

# THE MARITIME NEWSLETTER

EVALUATING POTENTIALS OF THE  
LEGISLATIVE FRAMEWORK  
IMPACTING ON THE NIGERIAN  
MARINE INSURANCE INDUSTRY

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## **EVALUATING POTENTIALS OF THE LEGISLATIVE FRAMEWORK IMPACTING ON THE NIGERIAN MARINE INSURANCE INDUSTRY**

### **I INTRODUCTION**

The role of marine insurance in Nigeria's economic development cannot be overstated as it offers significant protection from the risks arising from the entrepreneurial activities of shipowners and traders in maritime commerce, which undoubtedly correlates with the growth of such activities.

Marine insurance is also in the pivotal position of contributing significantly to the capital market through the premiums that flow from the provision of crucial insurance cover. A strong, buoyant and viable marine insurance industry therefore represents a crucial element in the economic development and growth of Nigeria's maritime industry. Given this role of marine insurance in the Nigerian maritime industry, it would be logical to presume or expect that the marine insurance industry is a major contributor to Nigeria's economy. However, this is not so as it is evident that the insurance industry has not lived up to its full potentials.

The Honourable Minister of Finance, Mrs Kemi Adeosun, at an insurance summit held in July 2016 confirmed this position when she noted that the insurance industry had under-performed and was denying the country an annual 1.5 per cent increment in Gross Domestic Product (GDP). It was further stated that there was a need to immediately address the issues responsible for the insurance industry's under-performance, as it was glaring that its pension and banking counterparts were performing better.

There is no gainsaying that any legislation impacting on the marine insurance industry in Nigeria and which has the potential of promoting the economic development of the industry warrants consideration. It is imperative to note that at face-value, the relevant legislation that constitutes the legislative framework influencing the marine insurance industry should ordinarily ensure its development in Nigeria. It would, however, appear that difficulty is presented in this regard by various challenges bedevilling the success of this legislative framework. Apparently, this position contributes appreciably to the under-performance of the industry.

Against the backdrop above, the objective of this paper is to highlight the economic potential of the legislative framework governing or influencing the Nigerian marine insurance industry, briefly consider their challenges and proffer recommendations regarding how they can be resolved.

### **II. THE NIGERIAN MARINE INSURANCE INDUSTRY**

Marine insurance can rightly be described as the matriarch of all insurance. It can be defined as a contractual relationship in which an insurer agrees to undertake the liability flowing from the

maritime risks or perils that could arise from the entrepreneurial activities of an insured shipowner or maritime trader, upon the payment of a consideration referred to as a premium.

From the outset of maritime commerce, the earliest maritime traders and shipowners understood that maritime perils were a likely danger that could arise in the course of transporting goods by sea. From the 12<sup>th</sup> & 13<sup>th</sup> century practice in Italy whereby certain merchants were willing to insure the risk of other merchants upon the payment of a premium, to the practice in England where marine insurance business was conducted in coffee houses and the most famous of which is now Lloyd's of London, maritime traders and shipowners have always identified the need to insure their entrepreneurial activities.

Marine insurance made its inroad into Nigeria around the beginning of the twentieth century through the British colonialists. It was introduced in order to undertake the risks that flowed from the commercial interests engaged in by European trading companies that had witnessed a rise, especially in respect of shipping activities. In Nigeria, the marine insurance industry is largely premised on the provision of insurance by various insurance companies to shipowners and cargoowners engaged in maritime commerce. The common marine insurance policies provided in Nigeria by the insurance companies are in respect of Hull and Machinery (H&M) insurance and Cargo insurance. Respectively, the H&M insurance provides cover to the shipowner against damage or loss to the ship, while the Cargo insurance provides cover to the cargoowner for physical loss and damage to the goods. Unfortunately, there is no Protection & Indemnity (P&I) Club in Nigeria to provide the Protection and Indemnity (P&I) insurance for third party liabilities arising from oil pollution damage, crewmen claims, collision, wreck removal, etc. However, there is a practice in the Nigerian insurance industry whereby some insurance companies appear to have entered into partnerships with foreign P&I clubs with a view to offering P&I insurance cover to Nigerian shipowners.

