results of an investigation under section 37 that the insurer is insolvent.[99]

Notwithstanding the provisions of the Companies Act of 1968, an insurer who is engaged in the life business cannot voluntarily wind up its business except for the purpose of amalgamation or transfer under the Insurance Act of 1976.[100] (See section 7.3.5).

7.6.10 General Penalties

The Act gave the Director of Insurance powers to institute and prosecute criminal proceedings in his own name in the Federal Revenue Court.[101] Any fines[102] imposed under the Act must be paid within 30 days of imposition or confirmation of the judgement on appeal. If not paid, the Director, may, in writing, suspend the insurer from engaging in any new business for at least one year. If the insurer fails to pay within the period of suspension, its certificates of registration shall be cancelled.[103]

7.7 Evaluation of the Insurance Act 1976

In the preceding section the main provisions of the insurance control legislation are identified. These in the main are the minimum capital requirements; the registration or licensing of insurers, brokers and agents; the powers of inspection and intervention by the Director of Insurance; the annual submission of accounts and returns; investment of insurance funds; settlement of claims; insurance of imports; suspension and cessation of business; organisation of supervision; and miscellaneous provisions. This section critically examines these provisions with a view to focusing attention on the effectiveness of Nigeria's regulatory legislation.

7.7.1 Financial Conditions for Commencing Underwriting Business

The basic function of insurance is the spreading of risk. This is achieved by the insured paying small sums of money into a pool out of which may be drawn much larger sums to compensate the few who suffer misfortune. The pool is administered by the insurer who knows from experience how much is required by way of premiums from the policyholders if the pool is to be large enough to meet the likely claims made upon it. Since the premiums are payable in advance, it must be ensured in the interest of policyholders that insurance companies are always able to meet their obligations under the policies they have issued. This is achieved by requiring insurers to comply with certain financial conditions before the company can commence business, namely: (1) a minimum share capital, and (2) a guarantee deposit.

7.7.1.1 Share Capital

The Insurance Act of 1976 increases the required figures precipitately as follows: ₦50,000 to ₦300,000 (or 500 percent) for a non-life company; ₦50,000 to ₦500,000 (or 900 percent) for a life company; and ₦100,000 to ₦800,000 (or 700 percent) for a composite company. In the case of reinsurance business, not less than ten times the revised figures are required. This requirement creates a barrier to entry. The figures are very high by international standards.[104] There is no doubting it that our vast financial requirements do not harmonise with what obtains in member countries of the Commonwealth and the ECOWAS community (Chapman, 1976/77). To contemplate further increases (Nigeria, 1986) is to compound the problem.

It is, therefore, clear that this financial condition is prohibitive and most probably has been promoted by men (both Nigerian and non-Nigerian) who are motivated by self interest. At a stroke it has restricted competition and protected entrenched positions. It has enshrined a likely monopoly by the present successful insurers with the effect that prospective, but suitable competitors will either be put out of business or excluded from starting up. We can confidently say that if the present control law had been operative in 1950 many successful insurers now in business could never have taken off. In a country where capital is not easily raised a high capital requirement will forestall the appearance of new insurance companies that may prove successful in future and successfully erode the pre-eminent position of the foreign associated companies.

It is evident that there is no scientific or actuarial basis for the new figures. What will ultimately and effectively ensure the financial security of an insurance company is not the quantum of paid-up capital but the quality of its management (Hurren, 1964 and Marden, 1976). As a company grows the shareholders' capital will bear little relation to the liability of the company. Basically the quantum of paid-up capital should be based on a working capital fund which is sufficient to cover the initial overheads, and running expenses for the first few years until the company is properly established. It should also cover possible underwriting losses and possible falls in the market values of investments.

7.7.1.2 Guarantee Deposit

The second financial requirement, the guarantee deposit, also constitutes a barrier to entry. The statutory deposit is out of date as a tool for government control of the insurance industry. It was merely used as a protectionist tool in the United States in the nineteenth century to discourage foreign insurers from the old world (Carter, 1973). Since 1946 the system of deposits has been superseded in the United Kingdom by the requirement of a solvency margin (Cockerell, 1976). It is not particularly effective in ensuring that insurance companies are always able to meet their obligations for it ties up capital and may worsen rather than improve the financial security of an insurer. In the case of a company with millions of Naira of insurances, it is only an illusory safeguard because as a company grows the deposit will bear little or no relation to the liability of the company.

What we require in the place of the statutory deposit, therefore, is a prescribed margin of solvency (Falegan, 1982) which is a requirement that the assests of a company should exceed its liabilitties by a fixed amount or a certain percentage. As a buttress to the safeguard which the solvency margin provides we would further suggest the use of a bank or fidelity guarantee equivalent in value to the deposit required. The advantage of such a device is that it enables the company to continue to use its funds freely in its total operations.

7.7.2 Licensing of Insurers, Brokers and Agents

The 1976 Act stipulates the respective conditions which a prospective insurer, broker or agent must fulfil before he can be allowed to carry on insurance business. These different situations are examined separately.

7.7.2.1 Insurance Companies

The inadequate control of insurance operators which existed prior to December 1976 led to a lot of abuses and malpratices, resulting in a sorry situation where:

> "... anybody could put up a signboard that he was in insurance business. Whereas he knew little or nothing about insurance. These firms operated without the government knowing of their existence. Such was the nature of firms engaged in fraudulent practices. They charged large premiums and were unable to settle claims of their clients..."[105]

The purport of any moderate conditions for commencing business is to deal with these anomalies. Therefore, the conditions which ensure that business will be conducted in accordance with sound insurance principles are welcome. However, it must be pointed out that the condition which says that "at least one competent and professionally qualified person (s) to man each department of insurance business" is unrealistic and sometimes unattainable by a well developed company.

In Nigeria, today, the principal constraint on development is not finance but shortage of executive capacity. There is not nearly enough trained manpower to go round. This is experienced both in government and in almost every other field of activity. It is, therefore, illogical to rigidly insist on a condition which no one can meet. At this stage of our manpower development, we think that this stringent requirement is desirable in principle only. It is appreciated that it emphasises the need for professionalisation and should spur the companies to support such. What is required just now is flexibility in its application. Like the teaching profession where qualified teachers unlike before are now easy to come by, the personnel position in the insurance industry will improve with time. The institutions of higher learning have started to offer courses in insurance and/or actuarial science; the Nigerian Insurance Institute has begun to award its own fellowship and will in due course conduct its own professional examinations; and professionally qualified Nigerians will certainly come from abroad. We do not have to stretch our imagination before we foresee that the future of our industry looks bright. Therefore, let us in the meantime manage with what we have got until the situation improves.

7.7.2.2 Insurance Brokers

The close control system of supervision (chapter 4.4) which the registratic of insurance brokers adumbrates exposes the inefficiency of over-regulation. The Nigerian experience of the detailed regulation of the brokers since 1976 has shown that it is no use piling up laws if they will not be enforced, as is often the case in Nigeria. This experience has also shown that the close control system has not demonstrated itself as a positive approach for protecting the interests of the insurers and the consumers. Table 7.2 which covers the period 1977 to 1982 shows the stifling of the cash flow of the insurance companies by curtailing their premium income and therefore their investments. The situation where a sizeable amount of the premium income of insurance companies is not handed over by the insurance intermediaries is clearly a threat to the solvency of the insufance offices and therefore the interests of the policyholders. (See chapters 9.3.1 and 10.2.4).

Class of Business	1977	1978	1979	1980	1981	1982
I Life	0.54	0.74	0.72	1.72	5.15	3.14
II Non-Life	58.65	65.35	62.73	79.11	111.89	125.12
III Life Premium Retained	45.21	54.34	65.31	87.37	113.05	112.63
IV Non-Life Premium Retained	149.89	141.62	145.22	158.90	207.20	244.42
I as % III	1.19%	1.36%	1.10%	1.98%	4.56%	2.79%
II as % IV	39.13%	46.15%	43.20%	49.79%	54.00%	51.19%

Table 7.2

Source: Federal Ministry of Finance, Insurance Department

Amount Due from Intermediaries as a Percentage of "Retained" Premiums 1977 - 1982 (M. Naira)

The point must be made that those who are so preoccupied with tightening the control laws and "plugging the loopholes" overlook the very fact that in Nigeria there are no brokers in the correct definition of the word. What we have are "conduct pipes or post offices" who are best described as glorified agents (Okwor, 1984).

So no matter how one looks at it, regulation or no regulation, there seems to be some problem with the manner in which insurance brokers in Nigeria carry out their trade (chapter 10.2.4). Brokers have been known to abuse the privilege of collecting premium from their clients (Soleye, 1984). In the initial period when indigenous brokers emerged, some of them did not live up to expectation, a situation which tarnished their reputation within and outside the insurance industry. Hence government's decision to cut them off from the insurance of government property (chapters 2.2.3 and 9.3.2).

The current 30 day deadline for closing premiums to underwriters has more often than not been ignored by the brokers and such a practice has hurt the policyholders and third party claimants in the event of loss. Not only do they tarnish the image of insurance business by various malpractices, including collusion with unsrupulous staff of insurance companies to manipulate the system to the detriment of policyholders they also behave as if they are engaged in a cat and mouse game, with the insurers by hawking their clients' proposals from one insurer to the other on the pretext of searching for the most favourable deals for the clients. Hence, some insurance companies are forced to tolerate the activities of such unscrupulous brokers. The fear that such insurance brokers may not give them future business, following a report to the Director of Insurance of their malpractices is real.

In this much protracted and anomalous situation, the only solution is to make it compulsory for all premiums to be paid by the insured direct to the insurance companies who are then free to give the placing broker his commission. This has to remain the position until the brokers' association can prove to the government that it has put its house in order. In that event government need not concern itself with supervising the brokers since they will be classified as insurance agents for all practical purposes.

The second implication of the mandatory payment of premiums by the insured to the insurance companies is the restoration by implication, of premium rebating which was unjustly abolished by section 47 of the 1976 Act. The current practice is that when the insured pays his premiums gross, what the insurers receive is a net figure leaving a margin of commission which mysteriously ends in the pocket of insurance employees who have registered as agents not only of their employers but also of other insurers. This practice is irresponsible, has deprived the individual insured of the commission to which he is justly entitled by approaching the insurer direct and may tarnish the image of insurance further. It has not only helped to completely eliminate the own case agency but created dubious insurance practices at the expense of the insuring public as well as the insurers and brokers. There is therefore the need to restore the own case agency.

7.7.2.3 Insurance Agents

The licensing of insurance agents is unnecessary for a number of reasons. Firstly, insurance agents are both a large and less homogeneous group than insurance brokers —— they constitute

a wide spectrum (Colenutt, 1979; Okwor, 1984) ranging from underwriting agents of some life insurance companies and individuals who obtain an agency for the purpose of drawing commission which they are free to pay over in whole or in part to the policyholder, to part-time agents such as solicitors, acountants, garage proprietors and employees of insurance companies.
Table 7.3 shows that over 8,000 agents were licensed per annum during the period 1979 to 1985. Secondly, high costs in terms of manpower and money of an effective system of central control is crippling. Thirdly, the supervisory authorities have little experience in the detailed supervision of insurance operators. Fourthly, an effective system of central control will increase the demand for public expenditure and result in a swollen bureaucracy. Fifthly, in our present level of development and standard of morality, it is reasonable to say that it is those people who have the means to oil the wheels of bureaucracy that will succeed in obtaining and retaining the annual licence. Sixthly, the current practice of insurance companies' employees registering themselves as agents of their employers as well as other insurers is improper.

Year	No of Licensed Agents	No of Registered Brokers
1979	5,762	74
1980	6,394	86
1981	7,123	106
1982	7,984	121
1983	8,828	148
1984	9,742	155
1985	10,724	182
Total	56,557	872
Average p.a	8,080	

Source: Insurance Department, Federal Ministry of Finance

Table 7.3

Number of Licensed Agents and

Registered Brokers, 1979 - 1985

What should be done in future is to make the insurance companies employing them fully responsible for the agents' conduct in carrying out the terms of their agency agreement with the company. The advantage of this approach is to induce the insurance companies employing them to exercise stricter standards in future in the selection and training of their agents (Falegan, 1981).

7.7.3 The Powers of the Director of Insurance

The former, succinct-name, Registrar(chapter 7.3), has now given way to Director of Insurance. We think that the powers are too wide. This is an unhealthy development for an industry that traditionally operates on the lofty principle of uberrima fides or utmost good faith. It is an evidence of the bad image which some of the insurers have earned for themselves over the years.

There are no sufficient and convincing grounds for such extensive and far-reaching intervention. Our industry is still largely in the private sector and where a group of men put up risk capital to run an enterprise within the rules of the game, they ought to be allowed to run their business as they wish. Their freedom to conduct their business as they think fit within the general framework of the law should not be eroded by bureaucracy. They ought to be free to appoint a chief executive who meets a stipulated standard of integrity and professional skill, and decide when and where to open a branch office within and outside Nigeria. If the present control law had been enforced to the letter, without flexibilities and amendments the result would have been too rigidly bureaucratic for the insurance industry in Nigeria, in that eventuality, it is everybody, the insurers, the insured and the taxpayers who would bear the cost of heavy bureaucratic overheads.

Moreover, the conferment of such dictatorial powers on the Director assumes that he controls a large organisation made up of highly skilled staff. It assumes that the functionaries of the office include personnel versed in law, actuarial science, accountancy, statistics and other related disciplines. It also assumes that an underwriter and an adjuster of claims, etc, are available. Experience in Nigeria and elsewhere has demonstrated beyond reasonable doubt that the supervisory authorities not only lack a number of officials[106] with the expertise and knowledge of insurance production and sale but also are subject to red tape and are therefore slow in performing their function. The situation is aptly summarised by Lijadu (1975):

> "The shortcoming of the insurance industry in developing countries is not so much due to the inadequacy of the insurance control legislations in these countries, but for the machinery established for enforcing the laws... Where the supervisory services as in most of these countries are unable to carry out the tasks for which they are set up, the resulting distortions are likely to render the laws in-operative and the purpose of the legislations are then frustrated"

We can confidently conclude that if the provisions of the Insurance Companies Act of 1961, the Insurance (Miscellaneous Provisions) Act of 1964 and the Companies Act of 1968, have been enforced in detail, we all could have been saved the agony of the present control legislation. Chapman (1976/77) has correctly remarked that

> "at times the authorities are slow in performing some of their functions. Some could have firmly prevented selective underwriting in motor business in some West African countries but they do not do so effectively because of pressures outside the industry andother implications. Similarly, they could have easily permitted review of motor insurance rates where this is clearly necessary but they invariably fail to exercise the powers conferred on them by tne legislations, even though they were aware that their default could cause some insurance companies to fail."

Lijadu (1975) goes further to deplore the statistical deficiency:

"in so far as statistics are concerned, the response to the questionnaires sent out to African countries by UNCTAD and ADB in recent years for data relating to the insurance industry leads one to conclude that there are no reliable statistics compiled by the supervisory authorities in these countries."

One wonders therefore why an institution which traditionally suffers from red tape should be given such far reaching powers of control over an industry whose operations are so dynamic and ever-changing as not to be easily understood by the uninitiated. There is therefore a pressing case for overhauling the machinery for control (chapter 12.2.3).

7.7.4 Annual Actuarial Valuation of Life Business

To ask for an annual valuation report (section 7.6.3.7) in a setting of under-development is to compound the difficulties in which the life insurers operate. It will increase the expense ratios of the producers of life insurers to the disadvantage of the policyholders.

Perhaps what we need in Nigeria, is not annual valuation but that life insurers should carry out an actuarial investigation whenever they want to make a distribution of profits in the form of bonuses to the policyholders, but that the investigation must be made at least once in every three or five years.

In this connection it is pertinent to point out that it is probably too cumbersone, expensive and obstructive to make it mandatory for the Director of Insurance to investigate the affairs of a registered insurer once in two years.[107] In view of the massive amount of work involved, a period of five years should be preferred.

7.7.5 Standardisation of Insurance Policies

Implied in the provisions of section 14 of the Insurance Act 1976 is that insurance policies should be standardised whenever possible. This contention is upheld by Oyebadejo (1977), Anifalaje (1984), Olotu (1983), and Okwor (1978) amongst a host of other commentators.[108] The appearance of the Rating Committee in section 33(2) has been accepted by the industry.

It must be observed that the conditions which led to the sordid state of affairs prior to 1977 have been washed away[109] by the rigorous enforcement of the entry requirements, a situation which is leading to a changed and healthy climate. In this new climate, a noticeable awareness of the nature and uniqueness of insurance is emerging.[110]

Though intangible, insurance is a marketable product. Even though it is extremely difficult to secure public interest in it, in quite some respects it is like a tangible object, for example, a car. There are various brands of cars - Peugeot, Datsun, Volvo, Toyota, Ford, etc. Within each make, there are various grades to meet the needs of the different consumers. So it is with insurance. There are various classes ranging from property, liability, loss of profits, motor, engineering, transit, to life, pensions and health insurances. Each class is made up of numerous subdivisions so that policies are available to cover all aspects of human endeavours. Life insurance needs for example, depend on the circumstances of the individual and it is obviously not a difficult task to classify people according to their circumstances. The property insurance needs of an individual depend entirely on his personal situation. The insurance needs of a farmer at Ado-Ekiti are different from that based at Isolo. A house located at the edge of the Sahara desert is exposed to different perils from that located at the riverine areas of the Niger Delta. Nigeria itself is a geographically and culturally complex entity. The standardisation of the fire policy in such an heterogeneous landscape would not seem to be helpful. While it can be standardised for convenience, insurance business is essentially a personal service; it is designed to meet and has met the needs of an individual. There is therefore no case for a wholesale standardisation of insurance policies in Nigeria even though the tariff system may be adopted in some such classes as marine and aviation hull, motor and fire insurances. Where the individualist element will influence claims experience, as in cargo insurance, individual rating is inevitable.

