NAICOM'S STATE INSURANCE PRODUCER (SIP) POLICY: A HASTY BREW?

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The Nigerian insurance regulator, National Insurance Commission (NAICOM)'s resolve to deepen insurance penetration in 2018 was evidenced by the introduction of various policies like the Tier Based Minimum Solvency Capital (TBMSC) and the State Insurance Producer (SIP), which were visited with much criticism from, and legal challenge by stakeholders that led to their withdrawal and cancellation.[1] According to the Commissioner for Insurance and NAICOM's Chief Executive Officer, Mohammed Kari, the SIP is an alternative channel for insurance distribution projected to increase insurance penetration to about 200% to 300% in two years, thereby increasing state governments' (SG) revenue base when implemented.

The Nigerian Council of Registered Insurance Brokers (NCRIB) stridently opposed the SIP because of its potential to undermine brokers' business – as 70% of their business is derived from the public sector.[2] Considering the state of insurance activities in Nigeria, which is still at basic or low level, are NAICOM's policies progressive enough? Or is that industry stakeholders are not prepared for industry disruption that NAICOM wants to champion? This article delves into the objectives cum legality of NAICOM's recent SIP policy (albeit now withdrawn), and consideration of its potential benefits and otherwise to the insurance industry.

Overview of the Guidelines on State Insurance Producer (SIP)

The SIP was introduced pursuant to NAICOM's powers in ***section 49(1)(b) NAICOM Act,***[3] which provides that: "*(1) In addition to any of its powers under the Act, the Commission may(b) issue guidelines to insurance institutions.*" Key highlights of the SIP Guidelines are: it enforces compulsory classes of insurance within States of the Federation; SIPs are mandated to only transact insurance business with the approved insurers whose list would be approved from time to time; insurance companies must operate within the SIP's jurisdiction for the purpose of placement and management of insurance business; the businesses will be subjected to the Commission's various guidelines where appropriate and premium payment shall be made directly to the insurer or lead insurer as the case may be; the licensing and registration fee of the SIP is ₦2 million and renewal of ₦1 million every two years; application of '*No Premium, No Cover*' rule in their operations under ***section 50 Insurance Act***.[4] However, for private brokers, the license fee is ₦2.5 million, slightly higher than the SIP; this already raises a red flag of moral hazard.

> "NIGERIA'S INSURANCE INDUSTRY ARE NOT READY FOR DISRUPTION IN THEIR OPERATION AT THE MOMENT, WHICH MAY CONTINUE TO REPRESS INDUSTRY GROWTH"

1 See NAICOM Circular, (Ref No. NAICOM/DPR/CIR/18/2018) ***'Withdrawal of Circular on Tier Based Solvency Capital Policy for Insurance Companies in Nigeria', 23rd November 2018:*** https://www.naicom.gov.ng/docs /circulars/Withdrawal%20of%20Circular%20on%20Tier%20Based%20Solvency%20Capital.pdf(visited on 30.01.2019). The Circular withdraws and cancels the 27th August 2018 Circular titled ***'Tier Based Solvency Policy for Insurance Companies in Nigeria'***; See News Agency of Nigeria (NAN), ***'NAICOM Again Bows to Pressure, Withdraws SIP Policy',*** *Premium Times, 21st December 2018:* https://www.premiumtimesng.com/business/302267-naicom-again-bows-to-pressure-withdraws-sip-policy. html (visited 30.01.2019); The Circular Ref. No.NAICOM/DPR/CIR/17/2018, entitled, ***'Withdrawal Circular on SIP Operational Guidelines'*** withdrew and cancels the NAICOM Circular dated 29th November 2018 (NAICOM/DPR/17/2018) on ***'Operational Guidelines on State Insurance Producer'***: https://www.premiumtimesng.com/business/302267-naicom-again-bows-to-pressure-withdraws-sip-policy. html (visited on 30.01.2019).

