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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

THE POLICY CONTEXT AND ITS EFFECTS ON FOREIGN INSURANCE COMPANIES IN KENYA

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2021

DECLARATION

I do declare that this research project is my original work and has not been presented to any other university for any kind of an academic award.

Signature: .... **DATE: 11th November 2021**

Ogutu Eunice Akinyi

This research project has been submitted for examination with my approval as the official university supervisor.

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DEDICATION

This research project is dedicated to my parents, my daughter and my sisters who have been my support system during this academic journey.

ACKNOWLEDGEMENTS

First, I would like to give thanks to God for giving me life and strength throughout the course of my academic undertakings. Special appreciation to my Supervisor Dr. Kizito Sabala under whose supervision I was able to complete this study. Dr. Sabala I will forever remain grateful to you. I would also like to thank my family for the moral support while pursuing this study. I cannot forget my classmates with whom we have travelled this journey together. Your friendship and constant encouragement kept me going.

Thank you!

LIST OF ABBREVIATIONS

AIBK	:	Association of Insurance Brokers of Kenya
AKI	:	Association of Kenya Insurers
CBIRC	:	China Banking and Insurance Regulatory Commission
CBK	:	Central Bank of Kenya
COP	:	Certificate of Proficiency
EAC	:	East African Community
FAO	:	Food and Agricultural Organization
FATF	:	Financial Action Task Force
FASB	:	Financial Accounting Standards Board
FCA	:	Financial Conduct Authority
FIC	:	Financial Intelligence Centre
FSB	:	Financial Stability Board
FSCA	:	Financial Sector Conduct Authority
GERD	:	Grand Economic Renaissance Dam
GDP	:	Grand Development Projects
GOK	:	Government of Kenya
IAIS	:	International Association of Insurance Supervisors
IASB	:	International Accounting Standards Board
ICP	:	Insurance Core Principles
IGAD	:	Inter Governmental Act on Development
IRA	:	Insurance Regulatory Authority
KNBS	:	Kenya National Bureau of Statistics
NACOSTI	:	National Commission for Science Technology and Innovation
NBI	:	Nile Basin Initiative
PA	:	Prudential Authority
RBA	:	Retirement Benefit Authority
SAP	:	Statutory Accounting Principles
TCF	:	Treating Customers Fairly
VAT	:	Value Added Tax

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ABSTRACT

Generally, this study sought to analyse the effects of government policies on foreign insurance companies using Kenya as a case study. The study therefore, examined the links between government policy and investment on insurance industry before analysing the insurance industry, government regulation and policy environment in Kenya thereafter interrogating the effects of government policies on the insurance industry in Kenya and finally concluded with several recommendations to make the insurance industry more profitable. The study also set out one hypotheses namely that there is an inverse relationship between government policies and the growth of an industry. The study relied on both primary and secondary data collection methods and was anchored on ADKAR change management models theory.

The study found out that government policies and regulation stand to benefit all the stakeholders in the insurance industry this is as result of a level playground created by these regulations. The study also established that one of the biggest wins from government regulation is customer protection and that through education programs clients have become more enlightened which has resulted to increased uptake of insurance products. The study also found out that premium undercutting has affected the industry negatively due to lack of government regulation on the same this has resulted to stiff market competition as insurance companies are competing to pull customers their way. Finally, the study also found out that when it comes to law making the government tends to come up with clauses that favour major insurance industry players and not all.

Lastly, the study has given recommendations which includes enhancing insurance capacity which will address the issues of premium undercutting and encourage fair competition among insurance companies thus increasing insurance uptake. Balanced regulatory approaches to be applied to all stakeholders in the insurance industry irrespective of their purchasing power. The insurance regulatory body to be proactive to ensure that fraud and money laundering is kicked out completely which will in return ensure that premiums collected is clean and review of existing insurance contracts to ensure that they are fair to all stakeholders in the market.

