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Critical Examination of the Law of Insurance with Specific Reference to Motor Vehicle Insurance in Uganda

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ABSTRACT

The article analyses the law of insurance with specific reference to motor vehicle insurance in Uganda. It has been concluded that there is a measure of familiarity with insurance products in the market although this is majorly limited to covers that relate to motor vehicle insurance (especially third party), fire, burglary and medical insurance. It is in this light that the article calls for the public to be sensitized about insurance in general and also about specific products and services. This will help increase knowledge from just the understanding of the word "insurance, to how insurance works exactly. The study equally recommends the introduction of more tailor-made products. This might help dispel the notion that insurance is expensive and help more people readily see how insurance can be applied to their everyday lives. Furthermore, the relationship between the government especially between the Ministry of Finance, IRA and insurance companies needs to be strengthened to ensure that an enabling business and regulatory environment is established for the industry. Finally, there is need for the insurance players to intensify the training and retraining of their staff and agents to make them skilled, competent and professional. This will help in building consumer confidence in the insurance industry.

Keywords: Insurance cover, Insured, Insurer, Legal framework, Motor vehicle insurance.

INTRODUCTION

In, law insurance is a form of risk management primarily used to hedge against the risk of a contingent uncertain loss. Insurance is defined as an equitable transfer of the risk of a loss from one party to another in exchange for a payment [1]. The new act defines an insurance contract to mean a contract under which one party, known as the insurer, in exchange for a premium, agrees with another party, known as the policy holder, to make a payment, or provide a benefit to the policy holder or another person on the occurrence of a specified uncertain event which, if it occurs, will be adverse to the interests of the policy holder or to the interests of. the person who will receive the payment or benefit [2]. The transfer involves the insured assuming a guaranteed and a known relatively small loss by a form of payment to the insurer in exchange for the insurers promise to compensate the insured in case of financial loss. The insured receives a contract called the insurance policy which details the conditions and circumstances under which the insured will be financially compensated [3]. Insurance involves pooling funds from many insured entities to pay for the losses that some may incur. The insured entities are therefore protected from risk for a fee with the fee being dependent upon the frequency and severity of the event occurring [4]. In order to be insurable the risk insured against must meet certain characteristics in order to be an insurable, the risk insured against must meet certain characteristics in order to be an insurable risk. Insurance is a commercial enterprise and a major part of the financial industry but individual entities can also self-insure through saving money for future insurance policies [5]. The establishment of the Uganda Insurance Commission was a consequence of government adaptation of the liberalization and privatization policies which ended its role of directly engaging in the provision of goods and services and taking on the role of regulator. The commission is a supervisor and regulator of the insurance industry in Uganda. It was established under Section 14 of the repealed Insurance Statute 1996 [2] provisions of which came into force on the 4th day of April 1996 but it was later changed to Insurance Regulatory Authority of Uganda by virtue of the Insurance Amendment Act 2011 and the same has been retained under the New law which is the Insurance Act 2017 [6]. The Insurance regulatory Authority is responsible for the supervision and regulation of the insurance sector. UIC was established in 1996 after the enactment in 1996 of the insurance statute, the first piece of insurance regulation. Before 1996, the industry was normally regulated by the department of trade allowing some insurance players to operate without fulfilling basic operational requirements [7].The Authority is a body corporate with perpetual succession and a common seal and may for the purposes of discharging its functions under this Act, acquire, hold or dispose of movable and immovable property, sue and be sued in its corporate name, do all acts and things that a body corporate may lawfully do. It possesses a common seal which shall be in a form determined by the Board [8].

Principles of Insurance

Insurance involves pooling funds from many insured entities known as exposures to pay for the losses that may incur. The Insured entities are therefore protected from risk for a fee with the fee being dependent upon the frequency and severity of the event occurring[9]. In order to be insurable, the risk insured against must meet certain characteristics in order to be an insurable risk. Insurance is a commercial enterprise and a major part of the financial services industry, but individual entities can also self-insure through saving money for possible future losses.

Insurability

Risks which can be insured by private companies typically share common characteristics. Large number of similar exposure units: Since insurance operates through pooling resources, the majority of insurance policies are provided for individual members of large classes allowing insurers to benefit from the law of large numbers in which predicted losses are similar to the actual losses[10].

