THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

THE REGULATION OF THE INSURANCE INDUSTRY: AN ASSESSMENT OF THE PENSIONS AND INSURANCE AUTHORITY (PIA)

BY

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I recommend that the obligatory essay prepared under my supervision by Ngosa Sipho Chisopa Mulenga, entitled

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I bear absolute responsibility for errors, defects or any omissions therein.

Date....21/12/04..........

Signature..........................

DEDICATION

This work is dedicated to the memory of my late father Mr. Felix Chitembo Mulenga. Thank you for teaching me the value of hard work and education, to love and care for family and friends. You were best father I could ever have. I know you would have been proud to see me get this far.
I love you Dad.

ACKNOWLEDGEMENTS

......with a grateful heart.
The greatest 'thank you' goes to the Almighty God for loving and sustaining me till now and giving me direction in this walk of life.

To my mother Mrs. Dorothy Mulenga- for being my guardian angel, friend and companion. Mum, you had so little so I could I have so much – may heaven shine on you all the days of your life.

My brother and sister Kampamba and Hlezipi – you guys have kept me laughing at all times – through thick and thin. This is the beginning of our success story. Let's make this happen.

To my supervisor Mr. Mumba Malila – thank you for reading my work line by line and being patient with me. Under the instruction of the 'great', one can achieve greatness too.

I am also greatly indebted to my mentor and inspiration Mr. Muyoba Chibiya, deputy Registrar of Insurance at the Pensions and Insurance Authority (PIA). Thank you for seeing the best in me and allowing me to explore this field of legal knowledge. Thank you to all the staff at the PIA for their time and patience as well as the materials they assisted me with

Wise friends make you wise.......Proverbs 13:20
Diana – you are one in a million. Thanks for making room for me in your little space and big heart.

Danny Simachela-my soul mate- you have shared my dream and allowed me to achieve it. I owe you a lot.

My circle of 'girl friends 'Kaluba, Comfort and Suzyo – you are the best. We soldier on to the next level. Tom – you are a good friend.

To all who have stood by me- your reward is in heaven.

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ABSTRACT

The modern democracy recognizes that there must be freedom. Friedman a renowned author in jurisprudence postulates these freedoms of the individual as being the freedom of contract, freedom of labour and association, freedom of property and freedom of enterprise. The freedom of enterprise is the cornerstone of the freedom of personal development. It is because of this freedom that individuals can enter into areas of business such as insurance not only to provide a service but to make a profit too.

The business of insurance is ordinarily deemed to be quasi public in nature impressed with a public use so that its regulation, supervision and control are authorized and required to protect the general public in safeguarding the interests of all concerned. The liberalization of the economy in Zambia has seen the emergence of new market players in all sectors of the economy that were previously state dominated. Insurance is no exception. In 1970 a government owned monopoly insurer, Zambia State Insurance Company (ZSIC) was formed obliging the then twenty-six foreign insurers to transfer their assets to ZSIC. Until 1992 ZSIC remained the only organization permitted to transact insurance business. Presently, there are more than ten players in each faction of insurance players being insurers, brokers, assessors, claims agents and loss adjustors. The law is the best regulatory tool.

The Insurance Act was updated in 1997. No regulations were issued in respect of the current Act but were issued in respect of the now repealed Insurance Act of 1968. The net results of not having formally updated regulations is that firstly, insurance

companies do not have access to a comprehensive set of rules and procedures being applied and secondly, the regulations being applied are not complete. The duties of the Registrar of Insurance are outlined in the Insurance Act but there is lack of a supportive structure in form of a separate statutory entity.

The International Association of Insurance Supervisors (IAIS) was established in 1994 and comprises insurance supervisory authorities of more than a hundred jurisdictions. The most important function of the organization is to set international standards for insurance regulation and supervision. The IAIS sets out principles that are fundamental to insurance supervision. These principles identify key areas in which the supervisor should have control. The use of these international standards ensures that Zambia keeps up with the latest developments in the international arena in terms of the financial sector.

The work presented is information from and about the regulatory regime for insurance in Zambia and in particular the Pensions and Insurance Authority. It was gathered mainly by field research and internet sources.

CHAPTER ONE

1.0 INTRODUCTION

Finances and their prudent management are at the pulse of any economy. The importance of a well managed financial sector cannot be over emphasized. The insurance market is one area of this particular sector that needs prudent management. The law can be used to achieve this end.

Insurance has been defined by many scholars.[1] For the purpose of this essay the following definition has been adopted.

"An economic device whereby the individual substitutes a small certain cost (the premium) for a large uncertain financial loss, which would exist if it were not for the insurance contract."[2]

A number of factors have led to an increased demand for insurance. These are mostly growth related. Firstly, there has been a privatization of state owned enterprises. Private entities will demand access to insurance coverage. There has also been a rapid growth in the private sector generally. Furthermore, there has been an ever expanding middle class which will increasingly seek insurance coverage for their assets.[3] Insurance is also bait for investment for *"without access to the risk spreading mechanism of insurance*

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[1] Examples of major authors are Robert Lowe and L Macgivallry.

[2] Training Manual for Insurers. July 2000. Original Glossary. Butterworth

[3] Zambia Privatisation Agency. The Need for Secure Business. 2000 Report

coverage, the chance of catastrophic loss would curtail major capital projects and business ventures."[4]

In the conduct of insurance business, both the interests of the policy holders and the insurance companies and brokers must be protected. A strong supervisory system ensures that this occurs. Section 120 of the Insurance Act[5] provides that *"All assets, liabilities and interests situated in Zambia must be insured with insurers licenced under this Act."* This provision of the law points to the fact that there must be a mechanism or entity to decide whether an insurer shall be entrusted to perform the function envisaged.

1.1 <u>STATE OF THE INDUSTRY IN ZAMBIA</u>

From independence until 1970, there existed 26 foreign insurance companies. Following the economic reforms of 1968, government formed the Zambia State Insurance Corporation (ZSIC) in 1970 as a monopoly insurer. This obliged the twenty-fix foreign insurers to transfer their assets to ZSIC. This was the status quo until 1992 when the insurance market was liberalized. Because of this liberalization, a number of new enterprises have emerged, significantly increasing competition.[6]

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[4] Report issued at the General Insurance Congress held in New Delhi India in March 2004

[5] Number 27 of 1997

[6] Financial Sector Development Plan for Zambia (FSDP) prepared by the FSDP Technical Committee In January 2004

The insurance industry consists of the following insurance service providers as at 25th February 2004; 1 re-insurer, 8 insurers, 35 brokers, 37 agents, 9 assessors, 2 loss adjustors and 1 claims agent.[7]

1.2 LEGISLATIVE FRAMEWORK FOR INSURANCE IN ZAMBIA

The Insurance Act number 27 of 1997 is the principle piece of legislation governing the supervision and regulation of the sector. Other pieces of legislation relating to insurance include the Companies Act[8] and the Banking and Financial Services Act.[9] The Companies Act provides the ground rules for the formation and the operation of companies including those that want to make insurance their line of business. This includes rules of incorporation and the articles of the company.[10] It addresses formation, management and winding up of companies in which category insurance companies' fall. The Banking and Financial Services Act applies in more than one way to the insurance industry. It establishes insurance is a non bank financial service. The sector is subject to confidentiality requirements[11]. Both bank and non bank financial institutions should not divulge any information obtained in the course of business except by express consent of the customer or by an order of the court. Furthermore, section 117 makes it an offence to

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[7] Register of Licenced Insurance Providers for 2004 obtained from the Pensions and Insurance Authority

[8] Chapter 388 of the Laws of Zambia

[9] Chapter 387 of the Laws of Zambia

[10] Sections 6,7, 8 and 9.