CHAPTER ONE: INTRODUCTION AND BACKGROUND OF THE STUDY

1.0 Background to the Study

Insurance is a financial commodity which is a social necessity. It necessarily does not serve one person's interest but of the general public. As such, government regulations through academic theory are acceptable and required in the need to serve public interest and gain public trust. Fire insurers globally and historically were concerned of the high risk of coverage of some cities since one major fire could financially destroy and bankrupt an insurer's surplus. This called for the establishment of Departments of Insurance in the United States with audited solvency requirements for every insurer before the issuance of a license to market and sell policies. Policy can be defined as a statement that provide a guideline for decision making by members of an organization. Overly, policies have promoted development of organizations in the public and private sector over the years[1].

Policies generally have been formed to give guidelines to actions that are to be taken and can be developed for both private and public sector that is both public and private policies. Whereas public policies are purposive government actions that address matters of concern to some part of society[2], private policies are ideas and values that are set by an organization to control their actions.

Both policies have affected the insurance investment industry to the extremes that is both positive and negative. The positive impacts relate to the outcome that were aimed at the time of development while the negative impact are the consequences that are realised as the set

[1] Chip Merlin (2020), The Role of Insurance, Government, and Pandemic Insurance, (https://www.forbes.com/sites/forbesbooksauthors/2020/05/18/the-role-of-insurance-government-and-pandemic-insurance/?sh=59872f845b36, Accessed May 18,2020

[2] James E. Anderson. (2000). Public Policymaking: An Introduction,4th edition. Boston: Houghton Mifflin

policies are being implemented. Government policies affect businesses negatively as they are put in place as controls to generate revenue to the government.

The practice of insurance is as old as the historical society and it is known to be practiced as early as 4000 – 3000 BCE by merchants of Babylon, 600 BCE by Hindus and by the Greece as early as the 4th Century BCE[3]. They were in the form of a bottomry contract where loans were granted to the merchants with the provision of non-repayment if the shipment was lost at sea. This practice has also been in existence in Africa for quite some time whereby the societal members pooled their resources together to form some sort of "social" insurance fund, the premiums ranged from material to other payments in kind.

The insurance shall refer to the company's obligation, by way of protection for any life loss, personal injury and loss or damage that occurs after a particular incident, including liability for damage or compensation. It is primarily aimed at reducing economic loss or measurable risks completely. They range from life, property and health protection through a cost known as a premium which is a compensation consideration if the insured risk occurs.

Due to the significant expansion of world trade and the extent to which the business organization invested beyond its own countries, the global insurance market quickly increased in the 20th century.[4]This led to the need for a global network of offices providing services which are not only confined to brokerage, underwriting support and claims services. There must be surmounted and tremendous legal and regulatory obstacles that vary from country to country.

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[3] Encyclopaedia Britannica, Available at https://www.britannica.com/topic/insurance. Accessed September 7, 2020

[4] Ibid pp 63

With the expansion and uptake of insurance, the need for a set of rules and regulation to govern them arose. The purpose of regulation is to protect the consumers by monitoring the solvency of insurers and their business practices. This is so because consumers are not in an equal bargaining position with insurers, thus, the government had to regulate the terms of insurance contracts. Similarly, since the consumer was purchasing a promise that would be performed in the future by the insurer, it was necessary for the government to regulate prices to prevent insurances from either undercharging that renders the firms solvent or overcharging that would be unfair to the consumer. Lastly, the insurance industry is not only been regulated for economic but also for social and political purposes.

1.1 Statement of the Research Problem

Insurance industry forms a vital part of country's financial sector as it contributes to the country's Gross Domestic Product (GDP). The industry is a mix of both local, regional and global firms that compete each other for a stake in the market. Measures have been put in place to safeguard people and businesses from unforeseen calamities. The rise of these insurance companies has led to the formation of policies by the government with the aim of regulating these entities. Insurance is investment against risks created by poor health, business cycles, fire among others which has resonated to government developing links and guidelines to be adhered to improve on the market stability and reduce on economic insecurity that would bring instability. This was seen in the European countries and U.S.A that led to policies being set to reduce pressure to households on the receiving end as a result of lack of government set policies[5].