Definite loss: the loss takes place at a known time in a known place and from a known cause. The classic example is death of an insured person on a life insurance policy, fire, auto mobile accidents and worker injuries may all easily meet this criterion [11].

Accidental loss: the event that constitutes the trigger of a claim should be fortuitous or at least outside the control of the beneficiary of the insurance. The loss should be pure, in the sense that it results from an event for which there is only the opportunity for cost. Events that contain speculative elements such as ordinary business risks or even purchasing a lottery ticket are generally not considered insurable [12].

Large loss: the size of the loss must be meaningful from the perspective of the insured insurance premiums need to cover both the expected cost of losses, plus the cost of issuing and administering the policy, adjusting losses and supplying the capital needed to reasonably assure that the insurer will be able to pay claims. For small losses these latter costs may be several times the size of the expected cost of losses. There is hardly any point in paying such costs unless the protection offered has real value to the buyer [13].

Affordable premium: if the likelihood of an insured event is so high or the cost of the event is so large, that the resulting premium is large relative to the amount of protection offered, it is _not likely that the insurance will be purchased even if on offer [14].

Calculable loss: there are two elements that must be at least estimable, if not formally calculable, the probability of loss and the attendant cost. Probability of loss is generally an empirical exercise while cost has more to do with the ability of a reasonable person in possession of a copy of the insurance policy and a proof of loss associated with a claim presented under that policy to make a reasonably definite and objective evaluation of the amount of the loss recoverable as a result of the claim [15].

Limited risk of catastrophically large losses: insurable losses are ideally independent and non-catastrophic meaning that the losses don't happen all at once and individual losses are not severe enough to bankrupt the insurer, insurers may prefer to limit their exposure to a loss from a single event to some small portion of their capital base[16].

Legal requirements in insurance contract

When a company insures an individual entity, there are basic legal requirements several commonly cited legal principles of insurance include:

Indemnity- the insurance company indemnifies the insured in the case of certain losses only up to the insured interest [17]. Insurable interest-the insured typically must directly suffer from the loss. Insurable interest must exist whether property insurance or insurance on the person is involved. Under the insurance Act 2017 [6], a policy of insurance shall not be issued to any person on the life of any person where that person has no insurable interest in the life or event. It goes ahead to say that insurable interest shall be deemed to be had by-

1. A parent of a minor or the guardian of a minor on the life of a minor.
2. A husband, on the life of his wife.
3. A wife, on the life of her husband.
4. Any person on the life of another upon whom he or she is wholly or in part dependent for support or education.

Company or other person, on the life of an officer or employee of the company or that other person. A person who has a pecuniary interest in, the duration of the life of another person, in the life of that person to the extent only of that pecuniary interest. Utmost good faith-the insured and the insurer are bound by good faith bond of honesty and fairness. Material facts must be disclosed.

Indemnification

To indemnify means to make the whole again or to be reinstated to the position that was in to the extent possible, prior to the happening of a specified event or peril. Accordingly life insurance is generally not considered to be

indemnity insurance but rather contingent insurance, there are generally two types of insurance contracts that seek to indemnify an insured: an indemnity policy and a pay on behalf or on behalf of the policy[18].
Types of Insurance
Any risk that can be quantified can potentially be insured. Specific kinds of risk that may give rise to claims are known as perils. An insurance policy will set out in detail which perils are covered by the policy and which is not. Below are non-exhaustive lists of many different types of insurance that exist.

Auto Insurance

Auto insurance protects the policyholder against financial loss in the event of an incident involving a vehicle they own such as in a traffic collision[19]. Coverage typically includes:

1. Property coverage, for damage to or theft of the car.
2. Liability Coverage, for the legal responsibility to others for body injury or property damage.
3. Medical coverage, for the cost of treating injuries, rehabilitation and sometimes lost wages and funeral expenses.

Home Insurance

Home insurance provides coverage for damage or destruction of the policy holder's home. In some geographical areas, the policy may exclude certain types of risks such as flood or earthquake that require additional coverage, maintenance related issues are typically the homeowner's responsibility. The policy may include inventory or this can be bought as a separate policy, especially for people who rent housing, in some countries insurers offer a package which may include liability and legal responsibility for injuries and property damage caused by members of the household including pets [20].

Health Insurance

Health insurance policies issued by publicly funded health programs such as UK's National Health Service will cover the cost of medical treatment. Dental insurance like medical insurance protects policyholders for dental costs. In the US and Canada, dental insurance is often part of an employer's benefits package along with health insurance [21].