Section 14(1) actually is unfortunate because it calls into question the professional competence and integrity of the insurers. Compliance with it[111] will mean an unnecessarily large amount of paper work by the insurers and the supervisory authorities who no doubt lack officials with the necessary expertise and who would have difficulty in acquiring them in the foreseeable future. There is therefore no hesitation in advocating that section 14 on insurance policies be abrogated because it is the professional duty of insurers to design their products and explain them to the consumers at the time of purchase. In this connection insurers should avoid the use of 'small print' and prepare their policies in the language of the ordinary people. There is nothing wrong with the use of exclusions, restrictions, conditions and warranties. These form the sheet anchor for insurers to avoid selection against them by sharp consumers. The complaint against insurers in Nigeria is that they delay in the payment of claims and not that they sell the 'inferior products.'

7.7.6 Technical Reserves

Insurance legislation in some countries requires that the insurer shall maintain at all times assets whose value exceeds the value of the liabilities by a prescribed percentage of the latter. This, according to Ogunshola (1985), is an alternative to the contingency reserve approach which is contained in the 1976 Act (section 7.6.3.5). The contingency reserve is definitely not equivalent to the assets exceeding the liabilities by a prescribed percentage. In practice the contingency reserve is related to premium income and no further allocations have to be made after the reserve has reached the level of ₦500,000 in life insurance and ₦300,000 in non-life business respectively.

However, the combination of the contigency reserve and the minimum paid-up capital is effectively a prescription for a margin of solvency. If the levels are set appropriately it is probably preferable to a solvency margin which is a percentage of the liabilities. The snag of this approach in the Nigerian context is that it is far from clear what steps are taken by the authorities when the amount in the shareholders' fund falls below the level of the minimum paid-up capital.

There is therefore, a need for a specific introduction of a solvency margin.

7.7.7 Investments

The investment outlets detailed in section 18 of the Insurance Act of 1976 are too restrictive [112] and therefore not in the best interests of the insurers and the policyholders the law is out to protect. A brief description of the operation of insurance companies will illustrate the point. In order to carry out his underwriting functions, the insurer must meet a number of expenses. This includes agents' commission, office and other establishment charges, the necessary margin for building up a reserve fund and amounts paid out and estimated to be paid out in claims. In a normal year, claims costs absorb about two-thirds of the non-life premiums received whilst the remaining one-third is spent on administrative and other costs. In a good year, if claims experience is favourable then after all outgoings a profit of one or two percent of premiums may be made (Chronicle, 1975). If, however, a major disaster occurs, claims could rise to 70 percent of premiums, with the result that a major underwriting loss is sustained. A change of just one or two percentage points on underwriting can make a substantial difference to the underwriting results of an insurance company. The safeguard insurers against predictable underwriting losses, which are more prominent than profits, is investment income.

Thus we have demonstrated that underwriting losses and investment income interact. If underwriting losses are more prominent than underwriting profits, and therefore if insurers are obliged to rely on income from invested funds, representing reserves against possible losses to cover outgoings and dividends then attention must be directed at the rate of return on the asset portfolios of an insurance company. In Nigeria a fixed deposit account yields until recently about three percent[113] whereas the yields from funds invested in the shares of companies quoted on the Lagos Stock Exchange can be as high as 20 to 40 percent. Table 7.4 shows that the cash holdings of Nigerian insurance companies have taken an unduly large percentage share (about 20 percent per annum) of the asset portfolios. Obi Mordi has observed,

> "In 1970, for instance, the ratio of cash holding to asset holding of a group of companies was, on the average 0.481:1. That is, for every ₦100.00 of the said assets there was a cash holding of ₦48.14" (Mordi, 1975).

It will be revealing if table 7.4 is compared with table 7.5 which depicts the invested assets of British insurance companies as revealed by the Association of British Insurers. The table shows that the asset portfolios of British insurance companies are dominated by mortgages, British government securities, debentures, stocks and shares; needless to say that cash holdings are negligible.

Because the provisions in the successive insurance laws in Nigeria are restrictive, insurance companies are obliged to invest a sizeable proportion of their funds in bank deposits. They are not exploiting the investment advantage of the funds at their disposal. The importance of insurance companies lies in the fact that the savings of the community are an essential contribution to real economic growth. In the present circumstances insurance companies are not performing their traditional function.

They cannot be regarded (as they ought to be) as a major source of finance for industry directly or indirectly. Thus they have not been doing such things as financing bridging operations, or the provision of expansion facilities, for example. The problem of the small and growing trading or manufacturing companies

ASSETS	1980	1981	1982	1983	1984
Long-term (Life)					
Federal Govt. Securities	50.99(19.17)	58.85(21.10	66.70(21.26)	98.98(23.77)	111.77(22.72)
State Govt. Securities	1.07(0.40)	1.56(0.56)	1.46(0.47)	1.38(0.33)	2.74(0.56)
Semi-Govt. Bodies Securities	0.07(0.26)	0.96(0.34)	2.78(0.89)	2.99(0.72)	9.73(1.98)
Other Bonds and Stocks	71.47(26.87)	86.29(30.94)	98.82(31.50)	125.42(30.12)	141.28(28.71)
Real Estate	23.94(9.00)	17.18(6.16)	21.47(6.84)	38.86(9.33)	33.91(6.89)
Mortgage Loans on Real Estate	33.26(12.51)	39.95(14.32)	41.69(13.29)	48.92(11.75)	46.26(9.40)
Loans to Policyholders	10.62(3.99)	14.13(5.07)	20.99(6.69)	21.77(5.23)	27.97(5.68)
Other Loans	14.65(5.51)	9.87(3.54)	19.41(6.19)	25.66(6.16)	28.14(5.72)
Cash on Deposit A/C	52.23(19.64)	46.55(16.69)	33.03(10.53)	45.78(10.99)	82.61(16.79)
Bills of Exchange	7.01(2.64)	3.59(1.29)	7.40(2.23)	6.66(1.60)	7.63(1.55)
Total	265.93(100.0)	278.94(100.0)	313.76(100.0)	416.42(100.0)	492.04(100.0)
General (Non-life) Assets					
Federal Govt. Securities	35.15(18.71)	44.60(17.61)	42.16(12.43)	42.32(11.80)	41.63(13.42)
State Govt. Securities	3.80(2.02)	2.96(1.17)	3.04(0.90)	7.57(2.11)	6.68(2.15)
Semi Govt. Bodies Securities	3.87(2.06)	4.27(1.69)	3.56(1.05)	29.24(8.15)	4.81(1.55)
Other Bonds and Stocks	43.05(22.91)	63.74(25.16)	114.78(33.85)	103.78(28.94)	83.77(27.01)
Real Estate	21.02(11.19)	40.80(16.11)	44.71(13.18)	47.00(13.11)	59.57(19.20)
Mortgage Loans on Real Estate	8.86(4.72)	7.66(3.02)	19.47(5.74)	10.09(2.81)	10.88(3.51)
Loans to Policyholders	1.21(0.64)	4.11(1.62)	7.34(2.16)	0.15(0.04)	4.63(1.49)
Other Loans	5.74(3.05)	15.27(6.03)	28.08(8.27)	30.36(8.47)	13.81(4.45)
Cash on Deposit A/C	57.96(30.85)	63.31(24.99)	73.67(21.72)	86.75(24.19)	83.51(26.92)
Bills of Exchange	7.23(3.85)	6.58(2.60)	2.30(0.68)	1.34(0.37)	0.93(0.30)
Total	187.90(100.0)	253.30(100.0)	339.13(100.0)	358.59(100.0)	310.20(100.0)

Source: Insurance Department, Fed. Min of Finance and Economic Planning Percentage distribution in parentheses.

Table 7.4

Distribution of Investments by Insurance companies in Nigeria, 1980 - 85 (N'Million)

Assets	1980	1981	1982	1983	1984
Long-term (Life)					
British Govt. Securities	14,089(25.9)	14,663(23.5)	21,681(26.4)	24,489(24.7)	26,368(22.4)
Foreign Govt. Stocks	1,357(2.5)	1,732(2.8)	2,739(3.3)	3,695(3.7)	5,129(4.3)
Debentures	2,457(4.5)	2,605(4.2)	3,734(4.6)	4,592(4.6)	5,821(4.9)
Ordinary Stocks and Shares	17,476(32.1)	20,673(33.0)	28,065(34.2)	37,620(37.9)	48,067(40.7)
Mortgages	3,923(7.2)	4,379(7.0)	5,100(6.2)	5,550(5.6)	6,460(5.5)
Real Property & Ground Rents	12,821(23.6)	15,570(24.9)	17,267(21.1)	18,850(19.0)	20,520(17.4)
Other Investments	2,313(4.2)	2,877(4.6)	3,461(4.2)	4,506(4.5)	5,612(4.8)
Total	54,436(100.0)	62,499(100.0)	82,047(100.0)	99,302(100.0)	117,977(100.0)
General (Non-Life)					
British Govt. Secrurities	2,530(18.7)	2,912(18.4)	3,777(18.8)	4,124(17.7)	3,886(14.6)
Foreign Govt. Stocks	1,961(14.5)	2,454(15.5)	3,709(18.5)	4,255(18.2)	5,447(20.4)
Debentures	1,778(13.1)	2,207(13.9)	2,957(14.7)	3,229(13.8)	4,118(15.5)
Ordinary Stocks & Shares	3,758(27.7)	4,156(26.2)	5,100(25.4)	6,689(28.6)	7,676(28.8)
Mortgages	597(4.4)	634(4.0)	742(3.7)	786(3.4)	821(3.1)
Real Property & Ground Rents	1,579(11.6)	1,870(11.8)	2,041(10.2)	2,153(9.2)	2,278(8.5)
Other Investments	1,352(10.0)	1,610(10.2)	1,757(8.7)	2,116(9.1)	2,428(9.1)
Total	13,555(100.0)	15,843(100.0)	20,083(100.0)	23,352(100.0)	26,654(100.0)

Source: Association of British Insurers (Formerly British Insurance Association) Percentage distribution in parentheses.

Table 7.5

Invested Assets of British Insurance Companies, 1980 - 84 (£' Million)

In the matter of finance is well known: they may wish to have capital in such amounts and for such periods as to be not, on the one hand, a banking proposition or, on the other hand, not meriting resirt ti tge Stock Exchange. It should be noted that the investment market is not meeting the needs of the small investor so that the insurance companies ideally should afford him a method of indirect investment. In short, our insurers are not contributing sufficiently to productive investment, especially by smaller firms which are often in need of longer term finance for capital expenditure programmes.

All this is to the disadvantage of the policyholder who ultimately will have to pay higher premiums. It is partly because the investment programmes of Nigeria's insurance companies are wrong that some of the companies are not doing well. It is certainly not because the minimum paid-up capital is low.

It is therefore emphasized that there is need for the range of investments to be widened to allow the companies to carry out their traditional functions as institutional investors for the good of us all. For this reason it is essential that each insurance company should be free to work out its own investment policy. This flexible approach will allow new grounds to be explored.

7.7.8 Annual Returns

Section 19(7) of the Insurance Act of 1976 calling for the publication of the annual accounts of the insurers in at least one newspaper enjoying wide circulation has focused attention to one of the basic principles of the current regulation. It is accountability. If in the eyes of the public an aura surrounds the mechanism on which insurance is based and therefore the buyers of our products have to rely on a "promise to pay if..." then there must be ways by which we have to explain our yearly results to the government, the shareholders and the policyholders. This provision achieves just that. We can therefore conclude that the philosophy of insurance legislation in Nigeria is close control and accountability.

7.7.9 Settlement of Claims

In view of the fact that the widespread complaints about the undue delay that accompanied the settlement of motor claims gave the insurance business a very bad image and led to the setting up of the Obande Commission (Aje, 1978) in 1980, the stringent provisions on the settlement of claim are welcome. The specification of time-limits for the settlement of motor accident claims and the threat of the cancellation of insurers' licence under section 7 of the Act are bound to be beneficial to the insuring public.

7.7.10 Amalgamation and Transfer

The regulation protects the policyholders who object to amalgamation with or transfer to another insurer because where their objection fails, such policyholders can cancel their policies and be entitled to a refund of the proportionate part of their premiums. In order that the policyholders may have a meaningful opportunity to object, notice of the intention to apply to the court for the purpose of amalgamation ought to be advertised in the dailies.

7.7.11 Cancellation of Certificate of Registration

The cancellation regulation is more comprehensive than section 9 of the Insurance Companies Act of 1961 which stipulated only five grounds on which to effect cancellation (section 7.3.6). Under the current provisions 18 grounds for cancellation are cited. These are intended to ensure that insurance companies are run at all times on sound insurance principles and practice. In the past public confidence in insurance was lost because government control under the repealed enactments was inadequate. The 18 grounds for cancellation of the certificate of registration have the effect, in addition to the registration conditions, of removing the inadequate control which was the cause of past abuses and malpractices.

The appeal[114] to the Commissioner where the Director intends to either effect cancellation or reject an application for registration deserves a comment. Since the office of the Commissioner is a political appointment, an appeal to him is a dangerous requirement which should not escape the notice of an observer. It raises the issue of the fundamental rights of every Nigerian. By the nature of red tape and the bureaucratic nature of the civil service, it is inconceivable that the Commissioner will lightly reject the decision of the Director on whom he relies for technical advice. In the interests of the generations of Nigerians to come, these provisions should be amended to the effect that appeals should be made to the High Courts for redress. Otherwise, it will be too dangerous to leave the interest of a section of the community to the whims and caprices of civil servants and politicians.

7.7.12 Enforcement Machinery

Although the insurance control laws constitute the basis of insurance regulation in the country, the supervisory authority is delegated the power by the legislature not only to enforce the statutory provisions but also to exercise discretionary powers to interpret and to implement the statutes (section 7.7.3). A government department, called the Insurance Department, in a federal ministry is charged with the responsibility of administering insurance regulations. This department, which up to 1979 was housed in the Federal Ministry of Trade, has since been moved to the Ministry of Finance and Economic Planning (chapter 9.5). It is headed by the Director of Insurance (chapter 8.6.3).

That there is inadequate enforcement of the legislation is not in doubt (section 7.7.3). This inadequate control is due to the fact that government has no effective means of controlling the insurance companies. This was particularly the case prior to 1977 when the Insurance Division of the Federal Ministry of Trade which was charged with the responsibility of supervising the market, was short-staffed and could not effectively monitor the activities of the insurance operators. However, since the transfer of the Insurance Section to the Ministry of Finance, the staffing situation has considerably improved, though important and crucial positions are yet to be filled. The already unsatisfactory situation is constantly being made worse by the fact that the few technical staff recruited do not hold on to their jobs for long before resigning because the Ministry is unable to offer salaries competitive with the insurers, brokers and agents.

An investigation of the industry carried out by the Government in 1986[115] (chapter 1.4.6) shows that the Insurance Department is inadequately funded. The enquiry found that the foreign exchange outflow through reinsurance cessions was partly traceable to the weakness and ineffectiv-ness of the Department. Before recommending the Nigerian Insurance Commission as an alternative to the Insurance Department it observed that:

> "... The procedure for punishing errant or defaulting companies is open-ended in that at the stage of appeals to the Minister of Finance, the issues become politicised and the guilty companies are exculpated either by acts of omission or commission..." (Nigeria, 1986).

7.8 Notes

1. For example, the Companies Act, Cap. 37
2. Section 6 (1) Insurance Companies Act 1961.
3. Section 6 (2).
4. See paragraph 4 of the Insurance Companies Regulations, 1968.
5. Although the phrase "sound insurance principles" is not defined by the Act, an insight into its purpose is given by paragraph 4 (3) of the Insurance Companies Regulation of 1968.
6. Section 7 (2) Insurance Companies Act 1961.
7. See Schedules 1 and 2 of the Insurance Companies Regulations 1968.
8. Section 7 (3) Insurance Companies Act 1961.
9. Sections 8 (1).
10. Section 4.
11. Section 11 (1).
12. Section 11 (2).
13. Section 12 (1).
14. Section 12 (2).
15. Section 13.
16. Section 29 (1).
17. Section 31.
18. Cap. 37, Laws of the Federation of Nigeria and Lagos, 1958.
19. The relevant enactment is now the Companies Act No 51 of 1968 and the relevant sections are ss. 209 - 210.
20. Section 35 (2) Insurance Companies Act 1961 and section 210 (d) of the Companies Act 1968.

21. Section 9, Insurance Companies Act 1961.

22. Section 8.

23. Section 9(2).

24. Section 17.

25. Section 209, Companies Act 1968.

26. Section 28 of the 1961 Act appears to say that an insurance company could invest three percent of its profits in any financial year.

27. Section 1 (1) Insurance (Miscellaneous Provisions) Act 1964.

28. Section 1 (2).

29. Section 1 (2 & 3).

30. Section 2.

31. Section 5(1).

32. Section 5(2).

33. Section 1 Insurance Act 1976.

34. Section 2 (1) & (2).

35. Section 2 (3).

36. Section 3 (1).

37. Section 7 Nigeria Reinsurance Corporation Act, 1977.

38. Section 3 (2) Insurance Act, 1976.

39. Section 3 (3).

40. Section 3 (4).

41. Section 4.

42. Regulation 1, Insurance Regulations, 1977.

43. Section 8 (1) Insurance Act 1976.

44. Section 8 (2).

45. Section 9.

46. Section 10.

47. Section 5.

48. Section 6.

49. Section 11.

50. Regulations 16, Insurance Regulation, 1977.

51. Section 12 Insurance Act 1976,

52. Section 13.

53. Section 14.

54. Section 15.

55. Section 16.

56. Section 17.

57. Section 1 Insurance Companies (Miscellaneous Provisions). Act 1964.

58. Section 18 Insurance Act 1976,

59. Section 19.

60. Section 50.

61. Section 19(6).

62. Section 19(7) See also Form 24 Schedule 1 Insurance Regulations 1977.

63. Section 20 Insurance Act 1976.

64. Section 7.

65. Section 40.

66. Form 24 Schedule 1 Insurance Regulations 1977.

67. Regulation 18 Insurance Regulations 1977.

68. Schedule 2, Insurance Regulation 1977.

69. Section 25 Insurance Act 1976.

70. Sehedule 2, Insurance Regulations 1977.

71, Regulation 18, Insurance Regulations 1977.