Flowing from the above, it is clear that insurance companies are of strategic importance in the maritime industry which warrants the regulation of the insurance industry through the provision of legislation to govern their operations. It is imperative to state from the outset that while some laws were directly enacted to govern and regulate the insurance industry, there are also other laws which though not directly enacted to govern insurance matters, nevertheless, have an influential impact on the economic development in the industry.

What follows below is a consideration of the relevant legislation impacting on the marine insurance industry.

### **III. LEGISLATIVE FRAMEWORK IMPACTING ON THE MARINE INSURANCE INDUSTRY IN NIGERIA**

The legislative framework impacting on the advancement of the marine insurance industry in Nigeria and that will be considered in the course of this paper can be subsumed under two categories.

The first category represents subsisting local laws that specifically relate to marine insurance matters. This category also extends to the consideration of pending insurance Bills that will have a direct influence on marine insurance when eventually enacted into law.

The second category represents international maritime conventions that are not specifically designed to address marine insurance related matters, nevertheless, they have an influential bearing on the marine insurance industry.

**a. LOCAL INSURANCE LEGISLATION IMPACTING ON MARINE INSURANCE IN NIGERIA**

*i. The Insurance Act*

The **Insurance Act (IA) Cap I18 LFN 2004** is the principal legislation governing insurance business in Nigeria. The Act applies to two main classes of insurance that are life insurance business and general insurance business. By virtue of **s 2 (3) (d) of the Act**, marine insurance is expressly classified as one of the categories of general insurance business to which the Act applies.

**Section 67 (1) of the IA** directly impacts on marine insurance by providing that ‘...an insurance in respect of goods to be imported into Nigeria shall be made with an insurer registered under this Act.’ Couched in this form, **s 67 (1) of the IA** represent a protectionist law that seeks to ensure the promotion of the Nigerian marine insurance industry. Impliedly, the contracts for the importation of goods by sea must be executed on international trade terms (INCOTERMS) such as the well known **‘Free on Board’ (FOB)**. This dictates that while the seller will be responsible for ensuring loading of the goods on board the vessel, the Nigerian buyer or importer would be required to pay the freight, cost of transportation and deal with an insurance provider from any of the local marine insurance companies registered in Nigeria for the purpose of insuring the imported goods.

However, **s 67 (3) of the IA** appears to contradict **s 67(1)** by providing that the letters of credit issued by any bank or financial institution in respect of goods imported into Nigeria shall be on a carriage and freight basis only. In light of the premise that the general intention of s 67 is to ensure that the insurance of goods imported into Nigeria is undertaken by a local marine insurance provider, it is argued that s 67 (3) ought to provide that letters of credit for goods imported into Nigeria are to be issued on Free on Board basis only. Understood this way, it is crucial for s 67 (3) to be amended in order to reflect the true spirit of the section.

To ensure compliance, **s 67 (4) of the IA** lays down sanctions for the failure to comply with **s 67 (1)** by providing that any importer, broker or agent who secures insurance for imported goods other than as provided by **s 67** is guilty of an offence and liable to a fine of N500, 000 upon conviction.

Indubitably, the provisions of **s 67** strive to ensure that Nigerian marine insurance companies are patronised and engaged in respect of providing insurance for the importation of cargo to Nigeria. The provisions also provide various advantages which include the arrest of capital flight, creation of employment, earning of foreign currency, improved standard of living, and protection of local marine insurance companies from adverse foreign competition.

### *ii. Marine Insurance Act*

The **Marine Insurance Act (MIA) Cap M2 2004** is the primary legislation exclusively dedicated to the subject matter of marine insurance in Nigeria. The MIA mirrors the English Marine Insurance Act 1906 which codified the common law principles underpinning marine insurance. Understandably, the English principles of marine insurance are therefore applicable in governing marine insurance related activities and matters in Nigeria.

Unfortunately, in fully adopting the provisions of the English Marine Insurance Act 1906, it would appear that the MIA inadvertently failed to make any provisions that could be considered as supporting the Nigerian marine insurance industry. Expressed differently, there is an absence of provisions in the MIA that ought to reflect a shipping or cargo insurance policy that would promote the Nigerian marine insurance industry. This is in sharp contrast to the position in **s 67** of the IA which contains provisions seeking to promote the industry as earlier identified above.

### *iii. The National Marine Insurance Bureau (Establishment) Bill*

The **National Marine Insurance Bureau (Establishment) Bill 2016** seeks to create the National Marine Insurance Bureau (NMIB) both as a regulator for marine insurance companies and an entity having the power to engage in insurance business activities. The Bill is presently under consideration at the House of Assembly.