Accident, sickness and unemployment insurance

Workers compensation or employers liability insurance is compulsory in some countries [22]. Disability insurance policies provide financial support in the event of the policy holder becoming unable to work because of disabling illness or injury. It provides monthly support to help pay such obligations as mortgage loans and credit cards. Short term and long term disability policies are available to individuals b:_it considering the expense, long term policies are generally obtained only by those with at least figure incomes such as doctors, lawyers etc. short-term disability insurance covers a person for a period typically up to six months, paying a stipend each month to cover medical bills and other necessities [23]. Long term disability insurance covers an individual's expenses for a long term up until such time as they are considered permanently disabled and thereafter. Insurance companies will often try to encourage the person back in employment in preference to and before declaring them unable to work at all and therefore totally disabled. Disability overhead insurance allows business owners to cover the overhead expenses of their business while they are unable to work. Total permanent disability insurance provides benefits when a person is permanently disabled and can no longer work in their profession, often taken as an adjunct to life insurance [24]. Workers compensation insurance replaces all or part of a workers wages lost and accompanying medical expenses incurred because of a job-related injury. Casualty insurance insures against accidents not necessarily tied to any specific property. It is a broad spectrum of insurance that a number of other types of insurance could be classified such as auto, workers compensation and some liability insurances. Crime Insurance is a form of insurance that covers the policy holder against losses arising from the criminal acts of third parties. For example a company can obtain crime insurance to cover losses arising from theft or embezzlement [25].Political risk insurance is a form of casualty insurance that can be taken out by businesses with operations in countries in which there is a risk that revolution or other political conditions could result in a loss. Life insurance provides a monetary benefit to the descendants' family or other designated beneficiary and may specifically provide for income to the insured persons family, burial, funeral and other funeral expenses. Life insurance policies often allow the option of having the proceeds paid to the beneficiary either in a lump sum cash payment or an annuity[26]. Annuities provide a stream of payments and are generally classified as insurance because they are issued by insurance companies, are regulated as insurance and require the same kinds of actuarial and investment management expertise that the insurance requires. Annuities and pensions that pay a benefit for life are sometimes regarded as insurance against the possibility that a retiree will outlive his or her financial resources. In that sense they are a compliment of life insurance and form an underwriting perspective are the mirror image of life insurance [27]. Certain life insurance contracts accumulate cash values which may be taken by the insured if the policy is surrendered or which may be borrowed against, some policies such as annuities and endowment policies are financial instruments to accumulate or liquidate wealth when it is needed [28]. Burial insurance: Burial insurance is a ve1y old type of life insurance which is paid out upon death to cover funeral expenses such as the cost of the funeral. The Greeks and the romans introduced burial insurance around 600AD when they organized guilds called benevolent societies which cared for the surviving families and paid funeral expenses of members upon death. Guilds in the middle ages served a similar purpose as did friendly societies during Victorian times [29]. Property insurance: The tornado damage to an Illinois home would be considered an act of God for insurance purposes. Property insurance provides protection against risks to property such as fire, theft or weather damage. This may include specialized forms of insurance such as fire insurance, flood insurance, earthquake insurance, home insurance, inland marine insurance or boiler insurance[30].Credit insurance repays some or all of a loan when certain circumstances arise to borrower such as unemployment, disability or death.Mortgage Insurance insures the lender against default by the borrower. Mortgage insurance is a form of credit insurance although the name credit insurance more often is used to refer to policies that cover other kinds of debt [31]. Liability insurance is a part of the general insurance system of risk financing to protect the purchaser from the risks of liabilities imposed by l,1wsuits and similar claims. It protects the insured in the event he or she is sued for claims that come within the coverage of the insurance policy. Liability insurance is designed to offer specific protection against third party insurance claims, i.e payment is not typically made to the insured but rather to someone suffering loss who is not a party to the insurance contract [32].

The law governing third party insurance in Uganda.

Insurance Act

The insurance Act 2017[6] governs all insurance business and is supplemented by the motor vehicle insurance (third party risks) Act Chapter 214 laws of Uganda [33] that amongst other things makes third party insurance compulsory for all vehicle owners. The establishment of the Uganda insurance commission now the Insurance regulatory authority was a consequence of the government adoption of the liberalization and privatization policies which ended its roles of supervisor and the regulator of the insurance industry in Uganda[7].