72. Section 26 Insurance Act 1976.

73. See Regulation 19, Insurance Regulations 1977.

74 The procedure for appeal is governed by S. 6 of the Insurance Act 1976.

75. The registration fee is ₦200 - Schedule 2, Insurance Regulatiosn 1977.

76. Schedule 2, Insurance Regulatiosn 1977.

77. Section 27 Insurance Act 1976.

78. Section 28.

79. Section 29.

80. Section 30.

81. Section 34.

82. Section 47 The penalty for contravention is a fine of ₦1,000 on conviction.

83. Section 31 Insurance Act 1976.

84. Section 35.

85. Section 36.

86. Section 37.

87. Section 38.

88. Section 37.

89. Section 39.

90. Section 40.

91. Section 43, See also Cap 126, Laws of the Federation.

92. Section 44 Insurance Act 1976.

93. Section 45.

94. Section 46.

95. Section 32.

96. Section 33.

97. Section 48.

98. Section 21.

99. Section 23.

100. Section 24 See also Section 41.

101. Section 49.

102. See section 50, 51, 52, and 53.

103. Section 54.

104. For more details see OECD (1963), Marden (1976), UNCTAD (1972) and Ripoli (1974).

105. See The Guardian (31/7/84).

106. The failure to enforce the current control law is discussed by Anifalaje (1984).

107. Section 37(1) Insurance Act 1976.

108. The most notable among these other commentators is Prof. Ayodele Awojobi. See Daily Sketch, 29 March 1979 pp 1.

109. For confirmation see Ejikeme Omenazu, "A remarkable growth and changing image", in "Supplement on Insurance" The Guardian, 31 July 1984, pp 7.

110. See "Supplement on Insurance", Also "Supplement on Insurance Industry in Nigeria", Business Times 5 August 1980 and "Supplement on Insurance Industry", Business Times 3 July 1979 pp 9.

111. It is fortunate, if ironical, that the Director of Insurance has not been able to enforce the provisions of section 14. The explanation for this handicap is detailed in Anifalaje (1984).

112. For detailed comment see Olawoyin (1982).

113. This figure has been raised to more than 15 since the middle of 1986 when the structural adjustment programme (SAP) was introduced.

114. Section 6 & 7, Insurance Act 1976.

115. See Nigeria (1986).

Chapter 8

Indigenisation of the Insurance Industry in Nigeria

8.1 Introduction

The localisation policy was designed to enable the Nigerian Government to occupy the "commanding heights of the economy" (chapter 2.4). To attain the objective, government adopted three approaches. The first was to restrict the insurance of local risks to Nigerian insurers, the second was to set up its own institutions and the third was to participate in the equity holdings of expatriate firms operating on the market. The legislations used are summarised as follows:

8.1.1 Insurance (Miscellaneous Provisions) Act 1964

Although not enforced until 4 May 1967 (chapter 9.3.2), the Insurance (Miscellaneous Provisions) Act of 1964 was the precursor of indigenisation. Section 1(1) of the Act prohibited the payment of compensation under an insurance contract in respect of local risks unless such person paying the compensation was a Nigerian company. Section 2 provided that life contracts on Nigerian citizens should be issued by Nigerian companies in Nigerian currency. While it would appear that section 1 attempted to restrict the insurance of local risks to Nigerian insurers, section 2 was intended to limit foreign exchange expenditure on life insurance. As a consequence, all sterling contracts were expressed in Nigerian currency, except those which could be paid for by the policyholders abroad. It should, however, be stressed that the Act permitted insurers to remit reinsurance premiums on life contracts to overseas reinsurers. (See chapter 7.5).

8.1.2 Companies Act 1968

The major effect of part X of the Companies Act of 1968 was to sever the business operations of foreign enterprises in Nigeria from their parent companies and to constitute them as separate independent entities of their own. Thus, as from 18 November 1968, when this part of the Act came into force, every foreign company which before the commencement of the Act, was incorporated outside Nigeria and, having an established place of business in Nigeria, was deemed to have become a separate entity from its parent company abroad.

8.1.3 Insurance Companies Regulations 1968

The 1968 Regulations required existing insurance companies to apply for registration in the Register, and submit returns on their standing and financial position to the Registrar of Insurance.

8.1.4 National Insurance Corporation of Nigeria Act 1969

The functions of NICON as set out in the NICON Act were to: (1) insure public sector property, (2) undertake reinsurance business, and (3) act as broker on public sector insurance. Every Nigerian insurer was compelled to cede 10 percent of its direct business to the Corporation.

8.1.5 The Nigerian Enterprises Promotion Act 1972/77

The indigenisation Acts precluded expatriate insurance companies from investing in the equities of companies coming under schedules 1 and 2 of the Acts. Only indigenous companies were allowed to invest their funds under the provisions of the Acts. The Acquisition of Land by Aliens Edict 1972 (Lagos State) did not allow expatriate companies to own or develop real property unless the consent of the Governor was obtained.

In keeping with the provisions of the 1972 indigenisation Act, the Federal Government decided in 1975 to participate in the equity shares of foreign owned insurance companies. Forty nine percent of the shareholdings in 14 of these companies was acquired and the licences of those considered not viable were withdrawn. Following the Nigerian Enterprises Promotion Act of 1977, state governments were able to acquire 11 percent of the shareholdings of these companies to bring the Nigerian owned proportion to 60 percent.

8.1.6 Nigeria Reinsurance Corporation Act 1977

Under the 1977 reinsurance Act, the reinsurance functions of NICON were transferred to the Nigerian Reinsurance Corporation (Nigeria Re) and considerably strengthened. Nigeria Re receives 20 percent compulsory cession from all Nigerian insurers, has the right of first refusal on Nigerian reinsurance business before such business can be placed abroad, acts as the channel of compulsory cessions from Nigeria to the African Reinsurance Corporation (Africa Re) and generally acts as a reinsurer both inside and outside Nigeria.

8.1.7 Section 46 of the 1976 Insurance Act

Section 46 of the 1976 Insurance Act requires that imports into the country be insured on the market, except that where a particular risk cannot be covered by a Nigerian insurer, the Director of Insurance may allow a broker to place the business abroad (chapter 7.6.7.2).

There are, then, two separate elements to the domestication of the Nigerian insurance market. The first is the protection of domestic insurers against foreign competition by such means as the special role of NICON in writing public sector insurance, the Nigerian Enterprises Promotion Acts and the section of the 1976 Act concerning the insurance of imports. The second aspect is the promotion of the development of domestic reinsurance capacity.

8.2 Indigenisation of Expatriate Companies

Despite the setting up of NICON in 1969 the insurance industry was still dominated by foreign owned companies (Nigeria, 1970). Although there were only 15 expatriate companies out of a total of 74 companies operating on the market in 1970, they nonetheless shared 80 percent of the business.[1] Six years after, this concentration ratio had still not altered as confirmed by the then Chairman of NICON, Alhaji Aliko Mohammed.[2] It caused concern particularly in government circles that most of the compulsory 10 percent cession made to NICON by the direct companies was reinsured abroad owing to lack of underwriting capacity (Durojaiye, 1981). The large scale foreign exchange flows caused by the reinsuring of a large percentage of risk outside the economy soon gained the attention of government (Nigeria, 1970).

The Federal Military Government responded to public opinion and the 1974/75 Budget speech of 1 April 1974 included the government's intention "to reorganise and revitalise" the insurance industry as well as its decision to "take over 40 - 49 percent of the equity shares of viable insurance companies transacting life and general insurance business in Nigeria."[3] The speech also contained the Federal Government's proposal to undertake a "comprehensive review of the laws governing insurance so as to remove abuses now rampant in the industry."[3]

In fulfilment of that intention, the Federal Ministry of Trade and Industries issued a Statement[4] on 13 December 1974 that in "further pursuance of its indigenisation policy the Government decided to acquire 40 - 49 percent in the equities of viable foreign controlled insurance companies."[5] However, government participation was to be "without prejudice to the existing Nigerian shareholding prior to Government's decision."[6] The statement revealed that negotiations for acquisition of the equities had commenced since 28 November 1974 and added that negotiation with other specified selected companies would continue with a view to making similar agreements with them.[7]

Meanwhile, NICON concluded the take-over of the Niger Insurance Company from the Yorkshire General Life Assurance Company. The latter's fund stood at ₦11 million at the time of the takeover. NICON also acquired equity participation in the Nigerian Acceptance Company[8] which is not an insurance organisation.

Two years later, in February 1976, the Federal Military Government signed partnership agreements with six other insurance companies.[9] By the agreement, government was to acquire not less than 49 percent of the shares of each company, with the exception of the companies where there was a substantial Nigerian shareholding. The sixth company was the Royal Exchange which was included on the indigenisation list in 1974 - it would appear that the envisaged participation in that year did not materialise.[10]

Apart from the determination to balance the ownership structure of the insurance companies, government participation was stated to be in keeping with the nation's policy to indigenise the key sectors of the economy,[11] "so that as partners in progress, we may continue to prosper together."[12] The then chairman of NICON, Alhaji Aliko Mohammed, later stated that government acquisition of shares in a major insurance company was to compel the company to Nigerianise its top position and to re-invest its profits in Nigeria.[13]

Early in September 1976, one more insurance company, the Mercury Assurance, was added to the list. Although the agreement for government's 49 percent participation was signed in September 1976,[14] it nevertheless took retrospective effect from 3 March 1976. The partnership agreement was still considered to be inadequate by the New Nigerian which again repeated its earlier stand that "the ultimate policy should be the nationalisation of the insurance business."[15]

While all this was in progress, the omission of the insurance broking business from the list of enterprises in Schedule One to the Nigerian Enterprises Promotion Act of 1972 was criticised by the indigenous members of the Nigerian Chartered Corporation of Brokers. They argued that since insurance broking is analogous to retail trade, it should have been indigenised.[16] The Schedule Two list was also attacked because some very critical enterprises like petroleum, mining, banking, insurance, textiles and shoe manufacturing were omitted from the list.[17] The Daily Times felt "the total omission of the insurance business and petroleum marketing and exploration from the second schedule under the new law is mysterious."[18] These feelings were expressed because it was felt that many of the enterprises mentioned required neither substantial capital nor expertise beyond the reach of many indigenous entrepreneurs.[19] It is therefore no surprise that insurance was brought into Schedule Two of the Nigerian Enterprises Promotion Act of 1977.[20] By the provisions of this Act, indigenous participation in the expatriate companies was raised to 60 percent with effect from 31 December 1978.

By the end of 1976 when government had acquired shares in 12 expatriate firms, it became "the policy of the Federal Government that existing expatriate insurance companies which for various reasons were considered unsuitable for government participation should not continue to operate."[21] Hence the cancellation of the certificates of registration of British India General Insurance Company and New Nigerian Company in March 1976.[22]

8.3 Government As Insurer

The general philosophy of the political class[23] prior to the Nigerian civil war, except among those opposition leaders[24] who subscribe to government participation in banking and insurance as a means of promoting economic development (Baratz, 1964), was that the state should not transact insurance if the commercial market could give the consumers what they need.

A turn about was forced on the Nigerian political class by the chronic foreign domination of the economy and the belt-tightening experience which Nigeria had undergone in the 1967-70 Biafran war (chapter 5.5.2). The lessons in self-reliance had been learnt. The establishment of NICON on 1 July 1969 (section 8.5.1) is concrete evidence of change of course.

That a national insurance company would emerge in a situation where expatriate companies dominated the insurance industry was no more in doubt in view of the economic nationalism which accompanied the country's political independence. In the defunct Western Region, a state owned company, Great Nigeria Insurance, was established because "all insurance companies operating in the country were owned and managed by foreigners" (Great Nigeria, 1981). The underlying reasons for the formation of NICON were that "the majority of the companies, which were, of course, foreign, deliberately kept low retentions" and that "about 90 percent of the premium paid is sent to London" (Ligadu, 1981).

Following the Obande Commission, whose report formed the basis of the Insurance Companies Act of 1961, an Indian adviser on insurance matters, I. K. R. Rao, produced a feasibility report (Okwor, 1984) in 1962 on the advantages of insuring the produce of the former Nigerian Produce Marketing Board with an indigenous insurance company. Based on the Rao Report, the First National Development Plan had earmarked the sum of "₦2 million for the creation of an insurance company which will undertake the insurance of Nigeria's export crops" (Nigeria, 1962). Owing to implementation problems, the project was not executed but was again renewed in the Second Plan. The reasons for government's continued interest in the eventual take-off of the company were that "foreign owned insurance companies not only controlled about 95 percent of the market but also reinsured heavily with some of their parent companies abroad" (Okwor, 1984) and, therefore, "government took cognizance of the need to conserve the country's foreign exchange resources to forge the development of the economy" (Nigeria, 1962). The formation of NICON gave the government the opportunity to participate in all classes of insurance, particularly marine insurance, which up to that time, was in the hands of the foreign owned companies (Nigeria, 1976).

The National Insurance Corporation of Nigeria Act of 1969 established an insurance corporation with powers to carry on every class of insurance and reinsurance business (chapter 9.3.1). In particular, the Corporation has inter alia, power to insure any property of government - Federal, States or of any statutory corporation.[25] The NICON Act compelled with effect from 1 October 1969, every registered insurer to insure with the Corporation an amount equal to 10 percent of the sum insured in respect of every insurance policy.[26] It, however, gave the Corporation a discretion to accept or refuse to accept from any registered insurer any reinsurance accommodation relating to any particular risk.[27] This provision on state reinsurance has been superseded by section 7 of the Nigeria Reinsurance Corporation Act of 1977 which repeals section 8 of the NICON Act.

Although NICON (after its formation) found itself at the apex of the country's insurance industry, it could not command the authority and prestige of the Central Bank which regulates the banking industry. This is because NICON functioned both as a reinsurer, an insurer, a broker and an agent. This clearly undermined its authority and leadership as a competitor can hardly be accepted as a controller (Durojaiye, 1981). This was hotly debated in insurance and official circles. Some felt that NICON should concentrate on the more important business of reinsurance. Others argued that it should not involve itself in reinsurance but should rather confine itself solely to writing of insurance business of government bodies and statutory corporations and leave private insurance business to other insurance companies.

Another trend in the debate was that NICON should discontinue being shielded by the automatic acquisition of a percentage of businesses gained by other companies but should have these interests in these companies and operate them as branches of NICON. It is only then, the argument went that the efficiency of the Corporation could be meaningfully judged. Perhaps the most controversial part of the whole debate was how the 1974 proposed 40 percent acquisition of the leading expatriate ins..ance companies could be effected. Some argued that it should be done through NICON's acquiring these interests on behalf of the government while others argued that government should acquire the interests directly as it did with the major banks (Nwankwo, 1974).

The current dimension in the debate is that NICON, being the leading state owned enterprise, should provide leadership for the industry by pioneering such untried areas as crop insurance, credit and deposit insurance and other new forms of insurance (Nigeria, 1976).

The future of a corporation that has become the subject controversy is far from certain. It is, therefore, hardly surprising that the leadership of the Nigerian insurance industry is today shared by both NICON and Nigeria Re which was established by Decree Number 49 of 1977.

Many reasons account for the formation of Nigeria Re. NICON soon ran into difficulties through its attempts to do too much too quickly and had to be bailed out by experts brought in from the international reinsurance community such as Munich Reinsurance Company and Swiss Reinsurance Company (Re-Actions, 1981). This lack of reinsurance infrastructure in the country has resulted in an uncontrolled outflow of insurance funds by way of reinsurance premiums. Local companies often face difficulties[28] in placing abroad the business which is above their retention capacity. In addition, inspite of more than fifty years of the insurance industry, no specialist market has developed. It was in the light of this situation that the Federal Military Government earmarked the sum of ₦20 million in the Third National Development Plan for the establishment of the Nigeria Re (Nigeria, 1975). The Corporation would give the national market a stronger bargaining power than hitherto for negotiating reinsurance treaties with foreign reinsurers. This would result in better terms for the total national reinsurance cessions and thus ensure that a higher proportion of the premium income of the industry was retained in Nigeria. It would provide the capacity for insurance cover of large and complex risks in the country which are bound to emerge as major industrial and agricultural schemes get underway. The Corporation would contribute to the sound development of the insurance market by, for example, providing information on risk, tariffs and claims (chapter 2.4).

The Nigeria Reinsurance Corporation Act of 1977[29] repeals section 8 of the NICON Act and establishes a national reinsurance corporation which shall have the powers within and outside the country, to carry on reinsurance of any class of insurance business including life insurance business and to reinsure against loss of any risk or contingency. It is given powers to:

(a) acquire any undertaking of any registered insurer, hold or have any shares or stock in, or any financial interest in any such undertaking;

(b) acquire and invest in any other profitable business;

(c) assist in organising training schemes for employees of any registered insurer.