[5] Sandra E. Black and Jesse Rothstein (2019), Policy Brief 3: An Expanded View of Government's Role in Providing Social Insurance and Investing in Children, Available at https://econfip.org/policy-brief/an-expanded-view-of-governments-role-in-providing-social-insurance-and-investing-in-children/, Accessed February 11,2020

Globally government policies have both negative and positive effects on insurance investments and as such, companies in Kenya are not left behind. One of the notable government policies made recently in Kenya is the tax law amendment bill 2020 passed by parliament as a measure to cushion the country against the effects of covid-19[6]. This law had far more reaching consequences rather than offering a relief. This bill excluded insurance agents and brokers from the list of VAT excepted suppliers and therefore, they were to charge insurance companies on services that they have offered. This is an additional cost to the insurance companies who have two options of either absorbing the cost or adjusting premiums accordingly to cover for this cost. Therefore, in this study, the political climate and its impact on external insurance businesses in Kenya were investigated.

Documented evidence shows that generally Kenya uses informal mechanisms and self-help as the most ideal strategy of responding to natural disasters. On the other hand, formal asset insurance approach is uncommon or to some extent absent[7]. This has made the Government of Kenya to come up with policies and guidelines in the insurance industry with the aim of increasing customer belief in the industry and at the same time attract investment in the insurance industry.

The formation of Insurance Regulatory Authority in 2006 was because of information asymmetry, bad customer experience among other vices in the industry. Since its formation, customer belief to insurers have significantly improved with insurers on the other hand aligning their investment with the set government policies to avoid penalties and subsequently being knocked out of the business.

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[6] KMPG (2020), Kenya: Tax Relief Measures to Help Taxpayers Cope with COVID-19 Crisis, Accessed 1 April,2020

[7] National Council for Population and Development (NCPD), (2013): Kenya Population Situation Analysis pp.176

1.2 Research Objectives

1.2.1 General Objectives

The general objective of this study was to examine the policy context and its effects on foreign insurance companies in Kenya. On the other hand, the specific objectives of the study were.

1.2.2 Specific Objectives

1. To examine the links between the government policy on investment more specifically on insurance industry
2. To critically analyse the insurance industry, government regulation and policy environment in Kenya.
3. To interrogate the effect of the government policy on the insurance industry in Kenya.

1.3 Research Questions

To achieve the outlined specific objectives, the study was guided by the following research questions:

1. What are the links between the government policy and investment in the insurance industry in Kenya?
2. What is the relationship between insurance industry, government regulation and policy environment in Kenya?
3. To what extent does the government policy promote or undermine the growth of
4. insurance industry in Kenya

1.4 Literature Review

The literature review was divided into Public, capital, and private interest theories to try and explain the study.

1.4.1 Theoretical/Conceptual Literature

Several theories have been advanced to try and explain the pattern of government regulation of the economy. Economic regulation refers to the rules and regulations that are set by government agencies through rule making supported by threat of a fine. These regulations are usually put in place to prevent market failure and monopoly.

1.4.1.1 Public Interest Theory of Regulation

The theory of public interest can be stated as the distribution to individuals of scarce resources where the market mechanisms coordinate the allocation of these resources.[8] Government regulation is one of the ways to achieve effectiveness in allocating resources. Thus, notion of public interest is supposed to be exceedingly weak and can act very unproductively if left alone and government rules have a lower cost. Those assumptions made it easier to argue that government interference in the economy, for instance in the area of union protection, tariffs and minimum wages, were government reactions to public requirements in order to rectify a free market inefficiency.

By facilitating and maintaining market operations, the regulation was considered as a way to improve allocation. The interchange of production factors provided that individual property rights would be assigned and guaranteed effectively by being collectively rather than individually organized and free to enter into a contractual relationship between parties contrary to market operations. Arrangements between producers led to price increases that represent a deviation from the marginal costs and the market supplies inefficient quantities for commodities.