Licensing of insurance companies

Under the Insurance Act[6] Application for a license is made by a person proposing to carry on insurance business who shall apply to the Authority, in a prescribed form, for a license, which application shall be considered by the Authority. Where an application submitted does not provide all the relevant information or if clarification is necessary, the applicant may be called upon to provide the information or clarification to complete the application. The Insurance regulatory Authority shall consider the following factors, 26

1. The financial status and antecedents of the applicant.
2. The competence and integrity of the proposed management and administration.
3. The adequacy of the applicant's capital structure, earning prospects, business plans, financial plans, reinsurance and retention proposals.
4. Whether the public interest would be served by granting a license.
5. The governance framework of the applicant.
6. Proposed reinsurance and retrocession arrangements; and such other matters as the Authority may consider appropriate[6].

Thereafter the Authority shall, within four months after receipt of a complete application, investigate and prepare a detailed report in respect of each application. The Authority shall, for the purpose of considering and making a report on an application, appoint a committee of not less than three members of the Authority which committee shall report its recommendations to the Authority in writing [6]. The Authority may, if it is satisfied that the applicant complies with the provisions of this Act, grant a license to the applicant, on the payment of the prescribed fee.Refuse to grant a license and give reasons in writing for its decision. And once the insurance license issued by the Authority, it remains in force until suspended, varied or revoked. The Authority shall communicate its decision to the applicant within sixty days from receipt of a complete application [6]. The applicant may appeal to the Tribunal within thirty days from the receipt of the communication of the Authority, if aggrieved by the decision of the Authority and the Tribunal shall make a decision within thirty days from the date of the appeal [6].The Authority may at any time vary, suspend or revoke the license of an insurer or HMO to carryout business under this Act where it is in the public interest or it is required for protecting policy holders' interests, the business of the insurer is not being conducted in accordance with sound insurance principles and practices, the relevant minimum prescribed paid up capital or security deposit requirements have not been complied with by the insurer, the insurer is not in compliance with the capital adequacy requirements prescribed in regulations; the insurer has not commenced insurance business within one hundred and eighty days of obtaining a license to operate and when the insurer has made a false statement to the Authority which statement is material to his or her licensing and which he or she knows or might have known to be false [6].

Inspection of insurance companies

Section 56 of the insurance Act[6] provides for on-·site inspection of insurance players to be carried out at least once in 3 years although they can be carried out more often depending on the necessity. Documents deposited with the commission under the statute shall be open to inspection by the policy holder or shareholder on payment of a fee of ten thousand shillings except that the documents that may be inspected are those specified inform 30 in the schedule to these regulations. The commission may in performance of its functions under the statute if it has reason to believe that any person is carrying on any insurance business or is in any way representing to the public that he or she is carrying on any person to comply with the provisions of the commission may specify. Any person licensed under the statute shall furnish the commission with any information it may request for in relation to its work[6].

Offenses committed by insurance companies and penalties

A person licensed under this Act shall display his or her license prominently at the principal place of business in a part to which the public can have access and shall display a copy of the license in each branch of the business in Uganda. A person who contravenes this section commits an offense and is liable on conviction to a fine of fifty thousand shillings [6]. A person who carries or is privy to carrying on of any business under the Act under a Company established contrary to this act commits an offence and is liable on conviction to a fine of not less than two million shillings or to imprisonment of a term not less three months and not more than six months or to both fine and imprisonment[6]. In addition to the punishment provided under subsection 1, a license of a person convicted under that subsection shall be cancelled and that person shall be disqualified from acquiring a license for two years and there after shall not be issued a license without the approval of the minister[6].A person who being a manager or officer of a company licensed under this Act fails to take any reasonable steps to secure compliance with the requirements of this Act, makes any statement or gives any information which is false, in answer for information required under any provisions of this Act, is privy to furnishing of any false information under this Act, commits an offense and is liable on conviction to a fine of less than two hundred and fifty thousand Uganda shillings and not more than three million shillings or to a term of imprisonment not exceeding two months or both the fine and the imprisonment[6]. An insurance or reinsurance company which fails to comply with an order issued by the minister or the commission under this Act or contravenes any provision of this Act commits an offense and is liable to a public or private admonition, a fine of not more than two million shillings, suspension or revocation of the license[6]. Where an officer of a company under this Act authorizes the contravention of or contravenes any provision of this Act, he or she shall be personally liable to the penalty specified in relation to the contravention.Any person who commits an offence under this Act or any regulations made under this act for which no penalty is provided is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding twelve months or to both such and imprisonment[6].