In addition, it is authorised to serve as the channel for ceding compulsory cessions from the Federation of Nigeria to Africa Re.[30]

The Act makes it very clear that the Insurance Act of 1976 shall apply as far as it is possible to Nigeria Re as well as NICON.[31] It is made mandatory for a registered insurer to cede, in respect of every insurance policy issued or renewed by it on or after the 1 January 1978, 20 percent of the sum insured in the policy and the registered insurer shall forthwith pay over to the Corporation an amount equal to 20 percent of the premium received by the registered insurer.[32]

Provisions are made for the recovery of debt owed by a registered insurer to Nigeria Re.[33] It is made mandatory for every registered insurer to produce to any person authorised by the Managing Director such information or record as may be required by the Corporation[34] whose authorised capital is stated as ₦10 million.[35]

As a further effort to develop the reinsurance market not only in Nigeria but also on the continent of Africa, the Nigerian government played an active role in the establishment of Africa Re (chapter 2.4).

8.4 Localisation of Imports Insurance

The third major element of localisation of business is section 46 of the 1976 Insurance Act which requires that imports into Nigeria be insured in Nigeria (chapter 7.6.7.2).

8.5 Evaluation of the Localisation Policy

Policy is briefly examined under four sub-headings: government participation, monopoly of government business, state reinsurance and indigenisation of imports insurance.

8.5.1 Government Participation in Insurance

It has become fashionable in Nigeria for each government in the Federation - Federal or State - to own its own insurance company or bank. All in the name of a mixed economy. There are grounds for questionning such an approach. First, insurance requires little investment in fixed capital, but is a labour intensive enterprise demanding a well-educated labour force. Capital is mostly required to acquire and equip office accommodation, train staff and maintain relatively liquid and marketable funds for investment. Insurance is, therefore, eminently suitable for indigenous private investors. Second, it makes more economic sense for government to concentrate on the development of public utilities, economic infrastructures and new industries than her competition with indigenous private investors in easy areas. Third, the reasons why government bought shares in foreign owned companies are transient and have been put behind us. Fourth, state participation often results in "concentration" (table 8.1) with the associated drawbacks.[36] It usually results in

Year	Non-Life Premiums		Life Premiums	
	Gross or 100%	Net or Retained	Gross or 100%	Net or Retained
1978				
NICON	50.84(18.71)	16.03(11.35)	4.17(8.33)	4.17(8.66)
Other Direct Insurers	199.15(73.29)	104.96(74.34)	45.63(91.17)	43.74(90.82)
Nigeria Re	21.75(8.00)	20.19(14.31)	0.25(0.50)	0.25(0.52)
Total	271.74(100.0)	141.18(100.0)	50.05(100.0)	48.16(100.0)
1979				
NICON	56.20(18.20)	21.59(13.30)	4.57(6.94)	4.27(6.75)
Other Direct Insurers	187.88(60.85)	101.26(62.36)	60.70(92.19)	58.46(92.35)
Nigeria Re	64.69(20.95)	39.50(24.34)	0.57(0.87)	0.57(0.90)
Total	308.77(100.0)	162.35(100.0)	65.84(100.0)	63.30(100.0)
1980				
NICON	83.79(21.45)	27.65(14.80)	6.76(7.62)	6.47(7.57)
Other Direct Insurers	243.29(62.28)	120.11(64.27)	80.91(91.25)	78.05(91.27)
Nigeria Re	63.56(16.27)	39.11(20.93)	1.00(1.13)	1.00(1.16)
Total	390.64(100.0)	186.87(100.0)	88.67(100.0)	85.52(100.0)
1981				
NICON	97.45(19.65)	51.14(18.74)	11.03(9.31)	10.97(9.78)
Other Direct Insurers	305.59(61.62)	159.10(58.30)	106.05(89.49)	99.87(88.96)
Nigeria Re	92.87(18.73)	62.66(22.96)	1.42(1.20)	1.42(1.26)
Total	495.91(100.0)	272.90(100.0)	118.50(100.0)	112.26(100.0)
1982				
NICON	115.19(22.02)	63.73(21.06)	10.14(8.81)	8.81(8.15)
Other Direct Insurers	313.37(59.91)	173.18(57.21)	103.47(89.91)	97.79(90.49)
Nigeria Re	94.52(18.07)	65.78(21.73)	1.47(1.28)	1.47(1.36)
Total	523.08(100.0)	302.69(100.0)	115.08(100.0)	108.07(100.0)
1983				
NICON	102.99(20.85)	37.80(15.03)	15.14(10.19)	14.96(10.54)
Other Direct Insurers	279.54(56.59)	151.26(60.15)	131.70(88.60)	25.12(88.18)
Nigeria Re	111.41(22.56)	62.40(24.82)	1.81(1.21)	1.81(1.28)
Total	493.94(100.0)	251.46(100.0)	148.65(100.0)	141.89(100.0)

Source: The 8-man Insurance Investigating Panel (1986). Figures in parentheses show percentage distribution.

Table 8.1

Distribution of Market Shares in the Nigerian Insurance Industry on the Basis of Premium Income, 1978 to 1983 (₦'million)

a welfare loss for policyholders because the consumer is unlikely to get his insurance as cheaply as in conditions of competition. The success of a competitive state insurance institution is uncertain. It postulates the selection of managers with an entrepreneurial skill, who, working on stricter self inposed rules than their commercial competitors, are going to outdo them. It is also anybody's guess whether these state enterprises are not subject to politicial interference and pressures.[37]

For the above reasons, this study is of the view that state participation should only arise in special circumstances. First, there is the residual market philosophy or the need to fill the insurance demands not met by private insurers as where private insurers are unable or unwilling to provide cover demanded by the public, consider the risk beyond their resources, or see no prospect of profit in providing the cover required. In such circumstances government may intervene and operate an insurance or reinsurance fund to meet legitimate public demands (Cockerell, 1980). Second, where the nature of the insurance need is such that private insurers do not seem organised to respond to it, it is easier and faster for government to set up an insurance fund for the particular purpose. This is particularly expedient during war time. Third, where some insurance programmes need the element of compulsion for success it is easier for government to take over the programmes (Green, 1976). An example of this is the National Provident Fund or the social security system.

8.5.2 Monopoly of Government Insurance Business

The reasons for the establishment of NICON are transient - reorientation to the domination of the market by foreign owned companies, curtailment of foreign exchange disbursement on the import of insurance and reinsurance services, government partici-pation in marine, aviation and engineering insurances and the displacement of insurance brokers from handling government risks.[38]

The real issue to examine is how effective and desirable NICON's appearance on the Nigerian insurance market has been. Clearly it has curbed the domination of the market by foreign monopoly capital, but in the process it has itself dominated the market by its monopoly of government insurance business. This is detrimental to competition and efficiency because it encourages "concentration" of business in one company at the expense of the other companies that are indigenous companies too.

Secondly there is the problem[39] which is found in a restricted market. As mentioned below, (section 8.5.4) this is that under the conditions of localisation of imports insurance rates are higher (UNCTAD, 1975) than those in developed markets. Two arguments can be raised on this. The first is that under a monopoly (in other words, where external or local competition is excluded) the consumer is unlikely to get his insurance as cheaply as in conditions of competition. The second argument is that NICON has neither the capacity let alone the expertise to handle gigantic government risks like the iron and steel complex, petroleum refinerises, motor assembly plants, chemical industries, the Nigerian export produce, NNSL fleet of vessels, the aircraft of the Nigerian Airways, etc. In handling these risks NICON has no choices but to retain for its net account only a small proportion of these businesses and reinsure the balance with the reinsuring centres of the world leading to unabated loss of the country's foreign exchange on reinsurances.

Thirdly, the foreign exchange outflow is further assisted by the exclusion of insurance brokers from handling government and quasi-government risks, a peculiarity which makes NICON an insurer and broker at the same time.[40]

With the changed climate introduced by the Insurance Act of 1976, leading to the registration of the brokers, government may restore the previous position of giving government risks to brokers to handle. It is more economical for these huge risks to be spread firstly among all the insurers in the country and thereafter among foreign companies through the brokers using the slip than to allow NICON to be spoon fed by them. Moreover, the latter is no longer the captive insurance company it used to be since it now accepts non-government risks. What is more important, the totally unacceptable contradiction of broker and insurer rolled into one will be removed. This implies that our insurance companies both private and government owned should concentrate on their funstions as insurers and employ local brokers to do those things, such as placing reinsurances both facultative and treaties with local and overseas reinsurers, which are normally entrusted to brokers on other international insurance markets. This will have the effect of reversing the trend whereby insurance brokers not registered under our laws frequent our market and illegally obtain business in Nigeria.

8.5.3 State Reinsurance

The provisions of Decree No. 49 of 1977 confer a monopoly position on Nigeria Re and clearly constitute concentration with all the disadvantages.[41] Compulsory reinsurance appeals at first sight as a cheap and certain method of obtaining for the state a share of insurance profits but whether it makes for a healthy insurance market is open to question. If too much cream is skimmed off the vigour of private insurers, their willingness to stay in the business will be reduced, and the reduction of competition can result in the insured paying a higher premium than is necessary (chapter 10.4.1). The state's gain can be at the expense of the indigenous consumer, with repercussions on import and export prices, a consequent diminution of trade and a disincentive to the public from covering their risks by insurance (Cockerell, 1974).

To correct the position some suggestions are put forward as follows. First, until viable competitors emerge a fixed proportion of all reinsurance treaties should continue to be channelled through the Corporation. It should also enjoy the first right of refusal of all facultative business. This is as far as patriotism should go. The ceding companies should be free to place the remaining portions with other reinsurers without the concurrence of the Nigeria Re. In other words, non-regulation of reinsurance business above the figure compulsorily ceded is recommended for the country. Otherwise the direct insurers will be turned to mere agents of Nigeria Re with concomitant disadvtanges. Moreover, the initial difficulties confronting a pioneer necessitates that the Corporation should not take too high a share initially from the ceding companies' business as otherwise most of the business will leave the country by way of retrocession.

Secondly, flexibility is needed in applying section 7(2) of the Nigerian Reinsurance Corporation Act 1977 dealing with commission rates which should be similar to those payable on the international markets. This is necessary to enable the ceding companies to enjoy the maximum value of recourse to reinsurance.

Thirdly, the ceding companies should be allowed to open up reinsurance departments to operate side-by-side with specialist reinsurers that are bound to emerge in due course. In that case the monopoly currently enjoyed by Nigeria Re would become a thing of the past.

8.5.4 Insurance of Imports

The assertion that the localisation of insurance of imports was aimed at conservation of the country's foreign exchange on the one hand and providing a solid boost to the market on the other (Aktas, 1979 and Okwor, 1978) is more apparent than real.

What led to the action was a result of a sequence of historical events. The oil money which quadrupled in 1974 led to import policy liberalisation which was introduced by the 1975/76 budget speech. An unprecedented increase in the importation of goods followed and in the course of such importation this country witnessed the worst form of port congestion which was nick-named, "the cement armada" in 1975 (Ani, 1982). The situation led to protracted delays in the discharge of imported goods. Losses caused by delay and pilferage became very prominent. This prompted overseas underwriters to give general cancellation on all open covers written in respect of consigments destined for Nigeria. Although this notice was eventually withdrawn, the withdrawal was not without some inconvenience to the importers. This was because coverage under the contracts was thereafter restricted in most cases to port areas thereby depriving the importers of protection during transit to the hinterland where the majority of the warehouses were located.

This was the prelude to the insertion of section 46 in the Act of 1976. It was a panic action of government taken in desperation. Instead of taking loss prevention measures in the form of the expansion of port facilities, diversion of ships to neighbouring countries and the mounting of security units to counter escalating thefts government thought it could solve the resulting insurance problems by indigenising the marine insurance of imports. Hence the insertion of section 46 in the Insurance Act of 1976. The immediate explanation was to counter the overreaction of the overseas insurers. It was not to stem the drain in the country's foreign exchange per se. The formation of NICON in 1969 and Nigeria Re in 1977 was intended to do just that (Nigeria, 1976).

The effect of the innovation on the insurance market in Nigeria has been very far reaching. First, there was the precipitous increase in the volume of the marine cargo account. Table 2.4 shows that marine and aviation business has been the most rapidly expanding class of business in the insurance industry. Its share of the market increased from 9.2 percent in 1975 to 19.2 percent in 1982. As for the brokers on whom the bulk of the administration of this class of business normally devolves the 1976 Act has provided them a field day in terms of increased business and higher commission rate. Secondly, the prospects of a substantial increase in their individual marine cargo portfolios obliged the underwriting companies to embark on various types of training programme (Irukwu, 1979) to improve the quality and strength of their staff to cope with the resultant expansion. For the same reason, the brokers were obliged to exert effort to improve the quality of their expertise. Thirdly, with the coming into existence of the Act and the need to repatriate all accounts previously written abroad, the insuring public was presented with a unique opportunity to negotiate more favourable terms locally. In addition there is the advantage of easy accessibility to local insurers resulting in expeditious settlement of legitimate claims. These were the positive effects of section 46 of the Act.

The negative effects have been equally varied and several. First, overseas markets in developed economies were critical of the localisation of marine insurance of imports. The criticism (FAIR, 1979) centred on technical limitations and underlined the inability of the local market to satisfactorily undertake the specialised field of marine and aviation insurance. Second, as explained by the theory of comparative advantage (chapter 10.3.2), insurance rates have risen sharply, creating a situation (UNCTAD, 1980) which has increased the cost of imported goods and consequently worsened the rate of inflation because premiums charged by Nigerian underwriters on imported cargo far exceeded those charged offshore (FAIR, 1979). Third, Nigeria had to contend with the difficult problem of sabotage and circumvention of the localisation regulation. A motorious circumstance of circumvention is double insurance though there were quite a number of ways (FAIR, 1979) in which circumvention is effected. These include mysterious losses, use of dubious ships, non-payment of charter dues, payment of general average guarantee in hard currencies, etc.

The issue of sharply increased premium rates referred to above focuses attention on the assumption, uncritically made, that localisation automatically saves foreign exchange.[42] Yet to safeguard themselves the local insurers retain for their net account only a small proportion of the business they write and reinsure the balance usually facultatively abroad (table 8.2). This means that protection of local direct insurers shifts the balance of payments burden to the reinsurance account. So, bearing in mind the higher premiums noted above, there is no reason to suppose that the overall balance of payments is improved since the overseas insurers have received higher premiums than they would have charged.

Table 8.3 shows that disbursement on insurance constitutes an increasing burden to the balance of payments. Therefore, payments overseas, whether as premiums for direct insurance or cession costs of reinsurance, constitutes avoidable drain on foreign exchange. Accordingly, if localisation does not conserve foreign exchange, other measures[43] must be adopted to enhance the retention capacity of the direct insurers.

Year	100% or Gross Premiums	Retained Premiums	Premiums Ceded Locally	Premium Ceded Abroad
1977	49.38	30.76	11.12	7.51
1978	55.01	20.20	17.30	17.52
1979	60.77	25.86	16.86	19.05
1980	90.55	34.12	33.08	23.35
1981	108.48	62.11	26.21	20.16
1982	125.33	72.54	27.10	24.36
1983	118.15	52.76	35.61	29.76

Source: The 8-man Insurance Investigating Panel (1986).

Note: A substantial proportion of premiums ceded locally was retroceded abroad.

Table 8.2

Premiums Accepted and Ceded Abroad by the National Insurance Corporation of Nigeria (₦ m)

Year	Total Disbursements on Services (a)	Disbursements on Insurance (b)	Proportion of (b) to (a) (c)
1975	568.3	5.1	0.9
1976	1,982.4	8.0	0.5
1977	1,797.2	10.3	0.6
1978	2,212.3	14.5	0.7
1979	2,995.3	42.0	1.4
1980	4,453.7	44.0	1.0
1981	3,953.0	118.0	3.0
1982	2,784.4	56.0	2.0
1983	3,602.6	64.0	1.8

Source: Central Bank of Nigeria

Table 8.3

Proportion of Foreign Exchange Disbursement on Insurance to Total Disbursements on Services in Nigeria, 1975-1983

(N.Naira)

8.6 Other Devices

The other indigenisation measures worthy of mention are considered below:-

8.6.1 Compulsory Insurance

Following the great technological advances made during the two world wars, mechanical transport made rapid progress (chapter 2.2.2) and the number of motor vehicles plying the roads increased, so did the accident rate and subsequent deaths and injuries. Injured third parties often could not obtain the damages to which they were entitled, as most motorists were without adequate funds to satisfy the judgement debts. The resultant outcry led in Great Britain to the introduction of the Road Traffic Act of 1930 (Cockerell and Dickinson, 1980), making third party insurance in respect of death or bodily injuries compulsory. The Act made it an offence for anyone to use or permit the use of a motor vehicles on a road unless there was in force a policy of insurance covering the liability of the motorist for death or injury to third parties arising from the use of the motor vehicle. The usefulness of this legislation ensuring that money was available to compensate innocent victims injured or killed in road accidents was recognised by the colonial administrators (Longbotton, 1932) who extended it to Nigeria in 1945 under a different title of "Motor Vehicle (third party insurance) Ordinance." This legislation became operative on 1 April 1950.

The Act cover, which the insuring public tend to mistake for comprehensive cover, made an immediate impact on the insurance market. It brought such an increasing volume of business that it rapidly enlarged the market (McNesty, 1973).[44]

Apart from third party motor insurance made compulsory on social considerations, some other classes of insurance are made compulsory by economic or policyholder protection factors. For example, section 46 of the Insurance Act of 1976 stipulates that all shipments to the country must be insured against marine risks with Nigerian companies (chapter 7.6.7.2). It is on the grounds of policyholder protection that section 28 of the same Act makes it compulsory for a broker to take out a professional indemnity policy before he can obtain a licence to practice as such.