The NMIB is empowered to engage in insurance business by virtue of **s 5 (1) (b)** of the Bill which provides that one of the functions of the NMIB is to carry on business in the commercial sense of any other insurance company in Nigeria by specialising in the insurance of building, machineries and equipment that exist as part of the investment on Nigeria's waterways.

**Section 5 (1) (d)** of the Bill reflects that the NMIB has the objective of taking charge of and collecting insurance levies on all cargoes of crude oil or gas leaving and coming into the shores of Nigeria. **Section 5 (1) (e)** further provides that the NMIB also has the objective of checking the capital flight of billions of dollars which Nigeria loses to foreign insurance. The role of the NMIB as an insurance regulator is reflected in **s 6 (1) (c) & (d)** of the Bill which respectively provides that the NMIB shall register and keep record of all marine insurance companies operating in Nigeria, and regulate and coordinate the activities of marine insurance.

**b. THE INTERNATIONAL CONVENTIONS IMPACTING ON MARINE INSURANCE IN NIGERIA**

**i. The International Convention on Civil Liability for Oil Pollution Damage 1992 (1992 CLC).**

The 1992 CLC is an international maritime convention governing the liability of shipowners for oil pollution damage. The 1992 CLC allows a shipowner to limit the liability arising from his or her actionable wrong that occasions oil pollution damage. The convention therefore applies to tanker-owners.

The 1992 CLC has a direct bearing on marine insurance by virtue of its compulsory insurance provisions as reflected in **art VII (1)** which provides that the ‘...owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance....to cover his liability from oil pollution damage under this convention’.

It is important to note that the 1992 CLC has been rendered applicable in Nigeria by virtue of **s 335 of the Merchant Shipping Act 2007 (MSA 2007)**. The import of Art VII (1) of the 1992 CLC is that shipowners in Nigeria would be compelled to procure the necessary P&I insurance cover for their vessels that are engaged in the carriage of oil as cargo in order to undertake the liability that could arise from any oil spill. As earlier mentioned, certain insurance companies in Nigeria are in partnerships with foreign P&I clubs in offering P&I insurance cover in Nigeria. Given this position, it is presumable that marine insurance companies in Nigeria that offer P&I insurance will be patronised in order to secure such insurance cover.

Flowing from the above, it is therefore arguable that art VII (1) creates appreciable economic opportunities for the marine insurance industry in Nigeria considering that shipowners in Nigeria are under the compulsion to secure the necessary insurance cover.

**ii. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention 2001)**

The Bunkers Convention 2001 basically makes provisions dealing with oil pollution damage occasioned by the escape of bunker oil from a ship. The convention is applicable to all seagoing vessels and waterborne craft thereby ensuring that all categories of vessels fall within the ambit of the convention; however, this wide application to ships does not extend to tankers covered under the 1992 CLC.

The Bunkers Convention 2001 relates directly to marine insurance by virtue of its compulsory insurance provision under **art 7 (1)** which provides that the ‘...registered owner of a ship having a

gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance .... to cover the liability of the registered owner for pollution damage...’.

Similar to the position in respect of the 1992 CLC mentioned above, it is crucial to note that the Bunkers Convention 2001 has also been rendered applicable in Nigeria by virtue of **s 335 of the MSA 2007**. Therefore, Art 7 (1) of the Bunkers Convention 2001 warrants that all shipowners will procure P&I insurance to cover the liability that could arise from any bunker oil pollution. Understood this way, it is arguable that the Bunkers Convention 2001 promotes the economic advancement of the Nigerian marine insurance industry considering that shipowners are compelled to secure P&I insurance cover for bunker oil pollution damage from the insurance companies that offer such cover.

### **III CHALLENGES TO THE LEGISLATIVE FRAMEWORK IMPACTING ON MARINE INSURANCE IN NIGERIA**

#### **a. Inadequate legislative provision**

A challenge confronting the legislative framework influencing insurance related matters as identified earlier is the unfortunate position that there are existing shortcomings in the relevant legislation impacting on insurance that have inadvertently rendered them largely ineffective in promoting the economic advancement of the marine insurance industry. These shortcomings are identified below.