2 Omobola Tolu-Kusimo, ***'NCRIB to Sue NAICOM over State Insurance Product',*** *The Nation, 11th December 2018:* http://thenationonlineng.net/ncrib-sue-naicom-state-insurance-product/ (visited on 15.01.2019).

3 ***Cap. N53, LFN 2004***

4 NAN, ***'NAICOM Releases Guidelines on State Insurance Producer'***, *Tribune Online, 20th November 2018:* https://www.tribuneonlineng.com/174742/ (visited on 31.01.2019)

NCRIB vs. SIP: Any Reason for Conflict?

The interrelatedness of NAICOM and NCRIB's duties is a major issue that underpins the validity and relevance of the SIP. Notably, ***the Insurance Act (IA)***[5] and ***the NCRIB Act***[6] were enacted in 2003. The seeming 'conflict' between these legislation are exemplified in ***section 36 IA*** and ***Section 2 NCRIB Act.***

Accordingly, ***Section 36(1) IA*** states that- *"No person shall transact business as an insurance broker unless he is registered under the Act. Application for registration is to be made to the Commission in the prescribed form and accompanied by the prescribed fee and such other documents as may be prescribed from time to time"*. Meanwhile, ***Section 2 NCRIB Act*** provides that: *"The duties of the Council shall be to - (a) establish and maintain a central organization for Insurance Brokers; (b) enrol insurance broking body corporate; (c) secure in accordance with the provisions of this Act the establishment and maintenance of a register of insurance brokers containing the names, addresses and qualifications and such other particulars as may be prescribed of all persons who having applied in the prescribed manner..."*

The question whether NAICOM's powers extend to insurance brokers' activities under the ***IA*** has been settled in ***National Insurance Commission v. The Nigerian Council of Registered Insurance Brokers.***[7] There, ***Odili JCA*** (as she then was) had held that: *"I answer the question here in the negative and hold that the power given to the respondent under the NCRIB Act to register and enrol insurance brokers before they are registered with the Appellant has not rendered nugatory the power of the Appellant to regulate insurance business."*

This implies that even though the ***IA*** setting up both bodies compliments each other given that it enables NCRIB certify and register both corporate and natural persons for insurance broking services, yet the power to register only corporate persons so qualified by NCRIB to transact business as insurance brokers' lies with NAICOM**.**

In fact, the NCRIB's Circular on requirements for 2018 issuance of membership clearance certificate includes: copy of most recent NAICOM licence, original copy of the last NCRIB certificate, amongst others.[8] Since their roles are quite interwoven, it would be apposite to state that the SIP Guideline could have been an instrument through which NCRIB can be coerced to register the SIPs as members. However, such may not be appropriate considering the legal tussle that culminated in the ***NAICOM v NCRIB*** case. Or did NAICOM envisage a separate track regulation for SIPs being public sector, and therefore would not be regulated by the private sector NCRIB? Either way, an 'uncomfortable' moral hazard results.

Given the roles of NAICOM, as an apex regulatory body for insurance business including insurance brokers, will NAICOM be fair in its evaluation and investigation of the SIP compared to private brokers pursuant to ***section 49 IA***? It must first be established that

5 ***Cap. I17, LFN 2004***
6 **Cap. N148, LFN 2004**
7 ***[2006] 7 CLRN, 105 at 123***
8 Fatai Adegbenro, ***'Circular on Requirements for 2018 Issuance of Membership Clearance Certificate'***, NCRIB, 28th September 2017, http://ncrib.net/web/wp-content/uploads/2018/02/2018-NCRIB-REQUIREMENT.jpg (visited on 15.02.2019).

insurance brokers control over eighty-five percent (85%) of businesses produced in Nigeria estimated as ₦400 billion gross premium in 2016.[9] This means that ceding the responsibility to SIPs across various states in Nigeria may result in more competition in the brokerage industry, which will deepen insurance penetration thereby furthering the Federal Government's Economic Recovery Growth Plan (ERGP).