[8] Arrow, Kenneth J. (1970), 'The Organization of Economic Activity: Issues Pertinent to the Choice of Market Versus Nonmarket Allocation', in Haveman, Robert H. and Margolis, Julius (eds.), Public Expenditure and Policy Analysis, Chicago, Rand MacNally College Publishing Company, pp. 67-81

To maintain market operations, anti-monopoly legislation was introduced. This was done through monitoring, creation of positions of economic power and by prohibiting competition limiting agreements[9]. Public interest theory further stated that regulation is pursued to achieve collective goals[10] and that regulators have enough information and mechanisms to enhance public interests. Although public interest theory was formulated to try and bring out the reason behind government regulation, it has shown some weaknesses as brought out by the next generation scholars. These scholars argued that existence of regulation is not related with the market imperfections and that public perceptions or interests would be interpreted into legislative actions and that the theory only stressed on achieving desired outcome without adequate accommodative provisions for equity.

1.4.1.2 Capture Theory of Regulation

This theory stated that regulation is set up by the governing bodies as a response to demands of interest groups struggling to maximise the income of their members. In this theory the economic regulation is not for the public interest but an avenue for individual groups to promote their own interests. Capitalist control regulation institutions in the society this is because regulation serves the interest of small business groups like farmers and pharmacists.

According to Bentley and Truman it was important to include interest groups in the formation of public policy as they add value in legislative and administrative process.

The capture theory focused on the role that interest groups played in the formation of public policies. It is premised that companies as profit seekers expected a favourable regulatory environment when they understood that regulators and politicians were open to influence[11] ,

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[9] Posner, Richard A. (1974) "Theories of Economic Regulation." The Bell Journal of Economics and Management Science 5, pp. 335-58.
[10] Ogus, Anthony I. (2004), Regulation: Legal Form and Economic Theory, Oxford, Hart Publishing
[11] Ricketts, Martin and Peacock, Alan T. (1986), 'Bargaining and the Regulatory System', 6th International Review of Law and Economics, pp.3-16

over a period regulation agency ceded to pressure, influence and bribes. Under these conditions' producers were well equipped to address collective action therefore having strong influence in shaping the regulatory environment in their favour. This theory has had its limitations as it failed to explain how regulation is controlled by the producer groups and how regulation only serves groups of consumers than producers.

1.4.1.3 Private Interest Theory of Regulation

Commonly referred to as Chicago theory of government[12], private interest theory offers an explanation that regulation is a process through which interest groups seek to maximise their private interests. This theory considered regulation as a tool of politics designed to redistribute income rather than an instrument of correcting market imperfections. Some scholars argue that politics and law-making process can be used by private interest groups to secure benefits from the regulatory process.

According to George Stigler[13], regulation is not given because it is subjected to the market forces of demand and supply and that regulation is transacted in the political market as a mechanism for wealth transfer. He further proposed a commodity model of regulation where regulation in this case is treated as product in the market and is subjected to the forces of demand and supply. While regulation as a commodity is demanded by several groups, the quantity supplied is determined by regulators and politicians. Open market, therefore, poses a threat to the behaviour of monopolists more than the regulatory process.

The demand for regulation comes from organised groups while the supply of products is a much more complicated area for the lawmakers this is because interest groups argue that regulatory actions by the government are not intended for the public but to satisfy the interests

[12] Noll, Roger G. (1989a), 'Economic Perspectives on the Politics of Regulation', in Schmalensee, Richard and Willig, Robert D. (eds.), Handbook of Industrial Organization II, Amsterdam, North Holland, pp.1253-1287
[13] Stigler, George J. (1971) 'The Theory of Economic Regulation',2 Bell Journal of Economics and Management Science, pp.3-21

of a particular groups. Stigler's argument on theory of economic regulation was to try and explain who receives the benefits or the burden of regulation, what method the regulation takes and its effects on allocation of resources. He goes on to state that interest groups with political interests and producers secure regulation in their favour.