##### **i. Absence of compulsory insurance provision concerning export**

A crucial shortcoming of the **IA** is represented by the absence of any provision establishing any policy in respect of the insurance of goods to be exported out of Nigeria. Unlike the position where **s 67 (1)** of the **IA** provides that all imported goods must compulsorily be insured with a Nigerian insurer, there is no such provision in respect of goods exported out of the country. This position means that goods exported out of Nigeria can be done on ‘Free on Board’ basis rather than on Cost Insurance Freight (CIF) terms with the result that foreign insurance companies will insure such goods thereby leading to capital flight. A clear example is crude oil that is generally exported on FOB basis which is a loss to the Nigerian marine insurance industry as the insurance for such cargo is often undertaken by the buyer with foreign insurance companies. A policy represented by the creation of provisions in the **IA** which renders it compulsory for goods exported out of Nigeria to be on CIF basis would appreciably increase capacity-building of local marine insurance companies.

##### **ii. Restriction of compulsory insurance provisions**

The exclusion of certain vessels from the application of the compulsory insurance provisions in the international conventions inevitably presents a challenge. The 1992 CLC does not extend to vessels carrying less than 2,000 tons of oil. The Bunkers Convention 2001 also does not extend to vessels

having a gross tonnage of less than 1000. It is not clear why the conventions have provided such restrictions.

However, it is certain that an avenue has been provided for a large number of vessels to avoid the compulsion of securing insurance cover. Inevitably, the marine insurance companies are denied the premiums that such vessels would have paid, if the application of the compulsory insurance provisions in the conventions had not been restrictive.

### *iii. Failure to provide adequate powers to insurance regulator*

There is an absence of statutory provisions dictating the alternative procedure to be followed in the event that the insurance of imported or exported goods cannot be effected by a local marine insurance company. While s 67 of the IA provides that all imported goods must be insured with a Nigerian insurance company, it does not lay down any alternative procedure to be followed if such goods cannot be insured locally. Furthermore, as already mentioned earlier, there is the lacuna in the IA whereby there is neither any provision stipulating that exported goods must be insured by a local insurer nor the existence of any alternative procedure to be followed when insurance cannot be secured locally for such exported goods. It is argued that statutory powers ought to be granted to the insurance regulator in the country, **National Insurance Commission (NAICOM)** to empower it to stipulate the guidelines for such procedure.

### **b. Adverse legislation**

A crucial challenge to the insurance legislative framework is the issue of enactment of legislation that could be harmful to the economic development of the marine insurance industry. In this regard, the NMIB warrants attention. While it is clear that the NMIB is yet to be enacted into law, it is imperative to consider certain aspects of the Bill that will have significant effects when it is enacted.

A notable effect of the NMIB is in respect of its objective of taking charge of and collecting insurance levies on all cargoes of crude or gas leaving and coming into Nigeria. It is argued that this objective has the likelihood of discouraging foreign buyers from purchasing Nigeria's crude oil which is the country's primary foreign exchange earner. Put differently, buyers of crude oil will simply resort to purchasing the product from another country where it is less expensive. This is even more so considering that the significant drop in the price of crude oil in recent times means that there is more supply of crude oil in the market than demand. The corollary of this position is that the loss marine insurance companies will lose the opportunity of insuring the oil that could have been purchased by such buyers from the Nigerian market.

As regards the NMIB's objective of carrying on business in the commercial sense of any other insurance company in Nigeria in specialising in the insurance of building, machineries and equipment, it is totally unclear as to what this objective is going to achieve. There is already a significant amount of insurance companies in Nigeria offering very competitive market rates in

insuring the same subject matter. The result is that the NMIB which is being created as a regulator will be in direct competition with these insurance companies thereby creating a conflict. It is argued that it is inordinate for a regulator to be in direct competition with the same entities it seeks to control as it would be unfair and amount to an overreach of its powers.

**c. Inadequate financial capability of insurance companies**

As considered earlier, there are existing local legislation and international conventions that appear to promote the economic advancement of the Nigerian marine insurance industry, albeit inadequate.

However, a challenge confronting the possibility of taking advantage of such opportunities is the lack of adequate financial capability to undertake the insurance of certain crucial products. For instance, a lot of the crude oil exported out of Nigeria is done so on FOB terms as a result of the reluctance or inability of local insurance companies to insure the product which can be largely traced to inadequate financial resources to undertake the monumental liabilities that could arise from an oil pollution spill.