The flip side of the SIP can be massive diversion of clients from private brokers due to SIPs stationed at various jurisdiction who will also rely on the public sector as its primary clients. Although this does not affect private insurance contracts of clients in the public sector, yet there will be a shift of a significant number of the clients to the SIPs, since it is government initiated.

Most Governments' ministries, departments and agencies (MDAs) especially at the State level have developed a reputation for lack-lustre attitude to work; such low productivity and morale would negatively impact SIPs performance if the ***Guidelines*** were implemented. Other like rate cutting, corporate governance issues, insurance premium flight etc. that currently bedevils insurance penetration, perpetrated amongst brokers are clear signals that the insipid brokerage system need proper regulation and not proliferation. Definitely, NAICOM being the arbiter between the SIP (if implemented) and private brokers may not be fair given the risk of an 'us' (public sector) versus 'them' (private sector) mindset.

Therefore, NAICOM may be biased when incidences of mismanagement arises from the SIP compared to private brokers. NAICOM may treat the SIPs differently from the private brokers by relaxing its rules especially when it comes to compliance with the ***Guidelines***, reporting obligations on collection and remittance of premium, penalties for non-compliance, accounting records, minimum solvency capital etc. For instance ***section 15(1)(a)*** and ***(b) NCRIB Act*** pegs the working capital of a registered insurance broker at not less than ₦5 million made up of moveable and immoveable assets and cash in proportion as the Council may provide whilst a professional indemnity cover of not less than ₦10 million or 50% of their annual brokerage income from the preceding year, whichever is greater is also required. SIP's working capital and indemnity cover may be slightly different given the difference in the license fees[10]. Uneven treatment could dampen people's morale and belief in the regulatory system, which may further reduce the supposed penetration NAICOM should be championing. Thus, the SIP, being aware of NAICOM's less stringent regulatory oversight on its activities compared to the private brokers, may be tempted to act improperly, thereby creating moral hazards that do not currently exist.

NAICOM's likely regulatory bias in favour of SIPs, *vis a vis* private brokers operating in the same market space would result in unhealthy competition. Such would potentially contravene provisions of the recently passed ***Federal Competition and Consumer Protection Act (FCCPA) 2018*** on anti-competitive, anti-consumer protection and restrictive practices that affects the economic interest of consumers.[11] Not the least, ***section 42 Constitution of the Federal Republic of Nigeria 1999 (as amended)*** prohibits discrimination against any person on the basis of ethnic group, places of origin, sex, religion or political opinions. It can be argued that the private broker is not a 'person' under this context, but the *Interpretation Act*, defines a person to include corporates.[12]

Besides, NAICOM's supervisory role through its new consumer protection policy – ***Market Conduct and Business Practices Guidelines for Insurance Institutions in Nigeria 2015*** - may help in checkmating the SIP excesses for it to be effective.[13]

9 Cynthia Alo, ***'Insurance Brokers Control 85% of Businesses- NCRIB'***, Vanguard, 23rd October 2017, https://www.vanguardngr.com/2017/10/insurance-brokers-control-85-businesses-ncrib/ (visited on 15.02.2019).

10 The SIP Guidelines has not been published, therefore we are restricted to the available information from NAICOM website and online materials.

11 ***Section 17(b) FCCPA 2018; section 2(2)(a)*** and ***(b)FCCPA 2018*** *provides that the Act shall be binding on: "a body corporate or agency of the Government of the Federation or agency of a subdivision of the Federation, if the body corporate or agency engages in commercial activities… or agency of Government of the Federation or any State or Local Government has a controlling interest where such a body engages in economic activities…"*

12 ***Section 18 Interpretation Act Cap. I23, LFN 2004*** defines 'person' to include- *"any body of persons corporate or unincorporate"*. The provision is *in pari materia* with ***section 588 Companies and Allied Matters Act (CAMA) Cap. C20, LFN 2004*** defines 'person' to include a firm, individual or corporation.