[11] Section 50

falsely represent oneself as licenced to conduct financial services. The Insurance Act provides for licencing of insurers, brokers and other insurance service providers. The regulatory authority is perceived to be the Pensions and Insurance Authority (PIA) administering the Insurance Act number 27 of 1997.

1.3 THE PURPOSE OF REGULATION

Insurance markets may fail to produce efficient, competitive outcomes for one or more of the following reasons; anti competitive behaviour is common in business and the law is an important device to curb it. There is also market misconduct and in insurance it most undesirable to have unethical and unprofessional behaviour.[12] Regulation is therefore an attempt to establish a legal and ethical framework within which commerce can flourish.

Insurance is a complex transaction in that what is sold is a promise. Consequently, the organizations ability to fulfill the promise is critical to the contract. The purchaser relies on the expectation that the insurer will still be in business at the unspecified future date and have sufficient financial resources to discharge its obligations. To ensure that promises are kept, there is need to have a strong supervision of the insurance practice.[13] Therefore the two main objectives of supervision can be stated as being: to ensure that insurers have the financial resources required to pay claims as they become due and also that consumers are treated in an equitable manner in all financial dealing.

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[12] Sammy Makove, Commissioner of Insurance in Kenya speaking at 14th General Insurance Congress in New Delhi India.

[13] Appleman John Alan. Insurance Law and Practice: Admission and Regulation of Insurance Companies Kansas: Vernon Law Publishing

1.4 TYPES OF REGULATION

There are two types of regulation, namely statutory regulation and self regulation. Statutory regulation is where the rules and standards are established by an Act of Parliament and have the force of law. Self regulation on the other hand, has regulations and standards established through market organizations and groups. In some cases the law itself may also recognize self regulation. The Zambian legal system is one such regime where self regulation is recognized by the law. Under section 134(1) of the Insurance Act,[14] every licenced insurer shall be a member of the Professional Association of Insurers .Section 134(2) imposes a similar obligation on brokers to be members of the Insurance Brokers Association of Zambia. The two organizations have Codes of Conduct to which all members shall conform. If an insurer or a broker is not a member of their respective grouping, they may be suspended. Furthermore it may constitute a ground for revocation of ones operating licence.

There are a number of benefits of self regulation. Members of the industry will almost always have a better sense as to where the real problems lie than a government supervisory body. Also, most members of an industry recognize that poor practices by one member reflect badly on all of them. Therefore, it is in the long term interest of the industry itself to raise the standards. Self regulation is also more cost effective than government supervision. It shifts the cost burden directly to industry reducing the need

[14] Number 27 of 1997

for government to allocate resources to this area[15]. The cornerstone is for the industry participants to recognize that an environment supervised in unbiased and professional manner is good for both the industry and the public as a whole.

1.5 TOOLS OF STATUTORY REGULATION

Jeffery and Michael [16]espoused the following tools under statutory regulation.

The primary tool is entry restrictions through licencing. This entails that the law must provide for a body of persons from whom permission to transact must be sought. It means that the entities wishing to do so must fulfill certain known criteria. If they do not, they cannot commence operations. The licence must revocable for misconduct and renewable after a known period of time.

The second tool is the monitoring of the conduct of business. The law must provide for a method of keeping check on the market players. The companies must fulfill their promises and conduct their business in a dignified manner. This leans quite heavily on the first tool in that a company may be made to exit from the market if it does not live up to standards.

The third tool is to check on product developments. An insurance company must apply to carry out a certain class of business. If it wishes to take on more even to completely

[15] Interview with Lydia Sibanda, President of the Insurance Brokers Association of Zambia, held on the 23rd of July 2004.

[16] The Development and Regulation of Non Bank Financial Institutions. The World Bank.2000

change, it must give notice before doing so. This ensures that the regulator knows exactly what is being offered on the market. Furthermore, a check on governance and fiduciary responsibilities can be used. The law should clearly state how companies should be run and by what sort of persons. These persons must be of good standing and must be sufficiently qualified.

The last regulatory tool is accountability of funds and the affairs of the firm as a whole. Insurance is a business of trust and good faith. Therefore, it is important that money that is received by the firm is accounted for properly. In the light of new financial crimes such as money laundering and the financing of terrorism, the law must be a check on the affairs of the company and ensure that they are legal

These tools are reflected in the Insurance Act. Entry restrictions are seen in section 4 which provides that "*a person shall not carry on insurance business unless they are licenced as an insurer.*" The other players such as brokers too must be licenced as provided for sections 5 to 9 inclusive. Section 11(2) (c), which makes the tool of monitoring the conduct of business, states that the insurance company must protect the interests of policy holders and shareholders. Furthermore, under section 11(2) (f), the company must be generally competent to conduct insurance business.

Section 12(1) is illustrative of the third tool of statutory regulation as it obliges insurance companies to seek authorization to conduct a class of business not currently authorized in the licence. The Insurance Act makes use of the tool of governance and fiduciary responsibility generally under Part III regarding Management and Shareholding. A particular example is section 13(3) (a) which provides that directors of a brokerage firm must be of good repute and hold qualifications approved by the Registrar. The need for the law to provide for accountability is seen in sections 60and 61 of the Act. These two provisions oblige the firms to file returns at the end of the year as well as to lodge a certified copy of the minutes of the general meeting to the registrar.

The need for a strong regulatory system is not only a developing country concern. It has been felt worldwide. Developing countries face a huge challenge of having \to grow a supervisory system that is efficient and effective. Most advanced nations have had a number of years to achieve this as they have been economically independent for a much longer period of time. Canada had its first federal Superintendent of Insurance as regulator appointed in 1876-nine years after the country was formed[17]. As one author rightly pointed out

> *"In developed countries it has been found by experience that a sound insurance supervisory system encompassing concerns related to both solvency of insurers and their conduct in the market place is an important factor in maintaining public confidence in the financial sectors and insuring that foreign investment is not discouraged."*[18]

This is even more so in developing countries.

Despite all these concerns, a supervisory system must not be too conservative. A conservative regime will give rise to excessive supervisory expense. It will overshadow

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[17] www.canada.gov.org

[18] Lawrie Savage: Re-engineering Insurance Supervision. World Bank. Page 32.

flow of innovation. It must balance public protection on one hand and the entrepreneurial spirit on the other.

1.6 CONCLUSION

The insurance sector is very sensitive one. It requires to be guarded and nurtured for it grow in a stable fashion. Supervision in whatever form, whether statutory or self regulation provides the environment for this occur. This will then instill public confidence in the financial regime as a whole. However to achieve the intended purpose, the supervisor must have sufficient powers. This will be the subject of the next chapter which looks at what powers an insurance regulator must have to make a mark and foster the growth of the industry in developing nation such as Zambia.