Peltz man on the other hand argued that no single interest group can get hold of the regulatory body and that politicians will choose a regulation policy that maximizes their political support and allocates benefits across groups equally. His approach to regulation had three major components. First regulation conducted in the political marketplace resulting into wealth transfer. Second, demand for the product coming from the organised interest groups and third the effectiveness of the interest groups determined by costs and benefits of harmonisation[14].

1.4.2 Empirical Literature

1.4.2.1 International perspective of regulation in insurance

In the global spectre, the insurance industry is overseen by the International Association of Insurance Supervisors. The body IAIS was founded in 1994 to harmonize insurance requirements in the insurance industry. Generally, it brought supervisors from more than 200 countries to discuss developments as well as factors affecting insurance regulation.

IAIS issues insurance standards and principles that give guidance to its members. These guidelines are outlined annually based on changing trends in the insurance market space. IAIS mandate is to promote consistent and effective global supervision of the insurance sector with the aim of developing and maintaining a conducive and sound industry that not only benefits the policy holder but also protects them and at the same time ensuring global financial stability.[15]

[14] Peltzman, Sam (1976). "Toward a More General Theory of Regulation." The Journal of Law & Economics 19, pp. 211-40.
[15] The IAIS (2020) website available at http://www.iaisweb.org., Accessed September 6,2020

The regulation regime varies from country to country this is because countries have different products in the market. Introduction of a common international standard of regulatory regime could reduce costs for multinational insurers. To understand the effects of government policies on the global market, we investigated China's insurance industry. China's insurance industry has been experiencing rapid development in the recent years, in 2019 the income tripled. The Chinese insurance market is regulated by China Banking and Insurance Regulatory Commission (CBIRC)[16].

In order to expand the insurance market, the Chinese government revised rules and regulations on the foreign funded insurance companies, restrictions on foreign ownership of joint venture of life insurance companies and foreign ownership percentage were relaxed .Entry requirements were reduced from 30 years of operation to none and same rules applied to all whether foreign or local companies this kind of regulation as by far made the Chinese insurance industry the fastest growing industry in the world.

1.4.2.2 Insurance Regulation in Africa

The insurance industry in Africa remains one of the least penetrated globally yet it presents great prospects for growth. The sector has been going through substantial disruptions brought about by digital transformation, regulatory changes, evolving customer expectations, urbanization and demographic changes that are shaping the future of the industry. For insurance companies to survive this disruption and increase the penetration therefore, they need to be up to date technologically, be customer centric, be innovative and invest in talent.

We analyzed the South African market in order to determine the impact of the government policies on the insurance sector in Africa. The insurance industry in South Africa is the largest in Africa, based on written premium volume and assets. With a penetration rate of 16%, the

[16] China Banking and Insurance Regulatory Commission (2020) website available at https://www.cbirc.gov.cn Accessed September 7,2020

industry is well established. It has adopted the twin model that is same as the UK structure under which two regulators strive to improve the strength and harmony of regulation in the industry. South African government regulates the financial sector through Financial Sector Conduct Authority (FSCA) and Prudential Authority (PA) with the mandate of regulating and supervising how financial institutions undertake their business.[17]

Over the years Insurers have experienced mixed outcomes that are because of the measures put in place by the government. For example, the increment of interest rates has negatively impacted the insurers discount rate and capital costs and only the insurers with expanded portfolio have enjoyed a little bit of relief from the exchange gains. The financial intelligence centre act (FIC) has been amended to include financial institutions this is with the aim of making them accountable in the bid to reduce money laundering and terrorism financing.[18]

1.4.2.3 Insurance Regulation in East Africa

Insurance industry in the East Africa has experienced better performance in recent years. The performance however has not translated into growth for the insurance companies. The insurance environment has become more competitive with most underwriters resolving to revising premiums downwards to have a stake in the market. Technological improvement, empowered customers and unimproved insurance products are some of the challenges that affect the East African market.