8.6.2 Creation of Insurable Liabilities

From time to time the law has created a number of civil wrongs which are redressible by the award of damages. Examples of such laws are the Occupiers' Liability[45] in respect of persons who enter such land, breach of statutory duty under the Factories Act,[46] and the right to compensation under the Workmen's Compensation Act.[47] The liabilities that these laws create are insurable and, therefore, increase the business and fortunes of the insurance companies. The effect is an increase in the size of the insurance market and the entrance of new firms into the industry.

The Workmen's Compensation Act of 1987, for example, imposes a strict liability (without fault or negligence) on all employers of labour. Under the Act if a workman is injured on killed while acting within the course of his employment, the employer must pay compensation to the workman or his dependant in accordance with the provisions of the Act. An employer may take out a workmen's compensation insurance policy to protect himself against these risks. The passing of the Workmen's Compensation Act was one of the exogenous factors that boosted the insurance business in the fifties (McNesty, 1973).

8.6.3 Administrative Control

Although the insurance control laws constitute the basis of insurance regulation in the country, the supervisory authority is delegated the power by the legislature not only to enforce the statutory provisions but also to exercise discretionary powers to interpret and to implement the statutes. A government department called the Insurance Department in a Federal

Ministry is charged with responsibility of administering insurance regulations. This department, which up to 1979 was housed in the Federal Ministry of Trade, has since been moved to the Ministry of Finance (chapter 9.5). It is headed by the Director of Insurance.

The department, operating under legislative authority, makes and enforces rules within that authority. Decisions and rulings of the Director are subject to judicial review if any affected parties wish to challenge them. In making decisions, the Director of Insurance creates rules known as "administrative laws." These rules are made when it is necessary for government to intervene in the operations of insurance companies in the interest of the insuring public. This was the case in 1975 when insurance companies increased motor insurance premiums and the government, in its efforts to curb inflation, had to prescribe, against the wishes of the insurers, maximum rates to be charged for all classes of motor insurance business. It is with this experience in mind that the government introduced under the current supervisory law a Rating Committee, headed by the Director of Insurance, to advise the government on a continuing basis on the appropriate level of rates and commissions to be charged by insurance companies.[48] (See chapter 7.6).

8.6.4 Judicial Control

The judicial process is an important medium of insurance supervision. The courts interpret legislation when the meaning is challenged and also settle disputes among contracting parties. They may compel the Director of Insurance to issue a licence to an insurer or to prevent its cancellation. On the other hand, the Director of Insurance may, for example, petition the courts to enforce compliance with statutory or administrative laws. A court ruling on the constitutionality of insurance legislation or actions of the supervisory authority becomes part of the body of insurance legislation. It was in the course of litigation that it came to light that some foreign owned insurance companies incorporated outside Nigeria were operating in this country in 1969 through local agents in spite of the passage of the Insurance Companies Act in 1961.[49]

8.6.5 Manpower Development

Government has always encouraged the development of manpower in the insurance industry. As far back as April 1955, the Western Region Production Development Board awarded the first scholarships in insurance to two Nigerians[50] who now play a prominent role in the market. In 1959 the Federal Government gave six insurance bursaries for two successive years. The recipients of these bursaries - Francies Ozomah, Yinka Lijadu and Tony Lawson, to name some of them - returned home from the United Kingdom to become leading personages in the Nigerian insurance market (chapter 2.2.3).

In June 1967 the University of Lagos acceded to government's request of 8 May that the university should mount a two-year post-graduate programmes in actuarial science (chapter 9.3.3.1). After a lot of initial difficulties, the programme was commenced in 1970. Only two sets of students went through the course and owing to the perennial staffing problems of the university, which were aggravated by the specialised nature of the course, the programme had to be terminated thereafter. In 1975, as a result of technical assistance from UNCTAD's SPI, the university was able to restart the programme in the form of an undergraduate degree course.

With an eye on the acute shortage of trained and experienced manpower in the insurance industry, the Federal Government had proposed, in association with the United Nations Development Programme (UNDP), to establish in Nigeria an Insurance Education Centre for English-speaking West African countries (Shuwa, 1977). After this institution was eventually located in Monrovia in Liberia, the defunct Civilian Administration planned to set up an insurance school.[51] Meanwhile, some institutions of higher learning,[52] financed by the government, have taken the initiative and are now offering degree or diploma courses in insurance. If this scheme succeeds, it may well constitute the manpower development strategy for the insurance industry in Nigeria.

8.6.6 Control by the Ministry of Internal Affairs

The Immigration Act of 1963 requires the alien investor to seek permission from the Ministry of Internal Affairs before setting up a business or practising a profession in the country. The alien entrepreneur usually can obtain a visa for 28 days on the first occasion and subsequently a resident alien status. When the business is established, control is exercised through the regulation of the number of expatriate employees the foreign entrepreneur can bring in. The alien is generally not permitted to acquire an interest in land without government permission (chapter 5.5.2).

The pamphlet issued by the Ministry in January 1985 on the granting of business permits and expatriate quotas emphasizes that "no quota position would be renewed for more than five times or for a period in excess of 10 years from the day quota was initially granted..."[53]

8.6.7 Control by the Central Bank of Nigeria

With effect from April 1978, the lending operations of insurance companies were brought under the control of the Central Bank (Omoruyi and Demuren, 1980). From then on all insurance companies are required to render monthly returns of their operations to the Bank within 30 days from the end of each month. The Central Bank's control of the lending operations of insurance companies is broadly similar to that exercised over bank lending. In terms of the availability, distribution and cost of credit, the Bank's credit guidelines are designed to ensure that preferential treatment is given to the priority sectors of the economy. In the Central Bank's credit guidelines for 1985 fiscal year, for instance, insurance companies were enjoined to ensure that loans for residential building construction should be for a minimum period 15 years. The interest charges[54] for different categories of loans were fixed as shown in table 8.3.

Economic Sectors	1978/79	1979/80	1980	1981	1982
Preferred Sector - Manufacturing, Agriculture, Mining, Building and Construction	6	7-9	7½-9½	8½-10½	10½-12½
Favoured Sector - Residential Housing and Agricultural Production	6	6	6	6	8
Less Preferred Sector - General Commerce	8-11	8-11	8½-11½	9½-11½	11½-14

Source: CBN: Monetary Policy Circular Nos 10 to 15

Table 8.3
Interest Rate Structure (in Percentages)
for Insurance Companies

Section 29A of the Central Bank of Nigeria Act of 1967 stipulates penalties for defaulters on the rendering of monthly returns on lending operations.[55]

8.6.8 Control by the Ministry of Finance

Apart from its fiduciary control of the insurance industry carried out by the Insurance Department, the Federal Ministry of Finance and Economic Development exercises fiscal control over the industry in two ways - taxation and exchange control.

8.6.8.1 Taxation

Although the prime object of taxation is to raise revenue for the state, it can be used in a discriminatory way either to encourage activities of which the state approves or to discourage those about which it is less enthusiastic.

Tax measures which encourage insurance by means of tax inducements are welcome. The Income Tax Management Act of 1961 offers tax relief on life insurance premiums to policyholders. This relief is at present in respect of premiums not exceeding ₦2,000 for most types of life policy. The ground for the relief is the desire to encourage personal thrift and provision for dependants.

Under the Companies Income Tax Act of 1979, the tax payable by insurance companies is computed by applying the standard rate of company tax to the investment income minus allowable expenses in that year. This means that the tax payable on the life business of an insurance company is being computed on the same basis as an ordinary trading company, without due regard to the fact that the premium payable on a given life policy is normally fixed by the actuary throughout the term of the policy. Moreover, the standard rate of tax has been varied from time to time. Since the premiums payable to the companies on a life policy are fixed for the life of the contract, the actuary's computation of the premium rates assumed the continuation of tax rates for a long period. The companies have had to protest unsuccessfully that the current tax policy on insurance income inhibits the development of life insurance business. A more equitable basis is to tax them on the basis of shareholders' profits.

A substantial proportion of the life business of many companies consists of pension business and this is taxed in the same manner as the ordinary life business, but generally the uninsured pension schemes are free from tax. This means that the insured pension schemes are severely discriminated against vis-a-vis the privately administered ones (Ogunshola, 1984). Thus the small employer bears the brunt of the taxation on insured pension schemes.

8.6.8.2 Exchange Control

The state has power to impose control on the movement of currency flows across the national frontiers. The Exchange Control Act of 1962 as well as the various regulations and amendments made thereon subjects all foreign payments to the control of the Minister of Finance. Under the Act, prior permission of the Minister is required for all payments involving the use of foreign exchange (Proehl, 1965).

The control of foreign exchange has serious implications for the insurance industry. The ceding companies are usually unable to promptly settle their reinsurance premium liabilities in view of the perennial difficulties[56] in obtaining foreign exchange approval. The delay may be due to actual prohibition by the authorities or as a result of bureaucratic delay or difficulties im complying with stringent regulations requiring documentation or even by just the unwillingness of officials to take action. Delays may also be due to a misunderstanding of the purpose and functions of reinsurance especially in view of its intangible nature. For these reasons ceding companies find it difficult to settle their reinsurance accounts.[57]

For their part, the overseas reinsurers tend to react by imposing stringent reinsurance terms and conditions, such as increased cost of purchase, loaded commission terms, high interest on reserves, reluctance to settle claims and meet cash loss requirements and the imposition of premium payment warranties (Irukwu, 1984).

These restrictions also affect the operations of the national reinsurance corporation in view of their deleterious effect on effective competition in the international reinsurance community. Exchange control problems have proved the greatest stumbling block for Africa Re which incurred a loss of ₦3.5 million for this reason only.[58] The aviation market in Nigeria has reacted to the situation by the formation of the Nigerian Aviation Pool by 17 insurance companies in January 1984, with the aim of conserving foreign exchange by keeping all premiums on aviation insurance within the country without resorting to foreign reinsurance. This device led to foreign exchange saving to the tune of ₦750,000 in 1984.[59]

8.7 Notes

1. See New Nigerian, 25 March 1970, pp 1; also ibid. Monday 28 January 1974 pp. 1.

2. New Nigerian, 22 June 1976, pp. 7.

3. See 1974/75 National Budget Speech.

4. For the full text of the statement, see Nigerian Business Digest, Vol. 4, No. 10, January 1975 pp. 19.

5. Ibid. The companies are the Royal Exchange, New Africa Insurance, Crusader, UNIC, United Nigeria Life Provident, Lion of Africa, and British America.

6. Ibid.

7. Ibid. Further see Africa Diary, Vol. XV No. 3 Week January 15th to 21st, 1975 pp. 7274.

8. Ibid.

9. These include the West African Provincial, New India and Guinea.

10. See New Nigerian, 1 March 1976 pp 15 and Sunday Times 29 February 1976 pp. 15 and Sunday Times 29 February 1976 pp. 3.

11. Second National Development Plan, 1970-74.

12. New Nigeria 1 March 1976.

13. See Sunday 13 June 1976, pp. 2.

14. See the Nigerian Observer, 7 September 1976 pp. 16.

15. New Nigerian, 20 April 1976 pp. 1.

16. See Nigerian Business Digest, Vol. 2, No. 4, April/May 1972, pp. 24.

17. See Diejomaoh, V., "Nigeria's Business Promotion Decree", Afriscope Essay, Afriscope, May 1972, pp. 25; and Daily Times, 4 March 1972 pp. 10.

18. Ibid.

19. See Daily Times, 9 March 1972.

20. See item 20 of Schedule 2 to the Nigerian Enterprises Promotion Act 1977.

21. See New Nigerian of 2 April 1976, pp. 9.

22. Ibid.

23. See House of Representatives Debates Reports, 29 November 1961 pp. 351 Col. 3535.

24. Ibid., pp. 351, col. 3535.

25. Section 4 of the NICON Act 1969.

26. Section 8.

27. Section 9(3).

28. The registration of six insurance companies was cancelled in January 1985 "on grounds of lack of adequate and valid insurance treaties." See the Guardian of 28 October 1984 and New Nigerian of 15 January 1985.

29. Decree No. 49 of 1977.

30. Section 2 Decree 52 of 1988 has repealed this provision.

31. Section 6.

32. Section 7.

33. Section 8.

34. Section 9.

35. Section 10.

36. See Nigeria (1986) for illustration.

37. For what happened in Great Nigeria see the Nigerian dailies of 1 June 1984 reporting a famous case in which three former governors of the same party (UPN) were jointly accused of enriching their party with ₦2.8 million from the funds of a public contract made by Great Nigeria.

38. These reasons are examined in detail by Adewale (1979).

39. For theoretical analysis see Hindley (1983).

40. See section 4, National Insurance Corporation of Nigeria Act 1969.

41. See Habib - Makar (1982) and Hindley (1985).

42. See Habib - Makar (1979) and Irukwu (1978).

43. These include: the use of increased value insurances; admission of specialist insurers, irrespective of nationality to transact marine, aviation and engineering insurances; and the adoption of facultative placing of large risks and imports on the local and the international markets.

44. The 1945 Act, by increasing the size of the market, created opportunities for profit and might have led to new firms entering the industry.

45. The Occupiers' Liability, Law Reform Torts Act 1961.

46. Factories Act 1958, CAP 66 and Factories Decree 1987.

47. Workmen's Compensation Act 1958, CAP 222 Workmen's Compensation (Amendment) Act 1960 and Workmen's Compensation Decree 1987.

48. Section 33, Insurance Act 1976.

49. Gresham Life Assurance Society (Nigeria) Ltd. v. the Registrar of Companies and Colonel A. A. Ochefu (1973, 16 S. S. I.).

50. These are Messrs Bode Ogunlana, former managing director of NICON and K. A. Onalaja, current managing director of Royal Exchange Assurance - Ogunshola, F. O. (April 1980) personal Communication.

51. Daily Times (3/7/79).

52. These include Lagos University, Ahmadu Bello University, Zaria, University of Nigeria Nsukka, IMT Enugu, Ibadan Polytechnic and Lagos State College of Science and Technology.

53. See "New Guidelines on the Granting of Business Permits and Expatriate Quotas", Federal Ministry of Internal Affairs, Lagos. See also, Daily Sketch, 8 January 1985 pp. 7.

54. Monetary Policy Circular No. 19 - Central Bank Credit Guidelines, Central Bank of Nigeria, Lagos 31 December 1984.

55. New Nigerian, 15 January 1985 pp. 1.

56. An insurance executive has been obliged to purchase foreign exchange on the black market to meet his reinsurance obligations.

57. In this setting it is untenable that government should scrap the registration of insurance companies "on the grounds of lack of adequate and valid reinsurance treaties" (The Guardian of 28/10/84).
A better policy would be that Nigeria Re should take-over these treaties.

58. See The Guardian of 13 January 1985.

59. See The Guardian of 14/12/84.

CHAPTER 9

IMPLEMENTATION OF REGULATORY CONTROL

9.1 Introduction

Successive Federal Governments have adopted a number of legislative measures to control the operation of the insurance business. These measures have been examined in detail in chapters 7 and 8. In this chapter, on the other hand, the administrative back-up measures as well as the problems of their implementation are examined.

9.2 Early Period, Up to 1965

Although the Insurance Companies Act was passed in 1961, its provisions were not enforced until 1967 (section 9.3.2) because government could not acquire officials with the expertise and knowledge of insurance operations. Hence, the practical problems of establishing an enforcement machinery could not be resolved, and the control of the activities of the insurance companies was further delayed. The intention of the government to co-ordinate and enforce the 1961 Act and its 1964 supplement therefore came to nought. It soon became clear that there had been a marked increase in the number of insurance companies but the government had no means under the law of controlling them.

9.3 The Age of Karl Reichel, 1966 to 1970

The inability to enforce the provisions of the Insurance Companies Act of 1961 and the Insurance (Miscellaneous Provisions)

Act of 1964 (chapter 5.4.1) persuaded government to make a request to the United Nations Technical Assistance Board for an expert to undertake a comprehensive study of the Nigerian insurance market (chapter 1.3.2). In 1966 government approved the appointment of Dr. Karl Reichel, a United Nations expert in insurance, as the Federal Government Adviser on insurance matters (Reichel, 1966-71). He arrived in Nigeria on 22 October 1966, and completed his assignments by the end of 1970. He so single-handedly dominated the insurance arena during his tenure that it can properly to called the age of Karl Reichel.

His assignments are examined under four headings: the establishment of the proposed national insurance company to be owned by the Federal Government; the revision of the existing insurance control legislation; the setting up of an Insurance Division in the Federal Ministry of Trade for the enforcement of the Insurance Act and the mounting of a basic training of actuarial staff; and various other matters in the field of insurance such as advice on pension schemes.

9.3.1 The Proposed National Insurance Company

On the establishment of a national insurance company, Dr. Reichel had, as a working base, a number of reports already published on the insurance business in Nigeria. The first was the Rao feasibility study of 1962 (Reichel, 1966-71). The National Executive Council had adopted the report in 1964 with the modification that the national company should limit its scope to reinsurance, marine insurance and other classes of business not undertaken by the existing two regional government owned insurance companies,[1] presumably in order to protect them from competition. In November 1965, based on advice by local experts in the insurance market that it should not be possible to combine all the activities proposed in one company, it was agreed at a meeting in the Ministry of Trade that the recommendations adopted by the National Executive Council should be modified to facilitate the immediate establishment of a national reinsurance company and subsequently, the establishment of a national marine insurance company.

However, a re-examination of the issue and a closer study based on feasibility reports by foreign reinsurers revealed that it would be uneconomical to establish two national insurance companies instead of one which could participate profitably in all branches of direct insurance and in reinsurance business as well. Therefore, the Ministry of Trade recommended the establishment of the Nigerian National Insurance Company (Reichel, 1966-71) which was to maintain a reinsurance department to which all insurance companies operating in the country would be compelled to reinsure a certain portion of their business. It was further proposed that the authorised capital should be ₦1 million with 50 percent paid up and the "Nigerian National Insurance Company" would be in partnership with a consortium of reputable reinsurance companies (Reichel, 1966-71).