CHAPTER TWO

2.0 INTRODUCTION

Having seen the importance of regulating the insurance industry, the question that arises therefore is, what are the benchmarks for insurance supervisors in all jurisdictions and in particular for developing countries like Zambia? What is the ideal regulator like? A further query is in the light of globalisation – can these benchmarks be standardised and harmonised globally? Jeffrey and Michael write in support of this view and state that:-

"In the globalized world, supervisory aims can be achieved if supervisors consider themselves as a single body beyond different nationalities. Co-operation is supervisory safety in this world".[19]

2.1 INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS)

There is a currently a worldwide of evolution of international standards and their adoption by various countries. The accounting arena has developed the International Accounting Standards (IAS). In the arena of insurance, the International Association of Insurance Supervisors (IAIS) performs a likewise function. It was established in 1994 and comprises insurance supervisory authorities of more than a hundred jurisdictions.[20]

The association has three main objectives. Of prime importance is its function of setting international standards for insurance regulation and supervision. The other two objectives are to promote co-operation among insurance supervisors worldwide as well as

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[19] Jeffery and Michael. The Development and Regulation of Non Bank Financial Institutions. The World Bank.

[20] www.iais.org

to co-ordinate work with regulators in other financial sectors and international financial institutions.[21]

The IAIS sets out principles that are fundamental to effective insurance regulation. These principles identify key areas in which supervisors should have authority or control. The standards can be used by insurance supervisors throughout the world.

> *"The IAIS continues its initiative in order to maintain efficient, fair, safe and stable insurance markets for the benefit and protection of policy holders".*[22]

2.2 INSURANCE CORE PRINCIPLES METHODOLOGY

This methodology was developed as a result of the need to ensure protection of policy holders. This was further compounded by the increased international concern about financial stability.

In all this, the role of the law cannot be over emphasised.

"The legal system is the foundation of the financial system which ensures the honouring and enforcement of insurance contracts. Good laws are not enough. A body of ethical and professional lawyers and judges and a reasonably efficient court system whose decisions are enforceable must support them".[23]

The Insurance Core Principles can be used to establish or enhance a jurisdictions supervisory framework and in so doing may identify weakness which the law may correct.

The core principles highlight four main areas: conditions for effective supervision, the supervisory system, the supervised entity and on going supervision.

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[21] Makoto Okubo An Overview of the Activities of the International Association Of Insurance Supervisors. FSI August 2003.
[22] www.iais.org
[23] Lawrie Savage. **Re-engineering Insurance Supervision**. World Bank.2000.

2.3 CONDITIONS FOR EFFECTIVE SUPERVISION

The first benchmark highlights the conditions for effective insurance supervision. These are essential for the regulator to perform his function. This principle identifies elements of the legal and financial sector environment that need to be present. The existence of an appropriate institutional and legal framework is necessary to ensure the stable and effective operation of the insurance system. Good laws must be supported in honouring and enforcing insurance contracts. A sound legal system increases the credibility of the regulator. [24]

Where there is a lacuna, the insurance supervisor could have additional powers to put in place rules to address the weakness. The supervisor must have an institutional and legal framework – with public institutions, laws and regulations. This framework must be well defined and publicly disclosed. [25]

In summary insurance supervision relies upon an institutional and legal framework for financial sector supervision as well as a developed and effective financial market infrastructure.

The second benchmark is the supervisory objectives. To give prominence to the authority's role, the law should include a clear statement of the mandate and the responsibilities of the supervisory authority. When the objectives of the authority are

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[24] IMF Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles. July 2000.

[25] UNCTAD, Insurance in Developing Countries: An Assessment and Review of Developments (1989-93) Geneva 1994.

publicly defined, transparency is fostered.[26] This foundation allows all stakeholders to assess the performance of the authority as well as form expectations about it. When the objectives of the regulator are stated in the law, it safeguards the mandate and the functions of the authority from being changed arbitrarily. If need arises for a change, laws could instead be supplemented by regulations. [27]

The law should also clearly state the nature of the relationships of the supervisory authority with other relevant financial agencies. The relationships between the supervisory authority and the executive and judicial branches must be stated. This might include establishing what information should be provided, consultation on matters of mutual interest and when approval from various ministries is necessary. The third principle regards the supervisory authority itself. It is not enough for the supervisor merely to exist. It must be fully empowered to achieve its stated objectives. Legislation must identify the authority responsible for the supervision of the insurance entities as well as give it power to issue and enforce rules by administrative means. [28]

Another branch of this benchmark is the independence and accountability of the authority. The regulator and its staff must be free from undue political, governmental and industry interference.

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[26] A M Best. **Policy Reports. Universal Life Insurance** . Oldwick New Jersey. 1995.
[27] Meir Kenneth J. **The Political Economy of Regulation: The Case of Insurance**. State of New York Press, Albany 1988.
[28] Op cit

The financing of the regulator must also be free from interference. The resources must be allocated according to its mandate and objectives. It must have is own budget sufficient to enable it conduct effective supervision. [29] This will enable it to attract and retain highly skilled staff, hire experts from outside as is necessary. To cap the financial aspect, the regulator must publish audited financial statements on a regular basis.

> *"Independence, accountability, transparency and integrity interact and reinforce each other. Transparency is a vehicle for safeguarding independence, ensuring accountability, and establishing and safeguarding integrity".* [30]

The governing structure should also be clearly defined to ensure integrity. There must be explicit procedure regarding the appointment of the office bearers. When they are removed from office the reasons must be publicly disclosed.

2.4 SUPERVISORY PROCESS

An efficient regulator should have a transparent and consistent regulatory process. It is also feasible to have the decisions of the supervisor amenable to judicial review by the courts. Such a power should not however stifle the authority's power to intervene in business to protect the policy holders. The public's awareness of and the appropriate consultation on the supervisory process is important to the effectiveness and credibility of the supervisor. This means the regulator should make available to the public written information about the organisation and its activities. The information should include details on how the public can interact with its officials.

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[29] Klein, R W. **"Issues of Financing Insurance Regulation and The NIAC Services"**. National Association of Insurance Commissioners, Working Paper. 1996.
[30] IAIS Core Principles. Singapore 2003. at page 9.

The fifth guideline is supervisory co-operation and information sharing. The insurance industry is not an Island. It is heavily reliant on the other areas of the financial sector such as banking. Hence it must be able to network with other regulators. Information sharing is of course subject to confidentiality requirements.

2.5 THE SUPERVISED ENTITY

An insurer must be licenced before it can be allowed to operate in a jurisdiction. Licencing is defined as "*the formal authority given to an insurer to carry on insurance business under the domestic insurance legislation*". [31]

The ability to determine which insurers are allowed to carry out insurance activities within the area is in the interest of policy holders. The requirements for licencing must be made public, clear and objective. The insurance legislation must include a definition of insurers and prohibit the unauthorised insurance activities. The law should also define the permissible legal forms of insurance enterprises.