13 NAICOM, ***'Market Conduct and Business Practices Guidelines for Insurance Institutions in Nigeria'***, 25.07.2018: https://www.naicom.gov.ng/docs/regulations/Market%20Conduct%20Guidelines.pdf (visited on 15.02.2019); Similar provisions in ***sections 32*** and ***35 NAICOM Act*** on 'Powers of Inspectors' and 'Special Inspection' respectively give credence to it.

Since the NAICOM's goal is to make the industry more efficient and attractive for participating industry players, it is expedient that an enabling environment that will make the insurance business thrive be encouraged.

SIP: Does the Industry Really Need It?

The ***National Bureau of Statistics Q2 2018 Report*** shows that the insurance industry recorded a 6.07% growth contributing 0.4% to Nigeria's Gross Domestic Product (GDP) in 2017, whilst the total insurance premium was ₦376 billion.[14] In comparison to other subsectors of the financial service industry and relative to other African countries, Nigeria's insurance industry is punching below its weight. Nigeria's insurance penetration of 0.4% makes its insurance sector a non-starter compared with South Africa's 6.9% and Kenya's 2.9% penetration respectively.[15]

The SIP's key highlights (discussed above), seeks to localize purchase of insurance products at the grassroots level, which is a good development. This will shore up the six percent (6%) penetration level of insurance brokers in Nigeria.[16] However, the SIP relatively shows NAICOM insensitivity to industry demands. Creating an enabling regulatory environment that will enable the existing insurance brokers to be effective would appear to be more impactful and preferable to proliferation of brokers.

Civil suits for breach of contract especially on non-remittance of insurance premiums by insurance brokers may increase if the SIP is implemented. In ***Unity Life and Fire Insurance Co. Ltd v. City Insurance Brokers,***[17] the Court held: *"the fact that a pubic right has been conferred by statute does not deny a private person from a right to recover damages if such a person can prove personal damages. It is the law that a breach of a statutory duty created for the benefit of an individual or a class is a tortious act, entitling anyone who suffers special damage therefrom to recover such damage against the tortfeasor... the fact that the failure of the defendant who is a broker to pay over within a specific period the amount of premiums so collected will entail penalty does not deprive the insurance company from instituting civil action to recover such premiums already collected or his negligence to collect such premiums."*

Also, in ***Adewuyi Brothers & Co. v. Smak Insurance Agencies (Inc.),***[18] the Court held that the insurer is entitled to outstanding premiums from the broker whether it had actually been paid by the assured or not. The broker is in turn entitled to maintain an action against any assured who defaults in the payment of his premiums. If the current position of the insurance industry seems porous, how then will it be well-regulated when there are at least 36 or 37 SIPs across the

14 NAN, ***'2018 Second Quarter: Insurance Industry Records 6.07% Growth- NAICOM'***, *Eagle Online, 26th September 2018*: https://theeagleonline.com.ng/2018-second-quarter-insurance-industry-records-6-07-growth-naicom/, (visited on 31.01.2019).

15 Cynthia Alo, ***'Nigeria Ranks Low in Insurance Penetration In Africa-Oni'***, Vanguard Newspaper, 12th February 2018: https://www.vanguardngr.com/2018/02/nigeria ranks-low-insurance-penetration-africa-oni/ (visited on 01.02.2019).

16 Philip Izang Nyam, ***'Only 6% of Nigerians seek Insurance Brokers' Advice Before Taking Policy - NIA DG'***, *Blueprint, 12th October 2018*: https://www.blueprint.ng/only-6-of-nigerians-seek-insurance-brokers-advice-before-taking-policy-nia-dg/, (visited on 18.02.2019).

17 ***[1988] F.H.C.L.R 93 at 99.***

18 ***[1987]F.H.C.L.R, 207.***

Federation?