Different possible ways of setting up this governmental institution were considered in 1966. A major problem was whether or not the proposed company in which the Federal Government was to hold the majority of shares, should absorb the Universal Insurance Company and the Great Nigeria Insurance Company (Reichel, 1966-71), two government insurance companies owned by the Eastern and Western Governments respectively.

In July 1966, the Ministry of Trade prepared a Memorandum to the Executive Council regarding the establishment of the national company and a corresponding working paper for an interministerial meeting on this project proposed to be held on 29 July 1966. Although the Council Memorandum was cleared by the Ministry of Justice, the interministerial meeting had to be postponed owing to the political developments which overtook the country. In October 1966, in view of the constitutional talks which were going on in the country, it was found necessary to suspend further action on this insurance project until the situation became cleaser.

The second group of reports available to Dr. Reichel concerned the various tribunals of enquiry which had been set up by government. These tribunals made appalling revelations about the conduct of some insurance brokers and insurance companies vis-a-vis their relationships with some government departments and parastatals in respect of the insurance of the latter (chapters 5.4.2 and 7.7.2.2).

It was alleged that sums insured were often inflated by the brokers in order that huge premiums could be charged to enhance the brokers' commission income. Worse still, the brokers collected premiums from these government organisations and did not pass the money to the insurance companies up to a period of two years inspite of repeated reminders by the insurance companies. It was alleged that some risks in respect of which premiums had been collected were never insured. Some top officials of quasi-government organisations were appointed Directors of insurance companies that insured their organisations (Adewale, 1979). The logical conclusion one can make is that such an anomalous situation bred corruption and fraud which some of the reports of the tribunals went to confirm.

Notable out of these commissions of enquiry was Justice Adefarasin Tribunal of 1966 which investigated the affairs of the Nigerian Railway Corporation. The commission which was set up on 2 June 1966, submitted its report on 15 December 1966. The government White Paper on the report was published in 1968. Apart from accepting all the recommendations of the tribunal relating to insurance, the government went further to say that:

> the insurance of the properties of the corporations is henceforth to be undertaken by the state owned insurance company to be established in accordance with paragraph 23 of the White Paper on Statutory Corporations and State Owned Companies (Adewale, 1979).

In December 1967, an unexpected development took place. An employee of the Royal Exchange Assurance in the name of Elijah Abiodun Oke (section 9.7) wrote a letter to the Federal Commissioner for Finance, Chief Obafemi Awolowo, calling for the formation of a national reinsurance corporation. The full text of this letter is detailed in Appendix 11.

During an interview with Oke, the latter confirmed that further verbal discussion were held with him by officials of the Federal Ministry of Finance who assured him that government would take action in no distant date. Although Oke stated that he had other underlying reasons for his action, the memorandum carried a purely economic tone (Adewale, 1979).

Earlier, the Federal Government had set up on 22 April 1966, a Panel[2] of high ranking civil servants to investigate the procedure for awarding contracts, etc. It should be observed that insurance was not one of the subjects for investigation. Nevertheless in 1968, when the government published the White Paper[3] on the report of the Committee it was observed among other things that:

> Although not dealt with by the working party, the government is not satisfied with the way in which properties belonging to corporations and state owned companies are at present insured and it has, therefore decided that immediate steps should be taken to form a state owned insurance company which should be responsible for insuring properties belonging to all statutory corporations.[4]

This White Paper was the most important reason that persuaded the government to establish a national insurance company.

Such was the state of affairs when Dr. Reichel arrived in Nigeria. He familiarised himself with these reports, but could not do much owing to the political impasse in 1966-67. However, in August 1967, he reappraised the project and sought for its inclusion in the Second National Development Plan. But this was not possible in the light of the prevailing circumstances in the country and it had to wait to be included in the Third National Development Plan.

Early in 1968, the project was given new impetus and there was a need to accelerate its implementation. This was due first, to the White Paper, published in February, in which the government set out its policy towards statutory corporations and state owned companies and which indicated government decision to set up its own insurance company. Second, the civil war, raging in the country, like all wars, had caused a scarcity of foreign exchange, and this necessitated a scrutiny of the amounts which were being transferred abroad in respect of insurance business reinsured outside the country. Third, Dr. Reichel was able to adduce the beneficial effect of the project to the country:

The participation of the government in the insurance business which had been proposed in 1967 in the Second National Development Plan, would contribute substantially towards the development of a national insurance market and the proposed insurance cessions would create a local reinsurance market. Furthermore, this participation by the government would provide reliable statistics relating to all branches of the non-life insurance business which would serve as a basis for valuable advisory service and would provide an insight into the activities of the local insurance market, information which the government at the time did not possess. As confidence in this new national company increased, Nigeria's export produce would be insured by it. This would in turn make it possible for the country's export produce to be sold on c.i.f. terms. The proposed foreign participation in the share capital of the company would provide managerial and technical assistance which by all means would be required for the operation of the company during the initial period and would help to train indigenous staff (Reichel, 1966-71).

Seeking an approach which would present the least technical and administrative difficulties at the outset, Dr. Reichel put forward proposals on the various phases by which the proposed company would be set up. He was of the opinion that compelling all insurance companies operating in Nigeria to cede 10 percent of their risks would constitute the most suitable method of floating the company. He felt that the insurance of government property could be tackled in the second phase of operation after the corporation would have possessed a technical and administrative machinery as well as some experience of reinsurance. The third phase would pay special attention to marine insurance, in particular the insurance of the Nigerian Marketing Board. After this, the corporation would enter into the field of life insurance. In view of the compulsory cessions, he suggested that the corporation should be fully government owned and should be established by Decree (Reichel, 1966-71).

Dr. Reichel's proposals were accepted on 29 January 1969 (Reichel, 1966-71), and he proceeded with establishing the National Insurance Corporation of Nigeria (NICON) which, however, had to commence business on the second phase, that is, that of insuring the property of the statutory corporations and state owned companies. Dr. Reichel assisted in drafting the Decree establishing NICON and the articles of association by which it was incorporated under the Companies Act of 1968. He worked with the officials of the Ministry of Trade to recruit staff for the new corporation, and to secure office accommodation. He also made the initial contact for technical assistance with the Munich Reinsurance and the Swiss Reinsurance Companies, two of the major NICON reinsurance partners. On 1 July 1969, the National Insurance Corporation of Nigeria came into legal existence.

By the time Dr. Reichel completed his Nigerian assignment on 31 December 1970, the Federal Government possessed its own insurance organisation, the National Insurance Corporation of Nigeria, with connections with the international insurance community and already acknowledged a reputable institution in the local market. Through NICON the insurance of the property of the government as well as the statutory corporations has been arranged for the benefit of the national economy. The important marine cargo cover of Nigeria's agricultural produce has since been arranged through this Corporation. Apart from other benefits, government has attained further insight into the insurance industry in the process of the compulsory cessions of reinsurance under the NICON Act. Finally the legal cessions were applicable to general accident business, they have contributed to the building up of the local reinsurance market (Reichel, 1966-71).

9.3.2 The Revision of the Existing Insurance Control Legislation

As noted above, the Insurance Companies Act was passed by Parliament in 1961. It sought to regulate the activities of the insurance companies through the medium of registration and by requiring that certain conditions were fulfilled thereafter (chapter 7.3). Supplementing Insurance Regulations on which the operation and enforcement of this Act depended were approved by the Council of Ministers in March 1963. However, owing to administrative difficulties which the Ministry of Trade anticipated to encounter when attempting to enforce the legislation, the Act of 1961 and its Regulation did not come into operation. Dates of commencement had been fixed several times, but it had always been postponed. Then, in 1964, a subsidiary legislation, another Act, the Insurance (Miscellaneous Provisions) Act, drafted by the Ministry of Finance, was promulgated by Parliament. Its chief purpose was to regulate the investment of insurance funds in order to prevent the premium income generated in Nigeria from being invested by insurance companies in foreign countries (chapter 7.5).

In August 1964, the Ministry of Finance in a meeting discussed with the Nigerian Consultative Committee the regulations which were required and should be drafted for the implementation of the 1964 Act. The first day of October 1964 was suggested as a possible date for the commencement of this Act. It was also considered that it could be coordinated with the Insurance Companies Act of 1961 which was to be enforced by the Ministry of Trade. In the meantime, the Consultative Committee submitted a detailed memorandum on the 1964 Act and a draft of the Insurance Regulations relating thereto.

In November 1964, the Ministries of Finance and Trade agreed that the latter should take over the responsibility for drafting the Regulations for the 1964 Act and, further, that the Ministry of Trade was to enforce the two Acts. However, already in August 1964, the Ministry of Trade recognised, and in February 1965, pointed out the practical problems which had to be overcome first before the two Acts could come into force. It was felt that it would serve no purpose, and on the other hand it would do more harm, to bring the Acts into force without first ensuring that the necessary enforcement machinery had been properly established. Not only was the section in the Commercial Law Division, which was in charge of insurance at the time, understaffed, but personnel with special technical knowledge are required for the task of administering and enforcing the Insurance Acts. It was therefore decided by the Permanent Secretary that a new section in the Ministry of Trade, the Insurance Section, was to be created and the services of an actuary were to be secured before any further action could be taken. As there was not one actuary available in Nigeria, the Ministry of Trade was obliged to request the United Nations Technical Assistance Board for assistance (Reichel, 1966-71).

After that, nothing of importance occurred. In February 1965, the Ministry of Trade requested the Ministry of Justice to draft regulations for the 1964 Act with the aid of the guidelines submitted. In December 1965, the Ministry of Justice, while still awaiting further adequate drafting instructions prepared only a tentative first draft on some of the provisions required.

This was the state of affairs when Dr. Reichel arrived. After familiarizing himself with the background information mentioned above, he critically examined the provisions of the two Insurance Acts as well as their corresponding 'Regulations'. Thereafter, he discussed with the Registrar his findings which were classified into two groups. The first concerned the 1961 Act (chapter 7.3). It had been prepared with little regard to the local conditions, contained details which were largely irrelevant, left important matters out, contained provisions which were not sound and workable and did not show strict adherence to the terms defined.[5]

The second was devoted to the 1964 Act (chapter 7.5). Firstly, the subsidiary legislation was prepared with little regard to the 1961 Act. New definitions were also introduced. Secondly, there was duplication of information called for under the two Acts. Thirdly, whilst there was provision for a "Registrar" in the 1961 Act, there was an "Inspector" in the 1964 Act with apparently different functions, a situation which resulted in a very complicated arrangement respecting the supervision of insurance business. And fourthly, parts of sections of the 1964 Act were not specific and were difficult to interpret, and therefore not enforceable (Reichel, 1966-71).

Dr. Reichel was very clear in his mind about the nature of the problems and their solutions. He believed that the existing legislation needed a lot of modification and simplification. In a country where insurance was in its first stage of development and government as well as the insurance companies did not yet possess the qualified technical personnel, insurance legislation should be comparatively simple regarding technical requirements, suited to local conditions and easy to interpret. The subsidiary insurance legislation of 1964 would not have been needed at all if section 28 of the Insurance Companies Act of 1961 had contained provisions which correspond to the actual requirements of the government in respect of the investment of insurance funds in Nigeria. A simple amendment to this effect would have been adequate.

Dr. Reichel realised that to suggest in detail what modifications of the two exsting Acts should be made in order to bring them in harmony and make them enforceable would not only be a very difficult task but would produce a result that would remain awkward and inconvenient to use. He was therefore much pleased to learn from the Registrar of the Commercial Law Division, who was then in charge of insurance in the Ministry of Trade that he was of the opinion that the two Acts, which were not yet in operation any way, should be revoked and replaced by a new Insurance Act which merged the major provisions of the repealed Acts (Reichel, 1966-71).

Thereupon, Dr. Reichel commenced work on drafting a revised Insurance Bill together with the Insurance Regulations. The latter mainly prescribed the form in which annual returns and actuarial reports were to be submitted by insurance companies to the control authorities. By the end of November 1967, he had completed work on the draft bill (appendix 1) which contained the objectives of the two existing Acts of 1961 and 1964 and which took into account the requirements and prevailing conditions in the country. While the 1961 Act was based on the principles of 'freedom with publicity', the draft bill emphasized the stricter system of insurance control (section 9.4) which is the practice in USA, Japan, India and the Continent of Europe where it has proved for a long time an effective method. Dr. Reichel felt that such a system was more appropriate for developing countries where insurance has to be guided to a certain extent, often from its infancy, to a sound stage of development (Reichel, 1966-71).

At the beginning of December 1966, he was able to hand over his draft to the Registrar in the Commercial Law Division of the

Ministry of Trade as a working paper for comments and discussion. These discussions were very fruitful and resulted in a number of changes in the draft bill in order to coordinate it with the existing commercial laws, in particular the Companies Act of 1937. Provisions of minor importance were discarded and replaced by more essential ones. Provisions concerning co-operative insurance carriers, licensing of insurance intermediaries and the administration of the bill were included. At the end of January 1967, the revised draft was completed (appendix 1).

In order to give those who were unable to go into a detailed study of the bill to gain an insight into the considerations underlying it, Dr. Reichel prepared a Memorandum to the Ministry of Trade in February 1967 (Reichel, 1966-71). At the beginning of March this memorandum formed the basis of a new Memorandum of the Ministry of Trade concerning the re-enactment of the Insurance Acts of 1961 and 1964 to the Ministries of Justice, Finance, Industries, Labour and Economic Development and to the Federal Executive Council, whose members were requested to agree that the Attorney-General be requested to draft a new insurance legislation.

Upon completion of the draft bill, Dr. Reichel's attention was focused on drafting the complementary Regulation. A review of the existing regulations revealed the necessity to clarify and modify them and bring them into harmony with the principles underlying the draft insurance bill. Consequently, the first draft of the Insurance Regulation was overhauled. Henceforth financial and income statements were to be presented on a 'gross' basis. In designing the standard forms for insurance accounts and statements stress was laid on simplicity and essentials.

In April 1967, the Permanent Secretary in the Ministry of Trade deemed it advisable to submit the draft bill and the supporting Regulations to representatives of the insurance industry to ascertain their views. Subsequently, copies of the draft bill were sent to the Nigerian Insurance Consultative Committee, which represented 46 of the 92 insurance companies registered under the Companies Act of 1937, and also the Nigerian Corporation of Insurance Brokers. Memoranda were submitted by the two associations, and these were discussed with their representatives in three meetings held with the Ministry of Trade during the months of April and May. The two associations both welcomed the bill since its objectives were to safeguard the interests of the insuring public as well as the insurance companies themselves.

Meanwhile, on 4 May 1967, the Insurance Companies Act of 1961 and the Insurance (Miscellaneous Provisions) Act of 1964 were brought into operation by the Federal Executive Council (Reichel, 1966-71). This was published in an Extraordinary Gazette and in all leading newspapers in the country. However, the intention persisted that the revised legislations would be brought into effect as quickly as possible.

On 6 May 1967, the Deputy Permanent Secretary, the Registrar of the Commercial Law Division and Dr. Reichel, all of the Ministry of Trade held a meeting with the Attorney-General and the Solicitor-General at the Ministry of Justice. The Deputy Permanent Secretary emphasized that the Ministry of Trade had, during the previous five months, prepared a revised insurance legislation which was considered to have greater clarity and to be more comprehensive than the existing two Acts. He handed over to the Attorney-General the draft insurance bill, the regulations relating to it, and copies of the Memoranda referred to above. The Attorney-General tendered his appreciation of the work done and gave his views on how to proceed.

In May 1967, several meetings were held with various bodies- the manager of the foreign legislation division of Lloyd's of London, representatives of the Ministries of Economic Development, Industries, Justice, Labour and Finance and members of the Nigerian Insurance Consultative Committee. After the lengthy consultations, the draft bill was again reviewed, resulting in alterations which were compiled by the Ministry of Trade. By the end of May, the revision was completed and the draft brought to its final form and titled "Insurance Supervision Decree 1967" (Reichel, 1966-71).

In June 1967, Dr. Reichel commenced work on the regulations supplementing the proposed legislation. Here, too, the views of interested bodies were sought and embodied in the final draft. By the end of June this task was completed. The drafts of the proposed law and its regulations were handed over, in their final forms, to the Ministry of Justice for legal drafting.

At the beginning of September 1967, the Federal Commissioner for Trade submitted a memorandum to the Federal Executive Council seeking approval for legal drafting of a new insurance legislation on the basis of his Ministry's proposals. On 10 October the Executive Council, however, deferred consideration of the memorandum to enable the Commissioners for Trade, Finance and Justice to examine the implications.

On 8 December 1967, the Ministry of Trade held a second inter-ministerial meeting of the same Ministries, which met in June, to find out to what extent the draft provisions had conformed with the various amendments of the Ministries. Dr. Reichel made 30 points upon which the existing legislation had been improved and showed how the proposals of the Ministries had been incorporated in the draft. Convinced that the draft legislation would serve the interest of Nigeria, the meeting agreed that the matter be referred to the Commissioners for Trade, Finance and Justice, who should meet to agree and advise the Federal Executive Council to approve the proposals.