In performing its licencing function, the regulator must be able to assess the application for a licence and make a decision within a reasonable time. The applicant must be communicated to without delay. If the licence is denied or is conditional, the applicant must be provided with an explanation.

After licencing, supervision must continue in the evaluation of the degree to which the insurer satisfies the relevant licencing criteria and requirements.

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[31] Strongman's Insurance Dictionary for Practitioners. Appleman Publishing. Edinburgh Scotland. 1998.

The regulatory authority must also oversee the suitability of the persons running the insurance entities.

"They must possess the appropriate integrity competency, experience and qualifications". [32]

This is known as the fit and proper test and must be administered by the supervisory authority. Legislation must identify which key functionaries such as board members, senior management, auditors must meet fit and proper requirements. Where these persons no longer meet these requirements, the authority must be able to take appropriate action, including requiring that the owners dispose of their interests.

There is also a need for effective internal control. The regular should see to it that insurers have in place internal controls that match the nature and the scale of their business. The purpose of the internal controls is therefore threefold; to ensure that the business of an insurer is conducted in a prudent manner, transactions are only entered into with the appropriate authority and that assets are safeguarded.

"It provides the effectiveness of the operation and assuring compliance with laws and the regulations." [33]

The regulator must also have a hand in market analysis. This means that they should monitor all the factors that could impact insurers and the insurance market as a whole. It must have the power to take action where appropriate. To achieve this, a regular analysis of market conditions must be conducted.

> *"The supervisory authority supervises the financial soundness of the individual insurers and contributes to the financial stability of the insurance market. Both require an analysis of individual insurers and groups as well as the market and the environment in which they operate"*[34].

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[32] IAIS Insurance Core Principles 2003.
[33] IAIS Principles on Licencing. 2003.
[34] IAIS page 23

The scope and importance of the market analyses is stated in the Core Principles as follows.

"The market analysis not only includes past developments but also aims to identify trends and possible future scenarios and issues, so that the supervisory authority is well prepared to take action at an early stage if required".

The regulator must also effect an efficient reporting and monitoring mechanism. The reporting requirements are a reflection of the supervisory needs. They will vary according to the market structure and situation. Every licenced insurer should report and this forms the basis of off site analysis.

Monitoring acts as an early warning system which can often identify potential problems and "*prompt corrective action before problems become serious*". [35]It is also important that the supervisory authority reviews its reporting requirements. This will keep them in line with the aims of the authority.

A follow up to reporting and monitoring is that of onsite inspection. This is an important part of the supervisory process. It supplements the information supplied to the supervisor by the insurer in the reporting mechanism. This tenet enables the supervisor to obtain information and detect problems that cannot be easily obtained or detected through on going monitoring. On site inspections allow the regulator to assess the impact of various laws and regulations on the insurer. To make this more meaningful, there must be skilled staff to carry it out.

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[35] Ettlinger at page 34.

Lawrie Savage states that

> *"This work represents the eyes and ears of the supervisory process. One cannot have a real understanding of what is happening in a company without visiting its main office, meeting its management and observing how the business is being conducted".*[36]

The ultimate result of effective inspections is the regulator is able to bring about timely corrective action.

Identifying problems and knowing the measures to be taken is not useful unless the measures are enforceable and sanctions can be applied. These powers should rest with the insurance regulator. The authority must have a range of actions available in order to apply appropriate sanctions. The powers should be set out in legislation and may include: restricting business activities, withholding approval for new activities or acquisitions, directing the insurer to stop practices that are unsafe or unsound.[37]

In more serious cases the authority should be able to revoke the licence of an insurer, remove directions and managers as well as barring individuals from the business of insurance.

There should, in the interest of justice be an appeal mechanism in such situations. The law should also provide protection to the authority and its staff against lawsuits for actions taken in good faith while discharging their duties.

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[36] Page 18.
[37] UNCTAD. Insurance in Developing Countries: An Assessment and Review of Developments. 1989 to 1993. Geneva.

Where an insurer is no longer solvent, action must be taken by the regulator. The procedure for winding up and exit from the market must be clearly stipulated.

> *"The legal regulatory framework must define a range of options for the orderly exist of insurers from the market place.*[38]

Insolvency should be defined and the criteria and procedure for dealing with it established. In the event of winding-up, the legal priority should be given to policy holders. It is only fair.

2.6 PRUDENTIAL REQUIREMENTS

These lie at the core of insurance contract-the obligations must be fulfilled as they fall due. A comprehensive risk management policy must match the complexity, size and nature of the insurers business. The insurer must identify and ultimately quantify its obligations-both existing and anticipated.

There should be defined standards to be followed by the insurers and anyone else conducting similar business. The supervisory authority should ensure that provisions can cover all expected and some unexpected claims and expenses.
This part of the supervisory process requires the use of appropriate skills.

The following benchmarks address issues of market conduct that are essential to the regulation of insurance. Bad behaviour of the businesses might have an impact albeit a negative one on the reputation of market players.

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[38] IAIS Insurance Core Principles

In many insurance markets (Zambia being no exception), there are intermediaries who provide a link between consumers and the insurer. The conduct of these intermediaries also has an impact on public sentiment on the insurance sector. The essential criteria here is that the regulator must require intermediaries to be registered as well. They must also have adequate professional knowledge to carry out their tasks. The regulator must also have powers to take corrective action on these players. Furthermore, the supervisor must be able to take action against those individuals or entities that are carrying on intermediary activity without a licence.

> *"The supervisor must require intermediaries to act with due skill, care and diligence in their dealings with consumers and promote consumer understanding of the insurance contracts."* [39]

The also must be an effective method of resolving disputes whether formal or informal. It helps increase confidence in the system. Emphasis should be placed on an active non formal system of addressing conflicts because "*disputes over coverage including claims are often too minor to be dealt with through what is typically a somewhat ponderous and over loaded court system*".[40]

The main advantage of this is that lengthy and expensive court suits are avoided. This benefit flows to both the parties and the industry as a whole.

Alternative dispute resolution is usually in two stages. The first is mediation. The parties meet with a trained mediator with knowledge in insurance and contract law. The

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[39] Ibid at page 42.

[40] Babel, David and David Klock. **A Review of the US Insurance Industry**. Dr Phillips Institute for the Study of American Business Activity. University of Central Florida, Orlando. 1993.

mediator can be successful either by means of a compromise or aiding one party to understand why their position is not valid.

The next stage is usually binding arbitration after the mediation process has been completed. Arbitrators are usually lawyers who are authority in insurance and contract law. Another option is to have them from other backgrounds with training in insurance and arbitration techniques. The dispute settlement mechanisms should be placed under the wings of the regulator.

Fraud is another concern for most stakeholders in any business. The regulator has a key role to play in combating fraud in insurance within its jurisdiction as relates to insurance. Fraud can be perpetrated by any party from insurers to their staff to loss adjusters as well as policyholders.

"The regulator must have the power and resources to establish and enforce regulations to deter, detect, record, report and remedy fraud in insurance.[41]

This is important because not only does fraud result in financial damage but reputation injury to the industry as well.