Since the SIP focuses on compulsory insurance which is germane to national development, government MDAs can have an understanding with NAICOM whereby data of citizens who ought to have complied with certain compulsory insurance policies can be tracked down and brought to book without recourse to the SIP. Although, NAICOM had had meetings with the State Governors to implement the compulsory insurance policies, yet such cannot be achieved, if the existing 454 registered insurance brokers in Nigeria[19] are still underutilized.

Given that NAICOM and NCRIB's collective goal is to ensure insurance penetration, both agencies need to collaborate to encourage creative product development, marketing, demonstrable value-addition and proper awareness to meet the current market realities. Unlike the banking sector, the insurance sector does not have as much nationwide presence: most insurance firms are stationed at capital cities and commercial hubs with few brokers stationed at rural communities. This is another area that NAICOM and NCRIB can have a well-structured partnership to ensure that every insurer and brokerage firms have their presence felt across the nation especially in rural communities or better still technology be leveraged to reach the uninsured and/or unaware.

Digitisation: Gaining Speed for the Race

The twenty first century insurance industry and its stakeholders need to evolve in order to adapt to the market trends especially with the growing state of technology disruption in the industry. Apparently, the insurance industry players in Nigeria seems not to be ready for such disruption. And if they fail, they may get extinct. According to Pierre Nanterm, CEO of Accenture: *"Digital is the main reason just over half of the companies on the Fortune 500 have disappeared since the year 2000."*[20] Nigeria's insurance sector can well borrow the wisdom in Pierre Nanterm's perceptive insight, because the insurTech space is becoming acceptable to the millennials, which may phase out many insurance brokers and insurers' operations when regulatory license is granted to fully operate in the insurance space.

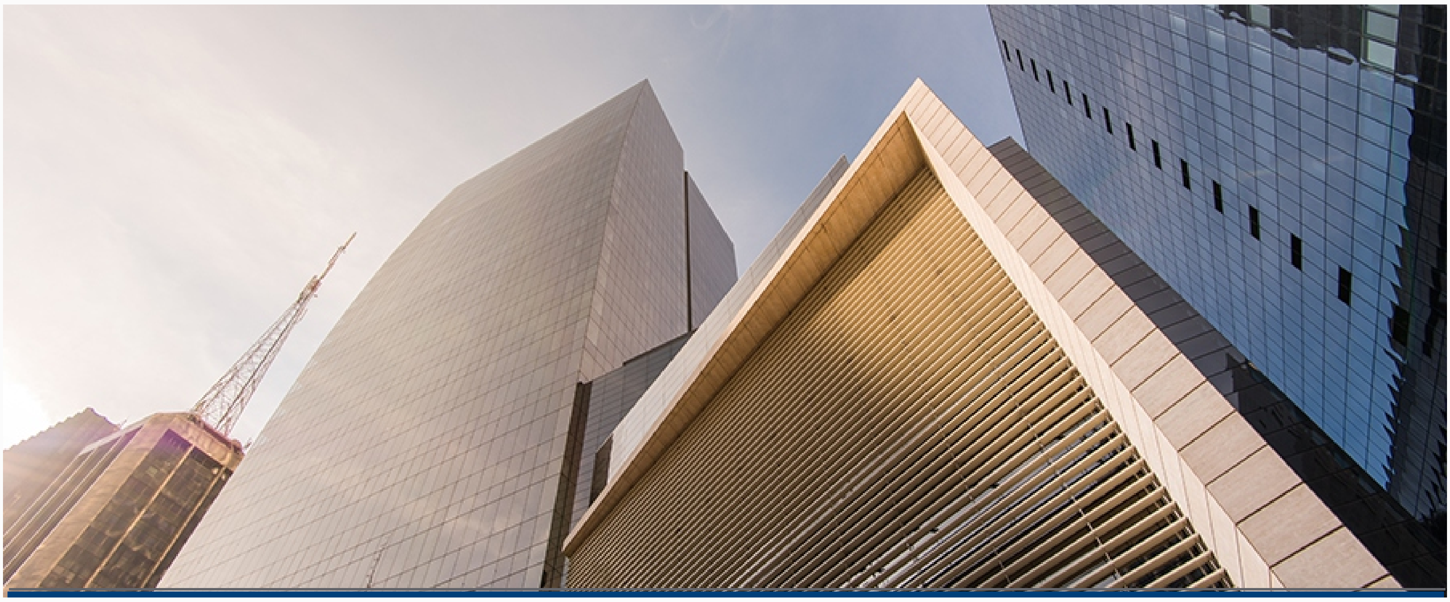
For instance, the insured can interface directly with the insurer, choose insurance products, and pay premiums digitally *vide* a smartphone, without a broker. In South Africa (SA) for example, most insurers have invested in digital distribution whilst some have moved beyond direct digital sales to embedding the company in people's lives through *'pay-as-you drive insurance'*.