In March 1968, the Ministry of Justice confirmed its agreement with the Ministry of Trade for the re-enactment of the Insurance Acts and discontinued work on the regulations to be made under the two existing Acts. Quite unexpectedly, the draft Companies Decree which was being considered by the Ministry of Finance created further complications. The latter Ministry came out with the view that foreign insurance companies should not be permitted any longer to operate through branches or agents, but might transact business through subsidiaries. The proposed draft, on the other hand, admitted foreign insurance companies, provided they lodged deposits and were registered to transact business. In a memorandum which Dr. Reichel was requested to write on this subject, he indicated that as a matter of fact, the objectives of both Ministries in this regard were identical and that disagreement lay only in the method of approach (Reichel, 1966-71). However, since the Ministry of Finance extended its views to the entire industrial sector and required that any company transacting business in any field in Nigeria should be incorporated in the country, the problem, directly linked to the Companies Act of 1968 was destined to further delay the regulation of insurance business in Nigeria.

9.3.2.1 Insurance Companies Regulation of 1968

After the Federal Ministry of Trade completed all preliminary work on the draft insurance supervision bill, it was, as observed above, expected that the Federal Executive Council would approve the re-enactment of the Insurance Acts of 1961 and 1964 in 1968. Instead,[6] on 10 October 1968, Regulations[7] supplementary to the Insurance Companies Act of 1961 were published in the Gazette.

After the Insurance Companies Act of 1961 was brought into operation on 4 May 1967, efforts were intensified to enforce the control law. The Ministry of Justice was of the view that the Regulations approved in 1963 clarified certain provisions of the Act. The Ministry of Trade was anxious that something should be done at least with regard to the registration of insurance companies as insurers and realised that the regulations made under the 1961 Act could be used for the time being. Furthermore, the forms prescribed to be used in the proposed legislation had been agreed by both Ministries as useable for the purpose of the existing legislation so that they could be continued under the proposed legislation. It is therefore clear that the 1963

Regulations were merely polished up for the purpose of the Insurance Companies Regulations of 1968.

As a matter of fact, it is of great significance that the 1968 Regulations indicated already the policy which the control authority is going to pursue,namely that mere registration of insurance companies will not meet the requirements of the public interests unless registration is followed up by a proper supervision of the companies.

In view of the on-going amendments to the British insurance legislation and the Financial Times Survey on Insurance[8] which was published in November 1968 the Ministry of Trade concluded with satisfaction that it was on the right course regarding its policy on insurance matters, particularly its objectives for the formation of NICON.

After the Insurance Companies Regulations came into force, the supervision of the insurance business in Nigeria commenced with the registration of insurance companies as insurers. To cope with the work involved, the Insurance Section was raised to a Division in the Ministry of Trade and the Registrar of Commercial Legislation was appointed by the Federal Public Service Commission to be the Registrar of Insurance.

The need for proper enforcement of the insurance legislation was felt immediately when during the first two months of activating the control legislation hardly any insurance company came forward to submit documents for registration. It therefore, became necessary to remind the 27 companies incorporated in Nigeria and the 59 foreign companies operating in the country through branch offices or agencies to comply with the requirements of the Insurance Companies Act of 1961 (Reichel, 1966-71).

9.3.2.2 Local Incorporation of Foreign Enterprises

Insurers operating in Nigeria had to be incorporated or registered as companies under the Companies Act of 1922. The revision of this Act commenced in 1964 and was completed in 1967. Meetings were held in the Ministry of Trade with various interested bodies and institutions in order to ascertain their views on the draft. Dr. Reichel took part in these meetings where he was concerned with the proposed provisions of the Companies Act relating to insurance business. Suddenly the Decree[9] was promulgated late in 1968.

The provisions of Part X of the Companies Act of 1968 were as brief as they were revolutionary. Their major effect was to sever the business operations of foreign enterprises in Nigeria from their parent companies and to constitute them as separate independent entities of their own. Thus, as from 18 November 1968, when this part of the Act came into force[10] every foreign company which, before the commencement of the Act, was incorporated outside Nigeria and, having an established place of business in Nigeria,[11] was automatically "deemed to have become incorporated under this Decree as a separate entity from the company incorporated outside Nigeria in whose name a place of business in Nigeria was established."[12]

The problem immediately arose as to what exemptions were due to insurance companies in view of the specified legislation to which insurance business is subject. The Insurance Companies Act of 1961 had distinguished between "external" and "local" insurers, whereas under the Companies Act of 1968, foreign companies were not permitted to carry on business in Nigeria through branch offices and agencies.

Part X of the Companies Act of 1968 cleared the last outstanding objection of the Ministry of Finance to the proposed insurance supervision bill, which objection was conveyed to the Ministry of Trade on 24 June 1968. Dr. Reichel was, therefore optimistic that the proposed draft of the comprehensive insurance legislation would be submitted to the Federal Executive Council later in 1969 after the major problems caused by the on-going legislative measures in the field of insurance had been settled. He was also very optimistic that the coming into force of the Insurance Companies Regulations of 1968 and the Companies Act of the same year as well as the proposed establishment of NICON early in 1969 would, apart from the advantages and benefits to the national economy, bring about substantial changes in the structure of the insurance market in Nigeria. Numerous foreign companies now "deemed" incorporated in Nigeria, which were transacting little business would wind up. Indigenous companies which did not meet the requirements of the control law would be compelled to cease operations. On the other hand, a number of new, technically better qualified and financially better equipped insurance companies would emerge (Reichel, 1966-71).

9.3.3 Enforcement Machinery

Although the Insurance Companies Act was passed in 1961 and the supporting Regulations approved by the Federal Executive Council in 1963, the government had no machinery to direct insurance business on a sound footing (chapter 7.7.12). This is because the government was totally ignorant of the operations of insurance, was not aware of its malpractices (section 9.3.1), had no means to safeguard the interests of the public and therefore could not successfully control the business (sections 9.6 and 9.8). This weakness led to uncontrolled increase in the number of insurers operating on the market (chapter 5.4.1). Although the Act provided for the "Controller of Insurance" to administer the legislation, nothing was achieved in this regard.

Dr. Reichel felt that the establishment of a new Division in the Ministry of Trade would be more appropriate rather than the creation of a new section under the Division of Commercial Law. He made it clear that it was not necessary to delay the enforcement of the Insurance Act until the government possessed personnel qualified in actuarial work. This is because the setting up of an efficient administrative machinery takes a long time to accomplish and can hardly be achieved on a theoretical basis. He, therefore, recommended that the revised insurance bill be put into operation as soon as possible, and while in operation, officials would be introduced into their new duties by the actuary and would be simultaneously trained in the principles of insurance and actuarial science (Reichel, 1966-71).

For the above reasons, provision was made for personnel of the Insurance Section to be established in the Ministry of Trade and was included in the Estimates for the 1967-68 financial year in December 1966. However, in January 1967, the Ministry of Establishment proposed that personnel from other divisions of the Ministry be depleted to staff the Insurance Section, apparently not realising that insurance supervision requires personnel with technical knowledge and skill.

Upon request by the Deputy Permanent Secretary in the Ministry of Trade, Dr. Reichel wrote a Memorandum, dated 7 February 1967, regarding the supervision of insurance and the creation of the necessary enforcement machinery. In the Memorandum he pointed out, among other things, the necessity to regulate and supervise the insurance business; and in order to do this there was need for an insurance legislation suitable for enforcement, a special administrative section and personnel with special technical knowledge of insurance. In addition, the Memorandum gave a detailed description of the duties of the Insurance Section and an estimate of the personnel needed to perform control functions in the coming budget year. Regarding the proposed personnel of the Insurance Section, the following requirements were stated in a letter to the Ministry of Establishments: Registrar of Insurance, Actuary, Actuaries-in-training, Executive Officer, Assistant Chief Clerk, clerks, stenographer, typists and messenger (Reichel, 1966-71).

At the end of March 1967, the Ministry of Establishments was willing to create two posts of actuarial assistants in the Ministry of Trade, but on a salary scale which the Ministry of Trade considered inappropriate. Owing to the publications of the Institute of Actuaries, London, explaining the position and duties of actuaries working in the government service in Great Britain and a note prepared for this purpose by the Government Actuary's Department in London, setting out the details of the pay scales, and owing also to the fact that the Insurance Acts of 1961 and 1964 were brought into operation on 4 May 1967, the endeavours of the Ministry of Trade were finally successful.

At the end of May 1967, three posts of assistant actuaries-in-training at the desired salary scale and the other posts requested for the Insurance Section, as mentioned above, with the exception of the executive officer, were created by the Ministry of Establishments. These three prospective actuaries worked under the guidance of Dr. Reichel in the Ministry of Trade and were given time off to attend training courses (Reichel, 1966-71).

9.3.3.1 Training Programmes

The most daunting problem which Dr. Reichel had to face was the training of actuaries. Without doubt, there is a case for the training of actuaries as there is presently only one actuary in the industry and such persons are needed in all countries by government and semi-govermental institutions, insurance organisations, pension funds, provident funds, social security schemes, bureau of statistics, etc. A complete lack of actuaries exists also in other African countries, therefore necessitating the training of African actuaries even if it is done on a regional basis.

For the above reasons, Dr. Reichel decided that the personnel of the Insurance Section would be introduced into their tasks. Therefore he proposed to conduct training courses for his staff in the principles of insurance, insurance legislation and supervision and insurance accounts. In addition, lectures were to be given in actuarial science combined with practical training to the three actuaries-in-training whom the Ministry intended to employ (Reichel, 1966-71).

At the beginning of March 1967, Dr. Reichel approached Dr. Farkas, Head of the Department of Mathematics, University of Lagos, and learnt that students of mathematics would graduate from the university for the first time in June that year and that some of these and some of the graduates of mathematics of the University of Ibadan might be interested in specialising in actuarial science after graduation (Reichel, 1966-71). In April, he formulated his proposal regarding his planned training programme, resulting in a well reasoned letter dated 5 June 1967 (appendix 15), of the Permanent Secretary of the Ministry of Trade to the Vice-Chancellor of the University of Lagos regarding a proposal to establish a post-graduate course in actuarial science, commencing in October at the Department of Mathematics or School of Administration (Reichel, 1966-71).

In October 1967, the Vice-Chancellor of the University of Lagos confirmed to the Permanent Secretary of the Ministry of Trade his agreement to the proposal to establish a two-year postgraduate course in actuarial science after the Ministry had offered to make available to the university the services of Dr. Reichel to supervise the course on a part-time basis (Reichel, 1966-71). In spite of initial difficulties the course eventually started at the beginning of November 1968. Dr. Reichel, being the coordinator of the programme, lectured four hours a week and conducted a seminar on insurance. His three assistants, being government officials, attended the lectures on a day release basis and were therefore able to attend to their official duties in the normal way. Owing to lack of scholarship, only the three assistant actuaries-in-training took part in the programme. In January 1969, the most promising of them quitted for overseas studies. In the May examinations, the remaining two candidates failed so badly that they were not allowed to continue the course.

The difficulties enunciated above did not daunt the government. This is because the importance of training actuaries for the benefit of the country was increasingly appreciated by government officials as well as the authorities of the University of Lagos. In order not to encounter again the difficulties experienced at the end of 1969 regarding financial sponsorship of admitted candidates, the Ministry of Trade took steps and reached an agreement with the Ministry of Finance in April. According to the agreement six fellowships in actuarial science were to be awarded for the academic years 1969/70 and 1970/71. Together with the three new assistant actuaries-intraining who had to be recruited by the Ministry, the number of graduate students in actuarial science would go up.

In view of the preparations that should be made to make such a course a success, the University of Lagos did not commence the course again until the academic year, 1970/71. In July it was advertised in the leading newspapers with the announcement that the Ministry of Trade would grant six actuarial fellowships for the period of two years (Reichel, 1966-71). With the recruitment by the Federal Public Service Commission of the three assistant actuaries-in-training for the vacant posts in the Ministry, it was envisaged that the course would get at least nine students. However, the main problem which was expected to confront the university at this time would again be the availability of qualified lecturers.

9.3.3.2 Insurance Statistics

The draft insurance bill provided under sections 38 and 39 that the supervisory authority should prepare an annual report including insurance statistics. The latter were to be compiled on the basis of the documents lodged under section 21 of the draft.

For several years the Federal Office of Statistics in Lagos had requested through a questionnaire information under section 9, of the Statistics Act, from insurance companies known to be in existence (46 companies in 1964) and compiled a Report on Insurance Companies Operations in Nigeria. Since an insurance control law was not in operation, these insurance statistics were the only source of information.

In January 1967, Dr. Reichel contacted the Federal Office of Statistics in Lagos and was supplied with the insurance statistics for the years 1960, 1961 and 1962 (Reichel, 1966-71).

At the end of February the statistics office published the insurance statistics for the years 1963 and 1964. Dr. Reichel examined them and hoped that with the enforcement of the new insurance control legislation it would be the task of the Insurance Section to compile such statistics. In March 1967, he therefore handed a copy of his observation to the Chief Statistician of the Federal Office of Statistics (Reichel, 1966-71).

9.3.3.3 The UNCTAD Questionnaire

In March 1967, the Ministry of Trade received from UNCTAD a questionnaire on insurance legislation, supervision and the nature of the market. The purpose of these questions was to gather information to support a study contemplated to cover the existing insurance systems and operations in developing countries.

Since the UNCTAD questionnaire was received at a time when the improvement of the proposed insurance legislation was well under way, special attention was given to it by the Ministry. Firstly, the questions relating to licensing, examination of accounts, financial guarantees, investment of funds, scope and organisation of supervision, etc, provided valuable hints as to the provisions which effective insurance legislation contains. Secondly, it induced the Ministry to assemble from other governmental departments relevant information on insurance as to foreign exchange, tax regulations, statistics and other matters. Thirdly, it caused the Ministry to compile particulars as to the number, capital outlay and the place of incorporation of insurance companies which were operating in Nigeria and which, until 1967, were registered only as commercial enterprises under the Companies Act. Fourthly, it induced the Ministry for the first time to formally study the situation of the insurance market in Nigeria (Reichel, 1966-71).

The UNCTAD questionnaire indirectly contained valuable suggestions from a completely independent organisation regarding the measures which might be taken by the government to strengthen the national market. It was particularly appreciated that some of these questions were in conformity with the plan of the government to establish a national insurance company.

The Ministry of Trade was responsible for answering the 129 questions on insurance and reinsurance and was assisted in doing so by Dr. Reichel. The reply to the questionnaire was given on 31 March 1967 (Reichel, 1966-71). In the reply it was assumed that the Insurance Act of 1961 and 1964 were at that time in operation. In view of the fact that the government was contemplating the replacement of these two Acts by a new insurance supervision decree, the replies which were probably not appropriate until the proposed bill was promulgated and enforced were specially indicated.

9.3.3.4 Registration of Insurance Companies

Until January 1969, the insurance companies, hitherto unperturbed, paid scant attention to the insurance legislation. The companies had to be reminded by the Insurance Section of the necessity to have, henceforth, permission to carry on business.

Out of the 27 insurance companies incorporated in Nigeria before the Insurance Companies Act came into force, only 12 had submitted applications for registration as an insurer by the end of March 1969. Besides the documents and statements which had to accompany the application were often incomplete. The 57 companies incorporated outside Nigeria which had established a branch office or an agency in Nigeria for the purpose of transacting business had to be dealt with differently and presented other problems. As reported earlier, on 18 November 1968, these companies were deemed incorporated in Nigeria under under Part X of the Companies Act of 1968. Within the prescribed period of three months, out of 57 companies 16 gave notice of their intention to continue transacting insurance business in Nigeria by forming a subsidiary company, 24 companies indicated the intention to wind up and 17 gave no reply at all (Reichel, 1966-71).

In this connection, various problems arose not only from the administrative and legal point of view but also from technical aspects, among others, the determination of the existing liabilities, the valuation of assets, the winding up of life insurance business, the transfer of the existing business to other companies. Therefore, during the months of February and March applications with documents, statements of account and solvency, policy exhibits, policy forms and conditions were submitted to the Registrar of Insurance who was at the time concurrently the Registrar of Companies. These documents gave the Ministry the first valuable insight into insurance operations in Nigeria, revealed facts and practices hitherto unknown and provided the basis for reliable insurance statistics. Numerous inadequacies were discovered, among others such as inadequate capital and surrender values under life policies.

During the second quarter of 1968, the registration exercise continued. Up till the end of June, 30 companies had submitted to the Registrar of Insurance applications for registration as insurers under the Act. Out of these, 14 companies were incorporated in Nigeria and transacted business before the 1961 Act came into force. Five companies were incorporated after that date; 11 expatriate companies deemed incorporated were taking steps towards full incorporation and there were eight companies, deemed incorporated which had submitted accounts and documents for the purpose of winding up under the supervision of the court. In all, there were still about 40 odd companies, incorporated or deemed incorporated, which were yet to comply with the requirements of the Insurance Companies Act of 1961 (Reichel, 1966-71).

In the third quarter of 1969, the desired progress could not be achieved in respect of the registration exercise. The companies were slow in complying with the requirements of the legislation. Those companies deemed incorporated since 18 November 1968, altogether 11 in number, did not accelerate their steps towards full incorporation which was prerequisite for obtaining the permission to carry on insurance business. Moreover, statements and documents submitted were often not in accordance with the requirements. Thus, up to the end of September 1969, out of a total of 33 companies which had applied for registration as an insurer with the aim of carrying on insurance business only seven companies could be registered as insurers.

At the beginning of July 1970, a list of 21 companies which had received permission to transact insurance business was published in the Official Gazette (Reichel, 1966-71). This publication which was commented on by a leading newspaper caused a great anxiety among the non-registered companies. Perhaps for the first time in Nigeria, insurance companies paid full attention to the existing insurance legislation. For this reason more than 40 companies had to apply for registration. It was obvious to Dr. Reichel that among those authorised were a great number of new and unknown companies while those companies which prior to November 1968, transacted substantial insurance business in Nigeria had, owing to their retarded incorporation, not yet met all the legal requirements for registration at the time of the publication of the list (Reichel, 1966-71).