"At several millions of kwacha each year, the cost of insurance fraud to the business community has contributed to the current problems of insurance affordability, more specifically motor insurance where rates are high".[42]

An ever increasing concern of the financial sector is anti money laundering and the fight against the financing of terrorism. In most jurisdictions these acts are criminal under the

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[41] Insurance Core Principles at page 48.
Chris Mapipo Times Business October 23 to November 6 2000. Page 8.

law. Insurers especially those offering life insurance could be involved knowingly or otherwise in these two activities. This obviously exposes them to legal risks. Because of this

"The regulator must have adequate powers of supervision, enforcement and sanction in order to monitor and ensure compliance with anti money laundering law".

2.3 CONCLUSION

When these criteria are fully considered in a legal system, they create a fully fledged and effective system of safeguarding all interests. It inspires confidence in the government and the legal regime as a whole in the country. It also allows the companies on the market to know about the regulatory agency: its status, powers and responses to various situations in the insurance industry.

CHAPTER THREE

3.0 INTRODUCTION

The conceptual background for regulation has already been set in the previous chapters. Chapter two dealt with the benchmarks of an insurance regulator- what powers they should have to carry out the envisaged function.

This chapter looks at what is obtaining on the ground in Zambia in terms of an insurance supervisor –the Pensions and Insurance Authority (PIA). It will look at the history, structure and operations of the authority and compare it to the core principles provided by the International Association of Insurance Supervisors. This will give a clear picture of what is and what should be the case.

3.1 LEGAL BASIS

The Pensions and Insurance Authority operates under the Insurance Act number 27 of 1997 and the Pensions Scheme Regulation Act of 1996. The Pensions Scheme Regulation Act creates the office of the Registrar of Pensions and Insurance.

The Pensions and Insurance Authority is not expressly created by statute.

Section 99 of the Insurance Act gives the following functions and powers to the Registrar.

a) The formulation and enforcement of standards in the conduct of the business of insurance with which a member of the insurance industry must comply.

b) Directing an insurer or re-insurer on the standardization of the contracts of compulsory insurance.

c) Directing an insurer or re-insurer where he is satisfied that the contract of insurance issued by the insurer or re-insurer is obscure or contains ambiguous terms or terms and conditions which are unfair or oppressive to the policy holders, to clarify, simplify, amend or delete the wording , terms or conditions, as the case may be, in respect of future contracts.

d) Formulate standards for the conduct of insurance business

e) Make recommendations to the Minister on any matter affecting the insurance industry

f) Advise the Government on adequate insurance protection and national assets and properties; and

g) Perform such other functions as the Minister may assign to him.

In the performance of these functions he must have regard to the rights and interests of policy holders and the solvency of the insurers themselves.

The Insurance Act in this regard has 'ideal' functions set out for the Registrar. Insurance is a sensitive financial transaction with fiduciary connotations. It is therefore important to have the protection of policy holders at the core. Therefore, section 99(c) which insures that insurance contracts do not contain obscure or ambiguous statements or terms that are oppressive to policy holders is well placed.

Recommendations to the Minister on matters affecting the industry are also vital so that correct policies and laws are formulated. Without this function, these formulations may not be sound. The Registrar is also the right person to advise the government on adequate insurance protection for national assets because he is well verse with knowledge on the importance of insurance and the state of the industry in general. Insurance is based on a promise. The policy holder relies on the expectation that the insurer will still be in business when the time comes to fulfill his promise. Therefore in the performance of these functions the Registrar must have regard to the rights and interests of the policy holders and the solvency of the insurers themselves. The functions set out in the Act are adequate. There is need however to have a supervisory body because this not a one man job.

3.2 THE MANDATE OF THE PIA.

The PIA is the sole regulator of the insurance sector in Zambia. Its functions are embodied in its mission statement which reads

"*To regulate the conduct of the pensions and insurance industry through prudential supervision in order to protect the interests of the pension scheme members and insurance policyholders and foster the industry's growth development and stability.*"

This statement further compounds the fact that regulation performs a dual function; - to protect the interests of the policy holders as well as nurture the development of the industry as a whole.

The authority also looks policy claims and market conduct through inspection. The authority also entertains complaints from the clients of insurance companies. Most of these complaints relate to motor vehicle claims. However, they have no legal basis for addressing these complaints. It could however be argued that consideration of the complaints is part of the off site monitoring function of any insurance regulator. This allows the regulator to receive information about erring insurance service providers and decide on the course of action for the benefit of the industry as a whole.

3.3 HISTORY OF THE PENSIONS AND INSURANCE AUTHORITY

The PIA was established in 1997. It was not an indigenous idea but was due mainly to pressure from the international financial community.

The establishment of an insurance regulator in Zambia was one of the conditions for the release of balance of payment support (BOP) from the World Bank in December 1996. The sum involved was $70,000,000 and to have access to it, the Zambian government had to have established and staffed the office by the 28th of February 1997.

The World Bank stated the importance of supervision in this area as

"in order to develop public confidence in these type of institutions, it is essential that they be carefully and prudently managed and that risk and fraud, theft or other abuses are minimized through vigorous application of a sound and strict regulatory regime."

In detail the two conditions were as follows

1. That the borrower has submitted to its parliament for enactment draft legislation for the supervision and regulation of insurance companies and pension fund management companies.
2. That the borrower has established two (2) independent agencies to regulate and supervise insurance companies and pensions fund management funds.

The first conditionality was met by the passage of the Pension Scheme Regulation Bill of 1996 and the Insurance Bill of 1997.

The second condition saw the formation of the Pensions and Insurance Authority (PIA). The first Registrar reported for duty on the 1st of April 1997.[43]

It is quite regrettable that the establishment of the PIA was not an indigenous idea. The pressure from the international community caused hurried actions. The creation of the Authority was something that the country itself needed. It should have been instituted at the time the insurance market liberalization in 1992. It is a notorious fact that an increase in number of players in any market needs regulation because of the anti competitive tendencies that some business concerns were bound to employ.

3.4 STRUCTURE AND HIERARCHY

The organizational chart of the PIA is as follows. There is a Registrar at the helm with two deputies to assist him, one in charge of pensions and one in charge of insurance. At level three there is a Financial and Administration Manager. Both the pensions and insurance departments have inspectorates. The inspectors look at two main issues.

a) management of the insurance companies and brokers

b) corporate image and governance of the companies and brokers.

Most of the staff are from different work and academic backgrounds such as accounting and lend their expertise to the institution.

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[43] This information was obtained from the Pensions and Insurance Authority. It is a summary of the reports that are stocked in the archives there.

The inspectorate is an important division of the PIA. The PIA can gather information directly from observing the insurers and brokers and visiting their business premises, this allows for accurate data gathering on

a) Management of insurance companies and brokers

b) Corporate image and governance of the companies and brokers.

3.5 FINANCING OF PENSIONS AND INSURANCE AUTHORITY

The PIA does not have its own independent manner of generating funds. It submits estimates of expenditure which are usually in the range of 2 billion to 3 billion Kwacha for basic operations. These funds must be approved by the Ministry of Finance and appear in the Yellow Book for them to be released. Not all the money applied for is released and this results in inadequate funding.[44]

Supervision fees are paid directly to the government and so the allocation can vary without notice. The combination of insufficient and erratic funding limits the PIA's ability to operate.[45] This problem of funding is being addressed by two proposed pieces of legislation – Insurance Levy Bill and the Pensions Levy and Administration Bill. This will allow the PIA to receive 1% of premiums and 0.5% of pension contributions giving them a projected four billion kwacha per annum.[46]

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[44] Interview with the Deputy Registrar for Insurance Mr. Muyoba Chibiya on the 31st of August 2004.