New business of models being adopted by forward-looking insurers in SA are similar to what many telecoms and tech companies use, which is faster, flexible and data-led iterative approach. Reinsurance and investment management companies are collaborating to create a new generation of health, wealth and retirement solutions.[21] Many tech startups in SA like Click2Sure, Hepstar, Cascade, Root Insurance, FinChatBot, StockBox and OUTsurance all disrupting the

19 NAICOM Website, ***'Insurance Brokers with Current License as at 30th September, 2018'***, https://www.vanguardngr.com/2018/02/nigeria-ranks-low-insurance-penetration-africa-oni/ (visited on 01.02.2019).

20 Pierre Nanterme, ***'Digital Disruption has Only Just Begun'***, *World Economic Forum, 17 January 2016*, https://www.weforum.org/agenda/2016/01/digital-disruption-has-only-just-begun/(visited on 15.02.2019

21 Sanchia Temkin, ***'Disruption is the New Reality in the Global Insurance Industry: PwC Insurance 2020 Report'***, PwC South Africa: https://www.pwc.co.za/en/press-room/disruption-is-the-new-reality-in-the-global-insurance-industry--.html, (visited on 01.02.2019).



insurance digital space through their innovative services.[22]

Therefore, the earlier industry stakeholders in Nigeria's insurance space collaborate to meet the growing InsurTech space the better for the insurance industry and the nation's GDP especially in deepening insurance penetration. This had been suggested in a prior article: *"Insurers need to ensure that claims are paid promptly when insurable events happen. Insurers and brokers should be more technologically driven in their operations in order to penetrate the upcoming millennial generation and effectively compete with the rising fintech companies. These could help push the boundaries and make up for loss of NAICOM's 'jurisdiction' over Group life, employees' compensation and health insurance businesses respectively to PenCom, NSITF and NHIS."*[23]

Conclusion

Obviously, the stakeholders in Nigeria's Insurance industry are not ready for disruption in their operation at the moment, which may continue to repress industry growth. Reversal of recent regulatory initiatives nonetheless does not erase the intent for qualitative improvement in the industry. It is expedient NAICOM, have a long term insurance blue print policy, which addresses the stakeholders' fears concerning loss of businesses. Whilst proper notice needs to be given to insurers and brokers in respect of any proposed policy to enable them prepare adequately; also by so doing, compliance is likely to be near seamless.

> 'Reinsurance And Investment Management Companies Are Collaborating To Create A New Generation Of Health, Wealth And Retirement Solutions'

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22 Tom Jackson, ***'African Tech Startups Funding Report 2018'***, Disrupt Africa, May 10 2018: http://disrupt-africa.com/2018/05/how-insurtech-is-transforming-sa-insurance-industry/, (visited on 02.01.2019).

23 Gabriel Fatokunbo, ***'Improving Nigeria's Insurance Penetration: Legal, Regulatory and Market Considerations'***, *Financier Worldwide, March 2018*: https://www.financierworldwide.com/improving-nigerias-insurance-penetration-legal-regulatory-and-market-considerations/#.XGqWoOhKjIU, (visited on 18.02.2019).