Dr. Reichel observed further that, since the end of the civil war in January 1970, the desire of Nigerians to establish many an insurance company had greatly increased. To cope with the situation and screen the multitude of new companies applying for permission to transact insurance business he recommended that the legal requirements had to be much more stringent. The demand for supervision by the public for the wiping out of mushroom companies which conducted insurance business by ignoring its principles and technical requirements was steadily increasing in Nigeria.

9.3.4 Miscellaneous Issues

A number of miscellaneous matters, mostly administrative, dealt with by Dr. Reichel is considered in sub-headings below.

9.3.4.1 Cooperative Insurance Societies

For some years the co-operative movement in Nigeria had planned to establish a national cooperative insurance society. The idea began to take shape in 1963 after a mission of the International Co-operative Alliance had visited Nigeria. From the beginning stress was laid on the setting up of an insurance society on a Federal basis. The Registrar of the Co-operative Division, Federal Ministry of Labour, pursued the plan and sought assistance for its implementation. He also represented his Ministry in the meetings held in the Ministry of Trade in respect of the proposed insurance legislation. He took advantage of the presence of Dr. Reichel to obtain the latter's views on the cooperative insurance project. Thus, during the months of November and December 1967, the various aspects of the project were discussed. Dr. Reichel pointed out that in the proposed new legislation provisions for establishing such a society on the co-operative basis had been specially made and that the setting up of an insurance carrier on a non-profit basis by members who offer insurance to one another at cost (mutual insurance company) would be an asset (Reichel, 1966-71).

In April 1969, the Federal Ministry of Labour forwarded to the Federal Ministry of Trade for comment a copy of the ILO report on the "Organisation and Development of Co-operative

Insurance in Nigeria." The Report was discussed at the annual meeting of the State Registrars of the Co-operative Societies in Nigeria held in Lagos from 21 to 23 May 1969. Dr. Reichel was invited to this meeting and he seized the opportunity to explain the issues involved as well as the steps to be taken to implement the project. And in January and February 1970, he assisted the cooperative movement in the drafting of the memorandum and articles of association of the Cooperative Insurance Society of Nigeria (Reichel, 1966-71).

9.3.4.2 Export Payment Insurance Scheme

At the meetings of the Ministry of Trade concerning projects to be included in the Second National Development Plan, the establishment of an export guarantee corporation by the government was discussed at length. In a memorandum introducing the subject it was pointed out that in order to encourage and expand trade with countries outside Nigeria the government should provide a specialised range of insurance and guarantee facilities which are not normally obtainable from private commercial insurers. The government should give coverage to certain commercial credit risks, such as insolvency and default in payment by buyers, and political risks which relate to changes in foreign countries' import policies and delays in the transfer of funds arising from exchange control difficulties in the buyers' country, and war and civil unrest.

The Central Bank, in its paper titled, "Export Financing in Nigeria", however, questioned whether an insurance scheme on the suggested line was relevant and of positive economic advantage to Nigeria at that stage. Dr. Reichel was pessimistic about the success of such a scheme since it would confront the government with new technical problems since insurance facilities in this respect were not available in the country (Reichel, 1966-71). The idea was therefore dropped.

9.3.4.3 Pensions

In November 1967, Dr. Reichel was approached by the National Libraries Board to assist in the setting up of a pension arrangement comprising the staff of all libraries. The scheme was to be established on a similar basis as the scheme for the senior staff of the Nigerian Universities. Dr. Reichel's comments on behalf of the Insurance Section centred on a group endowment insurance contract rather than on individual policies which the Board favoured because such a group contract would be more beneficial to the staff of the National Libraries (Reichel, 1966-71).

In December 1967, Dr. Reichel examined the Nigerian Universities Joint Superanuation Scheme on the basis of the available materials and found that the scheme needed improvement.

9.3.4.4 Foreign Exchange Regulations

In October 1967, the government announced a tighter control on the use of the foreign exchange reserves and announced, in respect of insurance, that premium payments would be effected in the Nigerian currency. This brought up the matter of foreign exchange regulations regarding insurance transactions which were made by the Ministry of Finance. For the purpose of co-ordination and assistance, Dr. Reichel established connections with the Ministry of Finance and the Central Bank of Nigeria, the latter being responsible for the administration of the regulations (Reichel, 1966-71).

Further discussions on the technical problems involved, such as exchange regulations and the transfer abroad of funds in connection with insurance business, were held in the Ministry of Finance with its Exchange Control Officer and the Deputy General Manager of the Central Bank of Nigeria. These discussions resulted in a request by the Central Bank to the Insurance Section to assist in the drafting of a questionnaire which insurance companies and insurance brokers would henceforth have to submit when applying for allocation of foreign exchange in respect of their insurance business.

9.3.4.5 Motor Insurance

The Federal Ministry of Trade embarked upon investigation into the motor insurance business with the aim of determining the adequacy of premiums charged by insurers and exploring the feasibility of establishing as a supplement to the Motor Vehicle (third party insurance) Act an unsatisfied judgement fund for certain third party liability claims resulting from road accidents. This work required collection of statistical data from the association of accident insurance companies and from traffic police departments and the collaboration of the Advisory Committee on Road Safety which was set up by the government. Dr. Reichel prepared a memorandum on this matter, but owing to the fact that the requested statistical data could not be obtained, this investigation was not concluded (Reichel, 1966-71).

9.3.4.6 Insurance of Government Property

Discussion were held with the Deputy Accountant General in the Ministry of Finance on the marine insurance fund operated by the Crown Agents in London and on insurances in relation to aviation and cash-in-transit risks which government placed overseas (Reichel, 1966-71).

9.3.4.7 Taxation of Life Offices

The Insurance Section welcomed a memorandum submitted to the Ministry of Trade by the Nigerian Insurance Consultative Committee on the taxation of the life business. This afforded an opportunity to investigate the basis of taxation of insurance companies. Co-operation with the Inland Revenue Department was established. After thorough preparation by the Ministry, the memorandum was discussed with representatives of the Insurance Consultative Committee at length. This persuaded the Committee to re-clarify their points and to submit a new memorandum in due course (Reichel, 1966-71).

9.4 Evaluation of the Reichel Model of Control

The Reichel model or style of control is the strict or close control system of regulation (appendix 1). Under this system there is control over premium rates, commission rates, policy condition, investments, etc (chapter 4.4). Hence Dr. Reichel made detailed provision for working capital, methods of conducting business, investment portfolio choice, the licensing of agents and the registration of insurance brokers. This detailed system of supervision has failed to correct the major problems facing the insurance industry, such as very limited retention capacity and the inability of the market to provide good service to the consumer (Nigeria, 1986).

In view of the continuing weakness of the market, it is essential to focus attention on why the Reichel effort has failed:

9.5 The Quinquennium Following the Departure of Dr. Reichel

Following the departure of Dr. Reichel from the country, a vacuum was created in the Insurance Department. The reason for this is not far to seek. The insurance section in the Ministry of Trade was, at the time the repealed Insurance Companies Act of 1961 was being implemented in 1967, under the Legal Adviser of the Ministry. The Legal Adviser, in addition to his duties as the Registrar of Insurance was the Registrar of Patents, Designs and Trade marks. Although assisted by the Superintendent of Insurance (appointed in 1970), the Legal Adviser was in the absence of an actuary, clearly ill-equipped to carry out the duties of an insurance monitoring and control agency (Nigeria, 1986).

The absence of effective control led to the mushrooming of the insurance industry by indigenous insurance companies (section 9.3.3.4). Although only 21 companies were authorised in July 1970, in 1971 the number rose to 66 (Irukwu, 1971). By 1972 it further went up to 69 (Irukwu, 1971), in 1973 it climbed to 71 (Ogunshola, 1973) and by 1974 it reached an all time high of 77 (Agbaje, 1975).

As observed in chapter 5.4.1, the flourishing of over 70 insurance companies, unregulated created problems in terms of their conduct and performance. Public confidence in the insurance industry weakened because of "the multiplicity of insurance companies - both underwriting and broker" (Nigeria, 1975). Against this background, it is perhaps not surprising that one of the major problems facing the country's economy, identified by the Third National Development Plan (1975-80), was

> "the existenceof confidence weakening elements in the insurance industry and the high percentage of reinsurance which goes to overseas companies. This was said to have resulted in the tremendous foreign exchange leakage caused by the reinsuring of a large percentage of the risk outside the economy and the dominance of foreign companies in the sector" (Nigeria, 1975).

Hence the Federal Government's proposal to undertake a "comprehensive review of the laws governing insurance so as to remove abuses now rampant in the industry" (Nigeria, 1974). In pursuance of this policy, a separate Registrar of Insurance, a Deputy Superintendent of Insurance and an Insurance Auditor were appointed in November 1974, despite opposition from the Ministry of Justice which appointed the Legal Adviser (Nigeria, 1986).

The newly appointed Registrar of Insurance was given two assignments. The first was the revision of the Insurance Companies Act of 1961 which had become dormant owing to the inadequacies of the enforcement machinery. The second was the indigenisation of the foreign owned insurance companies.

On 31 March 1976, the then Head of State announced that a Financial Review Committee was set up:

> "... to examine the adequacy, relevance or otherwise of the institutions in, and the structure of the financial system to meet the needs of the economy for rapid development" (Nigeria, 1976).

The Committee's investigation of the insurance industry was part of a much larger enquiry into the Nigerian financial system in conformity with its terms of reference. Its report has provided very valuable information on the background that led to the formation of NICON in 1969 and Nigeria Re and Africa Re in 1977 (chapter 1.3.2). Its recommendations include: a further indigenisation of the foreign owned subsidiaries; radical provisions to be included in the Nigeria Re Act; the review of the provisions of the NICON Act of 1969 and the transfer of the Insurance Department from the Ministry of Trade to Finance (chapter 1.3.2).

On fiduciary regulations of the industry, its recommendations were far reaching. First, it blamed the mushrooming of insurance companies on the low capital requirement of the 1961 Insurance Companies Act and supported government's decision to raise this to ₦300,00 for non-life and ₦500,000 for life insurance companies. Secondly, it was worried that the balance sheets of many insurance companies showed substantial amounts due from agents and brokers and therefore concluded that these intermediaries required great control. Thirdly, it recommended that the investment of insurance funds should be regulated from time to time in the light of the needs of the economy and particularly that the rate structure and investment guidelines should be determined by the Monetary Authorities so as to unify the determination of monetary policy with regard to both banking and non-banking financial institutions. Lastly, for more effective supervision of the industry, it recommended the setting up of a Board by the controlling Ministry with powers under the control law to regulate the industry. It felt that the use of the Board would be more efficient than what obtains at present where the control is exercised by the Ministry (of Finance) without clear-out guidelines or any clear indication of policy (Nigeria, 1976).

9.6 The Implementation of the 1976 Act

The Registrar of Insurance led the efforts[13] which resulted in the promulgation of the Insurance Act of 1976. By the provisions of the latter (chapter 7.6) all existing insurance companies had to re-register and those which could not comply with the new conditions were weeded out. As a result of the exercise, the number of companies operating on the market was reduced from 73 to 56 on 31 May 1977 (Nigeria, 1986). The remainder which could not meet the registration requirements were not allowed to operate. The Insurance Regulations of 1977 re-affirms the pattern of rendering returns established by Dr. Reichel (section 9.3.2).

Although the Insurance Act of 1976 and the Insurance Regulations established a better system for the improvement and development of the industry, the Insurance Department statutorily empowered to enforce the provisions of the control legislation is ill-equipped to monitor and control the industry (section 9.3.3). It lacks sufficient and competent staff to man its Inspectorate Division which it needs to enforce the provisions of the legislation. This is due to the failure of the Department to attract qualified personnel from the insurance market because of its poor civil service salary structure. Apart from inadequate staffing, it is inadequately funded.

9.7 Recent Implementation (Since 1981)

The 1976 Act contains provisions which are irrelevant and unsound (chapter 7.7). Commentators[14] and the practitioners[15] were quick in pointing out the anomalies. In apparent response to the criticisms, the Insurance Department called a meeting of the leading practitioners operating in the industry in April 1981, to discuss the issues. The discussions, which lasted till August, resulted in suggestions which were intended to correct the deficiencies.

The totally unexpected decision by the Federal Minister of Finance at the end of 1983 that the registration fee (appendix 16) for all classes of insurance business was being reduced to ₦1,000,[16] united the entire market to mount a studied pressure[17] to enact a new insurance legislation.[18] The overthrow of the Shagari Administration at the end of the year prompted the Insurance Department to begin work on the revision of the 1976 Act. By March 1984, the proposed amendments were drawn up and circulated in the market. The final proposals were then submitted to the Federal Executive Council. In April the Nigerian Law Reform Commission arranged a National Seminar on the Reform of Insurance Law to consider the proposals. Thereafter the Federal Executive Council instructed the Attorney-General and

Minister of Justice to prepare a draft for consideration by the Council. In the meantime the former Supreme Military Council was replaced by the Armed Forces Ruling Council. This political impasse brought to an abrupt end the process of concluding work on the draft amendments (Nigeria, 1986).

Nigeria's rejection of the IMF loan[19] compelled the Federal Government to restructure the economy. Accordingly the President announced in his Budget Speech of 1 January 1986 that the government was considering the reduction of its holdings in banks, insurance companies and other financial enterprises without losing control. It was further announced that government would set in motion during 1986 the process of another review exercise of the Nigerian Financial System as was done in 1976. As a consequence an 8-man Insurance Investigating Panel[20] was set up in January (appendix 14) to review the entire insurance system.[21] The Panel, whose recommendations include the establishment of a national insurance commission or board to supervise the industry and a revision of the insurance legislation (appendix 17), submitted its report at the end of June.

9.8 Evaluation of Implementation

The poor state of the insurance industry in Nigeria is inevitable for one major reason. As observed in section 9.3.3 the government has no means of directing the industry on a sound footing because of lack of effective machinery for control (chapter 7.7.12). Moreover, the government does not realise that insurance supervision requires technical staff. Even when it was realised that personnel qualified in actuarial work was required, it has not been possible to secure the services of an actuary on a full time basis.[22] The few insurance clerks that are recruited are difficult to retain because of better remuneration elsewhere.

The constraints on effective supervision contained in a Memorandum submitted by the Insurance Department to the 8-man Insurance Investigating Panel are summarised as follows:(1) Because of the disparity in the salary grading of the staff of the Insurance Department and their counterparts in NICON, Nigeria Re and the rest of the market, qualified and experienced staff would not like to work in the Insurance Department. (2) In the civil service where the administrative cadre controls the progress of the professionals the latter are at a disadvantage and therefore cannot effectively promote their interest. The implication of this is that the Insurance Department staffed by professionals cannot expand as the need arises. (3) Stringent budgeting and restrictions in staff strength in the wake of the nation's economic difficulties have resulted in considerable staff turnover. A total of 35 professionals and graduates left the Department for the private sector during the past decade.

The cumulative effect of the above in the words of the memorandum is as follows:

"... In an industry which is one of high income earners, it (is) difficult, if not impossible, to attract the expected qualified and experienced personnel to work in a department where staff salaries and fringe benefits are far below what they can earn in the private companies. This is especially the case when a person with an ACII qualification joins the service of a good insurance company and finds himself as Chief Executive with all sorts of fringe benefits... His counterpart in the civil service finds difficulty in securing government quarters. While it is practicable for an administrative officer on salary grade level 12 to climb to G.L. 16 under a decade, it is difficult for his professional counterparts to go beyond G.L. 14 after 15 years of dedicated service... An average professional in the civil service is, to say the least, demoralised. The professional personnel in the Insurance Department share this fate. Under these circumstances... the insurance Department could not adequately perform its functions..." (Nigeria, 1986).

9.9 Notes

1. These are Great Nigeria and The Universal.
2. It was officially called The Ani Working Party on Statutory Corporations and State Owned Companies.
3. This was known as the White Paper on Statutory Corporations and State Owned Companies.
4. Ibid para. 23.
5. For example, "insurer", "registered insurer", "insurance company".
6. Obviously the pressure groups were responsible for the change of course.
7. See Legal Notice 92 of 1968.
8. See London's Financial Times (26 November 1968).
9. See Companies Act 1968, Decree No 51 of 16 October 1968.
10. The rest of the Act came into effect retrespectively as from 1 October 1968, see section 398 (2), Companies Act 1968.
11. See Akinkugbe (1979) and Aje (1978).
12. Section 368(a).
13. Information on "the efforts" has not been forthcoming on the ground that "government business is secret." (Thanks to the directive to this effect issued by the Buhari Administration). Not until the files reach the archives can the details be published.
14. See, for example, Falegan (1976/77) and Chapman (1977).
15. See appendix 11 for representations to the Insurance Department by professional bodies.
16. See "Insurance Amendment Regulation" signed by the Minister of Finance, Mallam Adamu Ciroma, vide The Punch (December 1983).

17. The leaders of the industry rejected the amendments and described the reduced fee as politically motivated and devised to give party patronage to members of the governing party, the National Party of Nigeria. They complained that the proliferation of insurers, and brokers would lower standards.

18. See The Guardian (21 and 30 April 1984), Daily Times (30.6.84), Daily Sketch (4.12.84), New Nigerian (18.7.85), The Guardian (19.8.85), etc.

19. See The Guardian (13.12.85).

20. Otherwise known as Oke Panel. It has since come to light that Prince E. A. Oke who petitioned Chief Awolowo in 1967 (section 9.3.1) was instrumental in the setting up of the panel. See Financial Punch (9-13 May 1986).

21. See Daily Times (12.2.86).

22. The Department of Actuarial Science and Insurance of the University of Lagos has since its inception in 1970 not succeeded in producing a single actuary.