[45] Southern Africa Economic Summit paper presented by Mbikusita Lewanika, former director general of the Zambia Investment Centre.

[46] Zambia - Review of Commerce, Industry and Tourism Report 2003. Directory Publishers.

The proposed pieces of legislation offer a solution to the financial crisis that the PIA is currently facing. It will allow them to function efficiently and carry out their inspections objectively. Having a sound financial base will allow the Authority to attract properly qualified staff. Even the staff already there will be motivated to work harder because they will be remunerated properly and their work environment will be greatly enhanced leading to job satisfaction. Availability of funds will also allow the Authority to publicise its activities and address complaints adequately.

3.6 RELATIONSHIP WITH OTHER ENTITIES

The Pensions and Insurance Authority is an entity outside the civil service. It is not a statutory body with a legal persona. It is essentially an agency of the Ministry of Finance. Therefore, the nature of relationship with the Ministry is that of master and servant.

The other regulators in the financial sector are Bank of Zambia (BOZ) and Securities and Exchange Commission (SEC). These are concerned with banks and capital markets respectively.

The Pensions and Insurance Authority (PIA) has signed a memorandum of understanding with the Bank of Zambia on information sharing. This allows the two regulators to share information on prudent supervision. Currently, the Central Bank has given the PIA written guidelines on solvency used in the banking sector. The PIA now has the opportunity of applying the same standards to the insurance writers and brokers.[47]

The PIA also has links across borders. It benefits from regional and international bodies such as the Committee of Insurance Securities and Non Bank Financial Authority (CISNA). The Securities and Exchange Commission (SEC) is also a member of CISNA The exchange of information with international and regional bodies is very beneficial to the whole concept of regulation. Zambia can investigate foreign investors who want to set up insurance business in the country.[48] This ensures that there are only genuine businesses operating in the country.

3.7 CONCLUSION

In order to chart a way forward in any situation, it is important to know and appreciate both the past and the present. This chapter looked at the insurance regulator we have presently in Zambia – the Pensions and Insurance Authority. It examined its historical background and its 'modus operandi'. This then allows a proper assessment of the Authority- whether or not it is equipped to carry out the envisaged function. This will be done with the help of the Insurance Core Principles Methodology, in the next chapter.

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[47] Interview with Mr. Titus Nkwale, Inspector for Insurance at the PIA on the 12th of March 2004.

[48] Interview with Mr. Nicholas Mbuya, Senior Inspector for Insurance at the PIA on the 12TH of March 2004.

CHAPTER FOUR

4.O INTRODUCTION

As elaborated in the second chapter of this dissertation, the Insurance Core Principles provide a uniform framework for the regulation and supervision of the insurance sector. They serve as a mode of evaluating insurance supervisory systems and procedures therein. This helps identify weaknesses that could adversely affect the interests of the policy holder and the stability of the market generally.

When carrying out an assessment it is important to have regard to the structure and stage of development of the financial system as well as the domestic context. For a core principle to be regarded as 'observed', the essential criteria must be met without significant shortcomings. Additional criteria may also be used in studying the particular core principle.

4.1 CONDITIONS FOR EFFECTIVE SUPERVISION

The first core principle deals with a policy, institutional and legal framework for financial sector supervision. It is submitted that the lack of any of these conditions could affect the quality and efficacy of insurance supervision. There must be an institutional and legal framework with public institutions, laws and regulations. This sort of framework must be clear and publicly disclosed. There must be a reliable and fair court system whose decisions are enforceable.

In Zambia, these conditions are lacking. The Pensions and Insurance authority is a little known institution which lacks total independence. Power is vested in the Registrar under the Pensions Scheme Regulation Act without any reference to the existence of the Pensions and Insurance Authority. The Insurance Act[49] lacks updated regulations to match the current state of the industry.

4.2 SUPERVISORY OBJECTIVES

Concisely stated this principle means that the primary objectives of insurance supervision and regulation are clearly defined. To give prominence to the regulators role, there should be a clear statement of the mandate of the supervisory authority. This mandate must be entrenched in law. A further point here is that the nature of the relationships with other financial agencies must be stated.

The PIA does not have objectives that are stated in the law. All it has is a mission statement that can be changed arbitrarily. Because of this, the supervisory authority does not have to give reasons for or explain any deviations from its objectives. A situation like this is not transparent and therefore is no good for a regulatory regime.

4.3 THE SUPERVISORY AUTHORITY

The regulator must have adequate powers, legal protection and financial resources to exercise its functions and powers. It must be fully empowered to achieve its stated objectives. The key values here are independence, accountability, transparency and integrity. There must be publicly disclosed rules for the appointment and dismissal of the head of the authority. The regulator should be operationally independent from external political and commercial interference.

[49] Number 27 of 1997.

Both the Registrar of Insurance and the Chief Executive Officer of the Zambia State Insurance Corporation (ZSIC) report to the Minister of Finance. This creates a conflict of interest. The mode of appointment of the Registrar is not clearly set out. The PIA is not properly financed. It is funded by a monthly allocation determined by the Ministry of Finance which can vary without notice. This severely limits the PIA's ability to operate. The relations with other government wings is not clearly defined- when the PIA should consult with the executive wings or its standing with the courts. Should the decisions of the PIA be contestable in the courts of law and be subject to judicial review? These are matters which ought to be clearly stated. Although one would assume that being a public body with quasi judicial power, the Authority's decisions would be amenable to judicial review.

4.4 SUPERVISORY PROCESS

The heart of this core principle is merely that the regulator conducts its functions in a transparent and accountable manner. To do this, the regulator must make available to the public written information about the organization and its activities. This should include substantive rules policies and legal interpretations. Basically it entails disclosure.

In this regard the PIA has not complied. Very few persons and individuals with insurance cover actually know about the Pensions and Insurance Authority and its activities. Those who do know about its existence know very little about the structures and procedures and what exactly the PIA is mandated to do. Therefore, there is not much disclosure and this hinders transparency and accountability.

The Registrar of Insurance is mandated by the Insurance Act under section 99(4) to publish a report on the industry for each year ending 31st December. These reports have been inconsistent. The last one was done in the year 2001 to include details on the liquidation of Union Insurance Company.

4.5 INFORMATION SHARING

The importance of efficient and timely exchange of information among supervisory bodies especially in the financial services sector is critical to effective regulation. The supervisor must of course maintain the confidentiality of the information it receives from other regulators.

The other two regulators in the Zambian finance sector are the Bank of Zambia (BOZ) and the Securities and Exchange Commission (SEC). These supervisors sit on the same regional bodies such as Committee of Insurance, Securities and Non Bank Financial Authority (CISNA). The Bank of Zambia has given the PIA guidelines on solvency which it is now using on the insurance firms in Zambia. At least this core principle has been complied with.