Insurance and workers compensation Act

The workers compensation act provides for compensation to workers for injuries suffered and scheduled diseases incurred in the course of their employment[34].

Subject to sub section 2 and 3, every employer shall insure and keep himself or herself insured in respect of any liability which he or she may incur under this Act to any worker employed by him or her. The insurers empowered to offer insurance under this section shall be specified in the list kept by the minister responsible for finance and published in the Uganda gazette[34].

An employer shall not for the purpose of obtaining a policy of insurance as required by this section make any false statement or willfully do any act in consequence of which the policy is liable to be voided on payment under the policy refused. An employer shall provide information regarding insurance effected to meet the requirements of this section, when reasonably requested by the labor commissioner or any other person acting on his or her behalf. An employer who contravenes this section commits an offense and is liable [34].

1. On first conviction to a fine not exceeding ten currency points.
2. On a second conviction to a fine not exceeding 20 currency points.
3. On a third and subsequent convictions to a fine not exceeding one hundred and fifty currency points and imprisonment not exceeding twelve months or both [34].

Insurance and motor vehicle third party Act

It shall not be lawful for any person to use or to cause or to permit any other person to use a vehicle on a road unless there is in force in relation to the use of the Vehicle by that person or that other person as the case may be a policy of insurance in respect of third-party risks that complies with the requirements of this Act. Subsection 1 shall not apply to a Vehicle owned by the Government of Uganda[33]. Any person who contravenes subsection 1 commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to term of imprisonment not exceeding two years or such fine and imprisonment. In order to comply with the requirements of section 2 the policy of Insurance must be a policy which is issued by an insurer holding a license issued by the commissioner under the insurance Act and insures such person or persons or classes of persons as may be specified in the policy in respect of liability which may be incurred by him or her or them in respect of death of or bodily injury to another person caused by or arising out of the use of a vehicle on the road except that a policy in terms of this section shall not be required to cover liability in respect of the death of or bodily injury to a person arising out of and in the course of employment of the person by the person insured under the policy[33]. In the event of an accident affecting a vehicle and resulting in the death of or a bodily injury to any person the owner shall forthwith after the accident or if the owner was not in charge of the vehicle at the time of the accident forthwith after he or she first becomes aware of the accident, give notice in writing to the insurer of the fact of the accident with particulars as to the date, nature and circumstances of the accident and there after give all such other information and take all such steps as the insurer may reasonably require in relation to the accident, whether or not the claims have actually been made against the owner on account of the accident[33]. Any person who without reasonable excuse fails to comply with this section or willfully makes any false statements in reply to such demand as aforesaid commits an offense and is liable on conviction to a fine not exceeding one hundred thousand shillings[33]. In any proceedings or any claim against an insured or an insurer under this Act in respect of an accident causing death of or bodily injury to any person being at the time of the accident a passenger for hire in a vehicle it shall not be a defense that the contract of carriage had excluded or modified the liability of the insured or any other person from paying or to pay damages in respect of accidents due to the negligence or willful default of the insured[33].In all third party claims in respect of damages to property of the death of bodily injury to any person arising from any accident the third party shall proceed against the owner or the driven or the council as the case may be and not the insurer[33].

CONCLUSION

The article concludes that there is a measure of familiarity with insurance products in the market although this is majorly limited to covers that relate to motor vehicle insurance (especially third party), fire, burglary and medical insurance. It is in this light that the article calls for the public to be sensitized about insurance in general and also about specific products and services. This will help increase knowledge from just the understanding of the word "insurance, to how insurance works exactly.

RECOMMENDATIONS

The study recommends the introduction of more tailor-made products. This might help dispel the notion that insurance is expensive and help more people readily see how insurance can be applied to their everyday lives. Furthermore, the relationship between the government especially between the Ministry of Finance, IRA and insurance companies needs to be strengthened to ensure that an enabling business and regulatory environment is established for the industry. Finally, there is need for the insurance players to intensify the training and retraining of their staff and agents to make them skilled, competent and professional. This will help in building consumer confidence in the insurance industry.

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