**d. Lack of implementation of enabling legislation**

A crucial issue confronting the existing legislation that promotes marine insurance is the inadequate implementation of these legislation. There are confirmed reports that quite a number of vessels that conduct business activities within the nation's waterways do so without the necessary insurance cover.

However, there is no effective mechanism to ensure that these vessels are compliant with the relevant statutory dispensation. This position indubitably denies Nigerian marine insurance companies of the much needed premiums that should ordinarily flow from the insurance of such vessels.

**IV. SOLUTIONS TO CHALLENGES**

**a. Review of legislative framework**

There is a need to review the legislative framework governing marine insurance in the country. The shortcomings earlier identified in the existing legislation governing marine insurance warrants that there should be an amendment to redress these shortcomings.

There should be provisions specifically determining the circumstances when insurance cover can be sought from foreign insurance companies in respect of goods either exported out of or imported into the country. The provisions should also expressly provide that the insurance regulator will be in charge of assessing whether such exemptions can be granted. It is suggested that NAICOM should have statutory powers to dictate the circumstances when insurance of goods imported or exported into Nigeria can be undertaken with an insurer outside the country. Credence is given to this

suggestion in light of the fact that countries that have enacted protectionist laws similar to s 67 of the IA appear to have further created express statutory provisions stipulating that only the insurance regulator can determine when imported or exported goods can be insured with a foreign insurer. For instance in Ecuador, **Article 66 of the General Insurance Law n° 74 dated 3 April 1998** provides that when insurance is not available locally, exemption is possible subject to prior approval from the insurance supervisory authority. In Ethiopia, relevant legislation represented by **Notice N° 1/1977 of January 5, 1977; Chapter 2, Article 8 of Proclamation 86/1994**; and **Directive N° SIB/27/2004, effective March 1, 2004** provides that the local insurance of imports is compulsory and exemption may be given by the National Bank only where the capacity or the particular insurance cover required is not available locally. In Ghana, **the Shippers' Council (Cargo Sharing) Regulations, 1987 (legislative instrument N0 1347)** provide that every insurance effected in respect of any goods imported into Ghana shall be placed with an insurer registered in Ghana, however, permission may be sought from the regulator to secure insurance abroad.

#### **b. Extended recapitalisation and remerging of Insurance Companies**

A crucial solution to the issue of inadequate financial resources confronting the marine insurance industry is the possible recapitalisation of the insurance companies in Nigeria. It is acknowledged that there was recapitalisation exercise in the insurance industry in 2005 which triggered the successful merger of a number of insurance companies. The recapitalisation initiative was designed to improve the capability and capacity of the insurance companies to undertake more risks of a highly capital intensive nature, however, while this has generated an improvement, it is clear that the intended far reaching effect is yet to be achieved. This is because Nigerian insurance companies are still unable to compete favourably with their international counterparts. Given this position, it is argued that there is an urgent need to undertake further recapitalisation of insurance companies in Nigeria. Embarking on another round of the recapitalisation of insurance companies would inevitably result in the pooling of their financial resources which means that greater competition can be offered against the foreign insurance companies.

Inevitably, recapitalisation will trigger a further merger of Nigerian insurance companies which will arguably create stronger insurance companies that can offer better services and greater competition. It is suggested that a cue can be taken from the merger of various banks in the Nigerian banking industry which has given way to fewer banks, but that are more stronger in undertaking complex capital intensive projects that had previously been considered financially challenging.

Understood from the above, the recapitalisation and remerging of existing insurance companies will ensure that there are bigger and better insurance companies that would be able to undertake the insurance cover for marine perils that are considered to be of a daunting nature.

## **V. CONCLUSION**

The Nigerian economy is presently experiencing a downturn, which warrants that all avenues for shoring up the economy require appreciable attention. Given the vital position occupied by the Nigerian insurance industry and the huge potential it presents in significantly contributing to the economy, there is no gainsaying that the present challenges bedeviling the industry must be redressed. It can only be hoped that the current administration in the country will embark upon the far-reaching legislative reforms in addressing these challenges.

However, in the event that the administration fails to take the required steps in rebooting the insurance industry, it is suggested that now is as good a time as any for the insurance industry to seize the initiative in taking the much needed steps to reposition itself in the scheme of things within the Nigerian financial industry and economy.

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