4.6 LICENSING

Before an insurer can operate in a jurisdiction, it must be licensed. The conditions to be fulfilled by the applicant must be clear, objective and made public. It is important to note however that licensing conditions exist for supervisory purposes and they should not in themselves act as a barrier to market access. The insurance legislation must do the following

a) define an insurer

b) prohibit unauthorized insurance activities

c) clearly state who is responsible for the issuance of licenses.

The regulators must asses the application and make a decision within a reasonable time. The applicant should be given the response without delay. If the response is negative an explanation must be provided.

The Pensions and Insurance Authority has good practices in this regard. The Insurance Act of 1997 has licensing requirements for insurers, brokers, loss adjustors, assessors and agents in sections 10, 13, and 15 respectively. Section 22 further prescribes a penalty for abrogation of the earlier provisions on licensing.

"A person who holds himself out to be licensed under this Act, in any capacity shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a period not exceeding two years, or to both."

The conditions are clearly stated in the Insurance Act, for the grant of any one of the five licenses. The other conditions in the Insurance Regulations (Subsidiary Legislation) are also clear ion licensing in regulations five to eight.

4.7 SUITABILITY OF PERSONS

Persons running insurance firms or brokerage firms must possess appropriate integrity, competence, experience and qualifications. This is more so because of the fiduciary nature of insurance contracts. The 'fit and proper' test must be applied to the owners, board members, senior management, auditors and actuaries.[50] The regulator should be given the power in legislation to satisfy itself that key functionaries have the required

[50] An actuary is a professional trained in evaluating the financial implications of contingent events. These skills are often used in establishing premiums and technical provisions for insurance products.

level of competence for their roles. Where they no longer meet the criteria, the authority must be able to take appropriate action.

In Zambia, the Chief Executive Officer (CEO) of an insurance company cannot be appointed prior to the Registrar's approval. A full curriculum vitae (CV) must be submitted including academic and professional qualifications. Approval will not be granted unless the CEO is resident in Zambia and has served in the insurance industry for over ten years. This is under section 26 of the Insurance Act. If the Registrar is convinced after appointment that the CEO is not 'fit and proper' to hold such office, he may direct the insurer to revoke the appointment. This must be done according to rules of natural justice and the person concerned must be given an opportunity to be heard.

Although there is a 'fit and proper' test on the CEO under section 26, this does not include senior management personnel or directors. Senior management can however be included indirectly under section 11(2) (f) which refers to general competency to run a insurance company. Generally this principle is not fully complied with.

4.8 CORPORATE GOVERNANCE

The board is the focal point of this benchmark. It refers to the manner in which the insurance business is overseen by boards of directors and senior management. It includes corporate discipline and accountability. Most importantly it deals with compliance with legal and regulatory requirements. The board of directors must

i) set out its responsibilities

ii) establish policies and strategies and the means of attaining them.

iii) not be the subject of undue influence from management or other parties.

In Zambian insurance law, there are no provisions for corporate governance. The Registrar's office must of course be commended because it has been quite active in this area with both insurers and brokers. Eight brokers did not have their licenses renewed in 2000 because of a lack of corporate governance principles.

Therefore though there are substantive steps, the PIA and the insurance legislation in Zambia has not fully complied with the corporate governance principles.

4.9 INTERNAL CONTROL

A close follow up to the corporate governance principles is that of internal control. A strong system of internal control is critical to effective risk management and a foundation for the sound operation of the insurer. The board is responsible for developing a strong internal control culture within its organization. The purpose of internal control as stated by the International Association of Insurance Supervisors (IAIS) is to verify that

a) the business of the insurer is conducted in a prudent manner in accordance with the policies established by the board of directors.

b) transactions are only entered into with the appropriate authority

c) accounting records provide complete, accurate, verifiable and timely information.

The regulator must ensure that auditing is carried out by suitably qualified staff and that audit reports are easily accessible.

The Zambian Insurance Act implies but does not set specific requirements on internal controls. Sections 73 and 74 have internal controls relative to underwriting risks. These deal with the approval of proposal forms and premium rates. Sections 75 to 98 have the stage. The Pensions and Insurance Authority cannot be said to have observed this principle.

4.11 REPORTING AND OFF SITE MONITORING

This means that the regulator receives essential information that will enable it monitor and evaluate the condition of each insurer and the state of the market in general. This provides early detection and prompts corrective action before problems become serious. Legislation should require insurance companies to provide regular and systematic financial and statistical information at regular intervals. As a minimum an audit report should be provided annually.

In Zambia, there is partial fulfillment of this ideal. Section 45(2) of the Insurance Act of 1997 requires insurers to file audited insurance accounts prepared in accordance with the Insurance Regulations and reconciled to the Companies Act [51] accounts. The accountancy standards however are stipulated.

The Registrar is empowered under section 40(2) to require independent valuations where he is not satisfied with the valuation of the insurer. Although this is so the Act does not require insurance companies to utilize valuation rules that are consistent or realistic. The lack of financial reporting is fuelled by the inadequate level of financial information provided. In this computer age the regulations should facilitate the electronic filling of reports.

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[51] Chapter 388 of the Laws of Zambia.

4.12 ON SITE INSPECTIONS

This benchmark enables the supervisor to critically examine the conduct of business of an insurer. It is an important part of the supervisory process and supplements reporting and off site inspections. The information allows the authority to analyze the impact of specific regulations on the industry. By law the regulator must have the power to gather the necessary information and use it appropriately.

One of the functions and duties of the Registrar under section 99 (2) (a) of the Insurance Act of 1997 is to formulate and enforce standards in the conduct of business with which a member of the industry must comply. The registrar is empowered under section 101 to call for information and production of books or documents for review. The Registrar may question present and past directors, auditors and employees. Persons who knowingly provide false information, alter, destroy, conceal information and documents requested by the Registrar may be fined or imprisoned. These provisions in the law however do no do much towards the observance of this principle. There are currently three members of staff in the insurance supervision area at the Pensions and Insurance Authority. This handicap has led to the absence of onsite inspections of insurance companies.

4.13 ENFORCEMENT AND SANCTIONS

The regulator must be able to take corrective action and impose sanctions where necessary. This of course must be backed by criteria that are publicly disclosed. As stated by the IAIS, powers to be set out in legislation must include

a) restricting of business activities

b) stopping the writing of new business

c) directing insurer to stop practices that are unsafe and unsound.

d) revoking the license of an insurer

e) removing directors and managers for misconduct

e) barring individuals from the business of insurance

In the interests of fairness a right of appeal must lie for these decisions. There must be legal protection to the regulator and its staff from law suits for actions taken in good faith while discharging their duties.

In Zambia, provisions to this effect do exist in sections 64 to 72 of the Insurance Act of 1997. Also, section 19 places a restriction on the business of an insurer and section 20 does the same for brokers. Section 12 prohibits the writing of new business without authorization from the Registrar of Insurance. Section 28 facilitates the removal of a chief executive officer if he is not 'fit and proper'.

There is substantial compliance with this core principle in the country's insurance law. However, to make it complete there must be a strong regulator.

