AO2 LAW | Anaje Olumide Oke Akinkugbe

NIGERIA'S NEW INSURANCE BUSINESS REGIME:
IN SEARCH FOR BIGGER AND BETTER FORTRESSES

www.ao2law.com

Background:

By its circular dated May 20, 2019 captioned "Minimum Paid-up Share Capital Policy for Insurance and Reinsurance Companies in Nigeria" (the "**Policy**"), the National Insurance Commission ("**NAICOM**") reviewed the minimum paid-up share capital requirement for all classes of insurance business in Nigeria, save for takaful and micro-insurance businesses. In the succeeding paragraphs, we examine the historical precedent of the capital requirements for insurance business in Nigeria, the new requirements of the Policy and our thoughts on what the Policy portends for the Nigerian insurance industry.

Capital Requirements for the Insurance Industry through the Years:

The enactment of the Insurance Companies Act in 1961 and establishment of a Department of Insurance in the Federal Ministry of Trade commenced the regulation of insurance business in Nigeria. The 1961 Act was however grossly inadequate in the wake of rapid commercial and business enterprise in the then newly independent Nigeria. To ameliorate this inadequacy, an Insurance (Miscellaneous Provisions) Act was enacted in 1964 and insurance Regulations issued in 1968 to give proper effect to and facilitate implementation of the 1961 Act. These legislations were repealed by the Insurance Decree No. 59 of 1976 as implemented by Insurance Regulations, 1977. Section 8 (1) of the Insurance Decree prescribes a minimum paid up capital of ₦300,000, ₦500,000 and ₦800,000 for life, non-life and composite offices respectively. A number of other insurance focused legislations were enacted between 1977 and 1997, notably the Insurance Special Supervisory Fund Decree, 1989 and Insurance Decree 58 of 991.

In 1997, the National Insurance Decree No. 1, now National Insurance Commission Act, Cap. N53 Laws of the Federation, 2004 (the "**NAICOM Act**") created NAICOM with the principal object of ensuring the effective administration, supervision, regulation and control of insurance business in Nigeria. In the same year, Insurance Decree No. 2 required insurance businesses to attain a minimum paid up share capital of ₦20million and ₦150million for life and general insurance; and reinsurance, respectively. General insurance companies with oil and gas; marine and aviation; credit insurance and other listed business were obligated to maintain a paid-up share capital of ₦70million.

The Insurance Act, 2oo3 currently compiled as Cap. I17, Volume 7, LFN 2004 (the "**Insurance Act**") increased required minimum share capital for insurance companies to ₦150million, ₦200million for life insurance and general insurance while a share capital of ₦350milllion was prescribed for composite and reinsurance businesses. In September 2005, NAICOM issued a Guideline, pursuant to an announcement by the Federal Minister of Finance, increasing the minimum paid up capital requirements for insurance companies. The directive raised the minimum paid up capital base of reinsurance and composite insurance companies from ₦350million to ₦10billion and ₦5 billion Naira respectively. The minimum paid up share capital requirement for life and non-life insurance companies was equally affected by the recapitalization exercise with a marked increase to ₦2 billion and ₦3 billion. Insurance companies were granted a transition period of one year and five months to comply with the new capital base requirements.

This exercise culminated with the consolidation of the entire insurance industry; at the end of the consolidation exercise, only 49 out of the previous 104 insurance companies remained in operation. It is reported that despite the drop in the number of players within the industry, activities increased with enhanced public awareness of the sector, rapid expansion and strategic business acquisitions and improved visibility.

In 2018, NAICOM issued a Tier Based Solvency Capital Policy for insurance companies in Nigeria ("**TBS Capital Policy**"). This attempt to implement another increase in share capital for insurance companies was withdrawn following an uproar in the insurance industry and an order of the Federal High Court.

➤ The Policy and the New Minimum Paid Up Share Capital Requirement:

NAICOM's power to administer, supervise, regulate and control the insurance industry is derived both from its establishment Act and the Insurance Act. Section 9(4) of the Insurance Act authorizes NAICOM to increase, from time to time, the amount of minimum paid-up share capital required to operate an insurance business. The Policy is issued pursuant to these powers. The Policy prescribes a minimum paid up share capital of ₦8 billion, ₦10 billion, ₦18 billion and ₦20 billion for life insurance, general insurance, composite and reinsurance businesses respectively.

The Policy takes immediate effect for new applications from the date of issuance; however, existing insurance and reinsurance companies are granted until June 30, 2020 to attain full compliance with the new minimum paid-up share capital requirement. The Policy mandates all new applicants to deposit an equivalent of 50% of the prescribed minimum share capital with the Central Bank of Nigeria ("**CBN**"). Existing insurers are required to make a statutory deposit of 10% of the prescribed paid up share capital. Failure to deposit the stipulated amount shall constitute a ground for cancellation of the certificate of registration issued to the defaulting insurance company.

➤ Scoring the Nigerian Insurance Industry:

It is reported that Nigerian's insurance industry has in the past decade achieved an average annual growth rate of 35.07% in both life and non-life insurance businesses. Gross premiums rose by 22% to N315bn in the third quarter of 2018 from N258bn in the corresponding period of 2017. Despite growing at a faster pace than the economy, Nigeria's insurance sector is still relatively underdeveloped, compared to its peers. With a population estimated at circa 200 million people, and a penetration rate of 0.3%, Nigeria has the lowest penetration rate amongst comparable African countries. South Africa currently stands at 14.7%; Kenya and Egypt boast of 2.8% and 0.6% insurance penetration levels respectively. Considering the growing middle class and increased life expectancy rate for Nigerians vis – à – vis insurance's character as an efficient diversifier of risk, the potential for growth in the sector is enormous.

➤ In Conclusion – Our Take:

Historically, the impact of regulation on positive performance in the insurance industry cannot be understated. Growth in life insurance premiums, for instance, has maintained a steady upward trend anchored on the compulsory group life insurance policy requirement on all companies. . In this regard, we consider the new minimum paid-up share capital requirements as necessary to strengthen the depth of coverage capacity of local insurers in a bid to improve market penetration. Low underwriting capacity, a current experience in the Nigerian insurance industry, is a barrier to a sustainable improvement of the market penetration data. We hope to see, in the coming days, an effective implementation of the Policy resulting in a consolidation of the sector through amalgamations, mergers and acquisitions as insurance companies aspire to attain full compliance with the Policy within the 13 months' period earmarked for existing insurance compa nies. The best outcomes for the insurance sector, would be the birth of recapitalised insurance companies able to take on high value and risked segments of the economy such as the aviation, marine and petroleum sectors, thus enhancing local participation and improved insurance penetration. An invigorated insurance sector is fundamental to national economic stability as resilient and bigger institutions are better situated to withstand economic downturns, while providing a solid risk mitigation strategy for Nigeria's teeming population.

For further information on the foregoing (none of which should be taken as legal advice), please contact: Bidemi Olumide (**bidemi.olumide@ao2law.com**) or Ifure Udofa (**ifureuwem.udofa@ao2law.com**) or Kenechukwu Nwaolisa (**kenechukwu.nwolisa@globalrecoverylimited.com**) with the subject: "***Nigeria's New Insurance Business Regime: In Search of Bigger and Better Fortresses***"