4.14 WINDING UP AND EXIT FROM THE MARKET

The laws must clearly provide for the orderly exit of insurers from the market place. Other items to be clearly defined are the insolvency and the procedures for dealing with it. Protection of policy holders is very important especially where there are winding up proceedings. In this vein, the Registrar may for the benefit and protection of the policy holders, present a petition for receiving order in accordance with the Bankruptcy Act. The Insurance Act does not deal specifically with insolvency and liquidation but section

71 allows the Banking and Financial Services Act [52] to apply with modifications. The Bankruptcy Act[53] also applies with certain modifications.

4.15 INTERMEDIARIES

In many insurance markets, intermediaries are also important market players. They provide a link between consumer and the insurer. Intermediaries include all those who are engaged in insurance activities such as brokers, assessors, loss adjustors and claims agents. Their good conduct is essential to the protection of consumers and instilling confidence in the financial markets. The regulator must require them to have adequate commercial and professional knowledge and a good reputation. The supervisor should be empowered where necessary to apply sanctions such as the cancellation of the intermediary's license or registration.

The Zambian insurance law does provide for the supervision of the intermediaries. They must be licensed under sections 13, 14, 15 and 16. The 'fit and proper' test is also applicable to office bearers in these firms under section 26 (4) (a) (ii) of the Insurance Act which provides that the CEO must be resident in Zambia and have been in the industry for more seven than seven years for a broker and not less than five years for an assessor, loss adjustor and insurance agent. Section 26 (d) states he must be 'fit and proper' to hold such office.

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[52] Chapter 387 of the Laws of Zambia

[53] Chapter 92 of the Laws of Zambia.

This principle is 'observed' in terms of the provisions being present in the legislation. However, it all relies on the strength of the regulator legally, financially and in terms of human resource.

4.16 CONCLUSIONS

An assessment of the Pensions and Insurance Authority against all the Insurance core Principles is outside the scope of this work. The principles picked out are the most cardinal and the control of these areas gives the supervisor a grip on the other areas too since they are inter related.

The PIA is broadly observant in the benchmarks that deal with licensing, changes in control, information sharing and confidentiality. There is little observance in terms of the ideals on the organization of the insurance supervisor itself, corporate governance, internal control, monitoring, inspection and sanctions. There has been completely no observation in terms of prudential supervision. The pivotal weakness in the operations of the Pensions and Insurance Authority is the lack of financial and human resource. The proposed solutions to these weaknesses in the PIA structure, the Insurance Act number 27 of 1997 shall be addressed in the next chapter.

CHAPTER FIVE

5.0 GENERAL CONCLUSION

This paper attempted to show the role of regulation in the insurance industry and more especially to highlight the part that the Pensions and Insurance Authority (PIA) should play in this scenario. In establishing this it was emphasized that there is need for a sound and supportive legal and regulatory framework to foster the growth of this industry. The paper sought to investigate whether the current regulatory environment is conducive and what can be done to improve it.

Insurance was defined as "an economic device whereby the individual substitutes a small certain cost (the premium) for a large uncertain financial loss, which would exist if it were not for the insurance contract. The insurance market was liberalised in 1992 and this increased competition. This calls for greater supervision because the cases of market misconduct are bound to rise since it is a notorious fact that not all are in business with honest intention. There are two types of regulation- statutory regulation and self regulation. Both are relevant and are made use of in the Zambian Insurance legislation. Thus before the recommendations are under listed, a summary of each chapter will be given.

The first chapter of this paper, which gave a general introduction of the topic sought to emphasize the role of regulation in fostering the growth of the industry. It looked at the state of the insurance industry in the various historic periods in Zambia. It gave the legislative framework as being the Insurance Act number 27 of 1997. Other pieces of legislation include the Companies Act and The Banking and Financial Services Act.

The second chapter built up on the discussion in the first chapter. It gave a picture of what the ideal insurance regulator is like, what structure it should take and the powers that it should have. A lot of use was made of the information provided by the International Association of Insurance Supervisors (IAIS) which is an association of over 100 supervisors in numerous jurisdictions worldwide. Reference was also made to the regulatory regimes of countries such as the United States of America and Canada from whom a developing country like Zambia has a lot to benefit. The chapter further looked at the Insurance Core Principles Methodology which was developed by the IAIS as a result of the need to ensure the protection of policy holders and the increased international concern about financial stability.

The third chapter presented the results of the research on the Pensions and Insurance Authority (PIA) as it is presently. It looked at the history of the institution as well as its current structure and operations. A look at its legal basis was also done. In order to understand its standing in the financial sector, the chapter also looked at the relationships that the PIA has with governmental wings and other regulators. This set the foundation for the assessment of the PIA- whether it was empowered and performing its role.

The fourth chapter undertook to assess the PIA against the Insurance Core Principles Methodology that was discussed in chapter two. The assessment could not be done without substantial reference to the provisions of the Insurance Act number 27 of 1997. The aim of this chapter was to identify the weaknesses in Zambia's insurance regulatory regime. When specific areas are identified it makes upgrade and reform of the system an easier process because it is a focused act.

The challenge of coming up with a regulatory regime for insurance that will foster and not stifle the growth of the industry is incumbent on the legislative wing of the government who have the constitutional power to make laws that are appropriate and beneficial to the economy and the nation as a whole. This should of course be done with the input of the various stakeholders in the market such as the Insurers Association of Zambia and the Insurance Brokers Association of Zambia.

Therefore in brief and by way of emphasis, the following recommendations are made.

- The Pensions and Insurance Authority (PIA) should be restructured as an independent statutory body, which has perpetual succession, power to sue and be sued like the other regulators in the financial sector like Bank of Zambia and Securities and Exchange Commission. This will give it greater abilities to act because it will have a legal status in the sector unlike its current existence as an agency of the Ministry of Finance.

- The operations of the PIA need to be funded adequately. There should be a restructuring the supervision fees from the current flat fee to graduated system reflective of the volume of business of an insurer. This will enable the PIA to pay salaries closer to the market and hence attract suitably qualified staff with insurance knowledge. Better funding will also allow the Authority to carry out its inspecting properly. Inspection is one of the key methods of finding out exactly what is happening in the industry.

- The mandate of the PIA should also be increased to allow it legally address complaints from the public. This is only proper because the main aim of insurance sector supervision is to protect policy holder. The activities of the Pensions and Insurance Authority must be publicized more to make this power meaningful. This could be done by way of educational campaigns in the press.

- The current Insurance Act needs to be redrafted or amended in a significant number of areas. It must require the PIA authority to publish an annual report of all the insurance companies under its supervision detailing each company's individual performance and balance sheet. This is common international practice and will thus make the insurers accountable for fear of denting their public image. The Act should also extend the 'fit and proper' test to senior managers and directors as well as Chief Executive Officers. This is an extension of accountability and transparency. Only suitable persons must be put at the helm of these insurance companies because of the delicate nature of the transaction.

- The Insurance Association also needs to be more pro-active. They should regularly exchange information on the dealings of brokers and agents. They should blacklist brokers who display a pattern of protracted non payment and report them to the PIA for them to take action.

Taking up these suggestions will greatly enhance the status and operations of the Pensions and Insurance Authority and improve the insurance industry as a whole.

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