As to further strengthen East Africa's integration agenda, the EAC secretariat in partnership with the World Bank established the EAC financial sector development and regionalization project1 with the objective of supporting the establishment of a single market in financial

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[17] Financial Sector Conduct Authority (2020) website available at https://www.fsca.co.za. Accessed September 7,2020

[18] South African Insurance Association (2020) website available at https://www.saia.co.za. Accessed September 7,2020

services for partner states. With the view of having harmonization of financial laws and regulations that led to the formation of EAC insurance bill in 2018.

Several collective amendments have been undertaken by the members of EAC for example, the insurance act forbidding brokers and agents from receiving premiums on behalf of the insurance companies this has been enforced in both Kenya and Uganda and has resulted into enough cash flows and swift settlement of claims. The introduction of bancassurance regulation in both Kenya and Tanzania markets has widened up the distribution channels for insurance and has contributed to the uptake for insurance products.[19]

1.5 Research Hypotheses

In order to answer research questions adequately, the study was based on the below working hypotheses; there is an inverse dynamic relationship between government policies and the growth of the insurance industry and any change in government policies impact the operations of insurance stakeholders.

1.6 Justification of the Study

For the outlined research problems to be understood to the latter, two justifications were highlighted that is academic and policy justification.

1.6.1 Academic Justification

Several studies have been done as far as insurance growth in Kenya is concerned, however these studies have focused on other areas such as pricing, uptake, performance and effects of taxation on the companies. However, there is no single study which attempted to look at the policy context and its effects on foreign insurance companies in Kenya therefore, this study filled-in the knowledge gap as well as the literature gap that existed in this area, the study

[19] Deloitte (2019) available at https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/financial-services/ea_insurance_outlook_report_2019.pdf, Accessed September 7,2019

successfully promoted the expansion of knowledge. It formed a basis upon which other researchers could rely on to form a basis for further research.

1.6.2 Policy Justification

This study aimed at reviewing the existing policy contexts with regards to foreign insurance companies in Kenya and the effects it has on their expansion. The study was able to identify several loopholes in the existing government policies, legal implication and economic implication which promote expansion of foreign insurance companies. At the end of the study, the researcher was able to suggest amendments to the existing government policies which will go a long way to ensuring that more foreign based insurance companies promote economic development.

1.7 Theoretical Framework

This study was anchored on the ADKAR model for change as advanced by Jeff Hiatt[20]. The theory provided a framework for achieving change at the organizational level. Challenges have frequently emerged in most businesses more so the ones that have just set up in foreign countries; therefore, there was need for firms to change their strategies to have a better business performance. Cartwright on the other hand argued that understanding the business environment, culture, economic and social factors is the best approach to consider when addressing the challenges faced.[21]

This was evident when Armstrong stated that organisation change management are continuously researched on by academicians, consultants, psychologists, social scientists and

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[20] Ibid, P 14

[21] Sue Cartwright, Cary L. Cooper (1996), M*anaging Mergers Acquisitions and Strategic Alliances* (Second Edition)

practitioners[22].This is so because of the complexity and unpredictability of the human behaviour and the environment hence the need to produce more models and frameworks.

For effective change management to occur the five key components of ADKAR model need to be controlled. Individuals make changes successfully when they have the essential awareness, desire, knowledge, ability and reinforcement[23]. Users of this model have the outcome orientation to change enabling transitions and achievement of organizational goals.

These are crucial elements that are aware of the need for change; staff is required to comprehend the intended change and the anticipated outcome of the transition. The wish to support the change; employees are inspired to make the change they want. Staff is empowered to know how to achieve desired changes, ability to demonstrate skills and behaviour, the right information and trainings are provided for staff regarding change management and reinforcement to ensure that change sticks; employees are given strategies to encourage and support change.[24]

The model has been proven to encapsulate the business and individual dimension of the change as well as to provide an obvious management checklist to manage the change.

1.8 Research Design and Methodology

The study used the cross-sectional method as its research design. Cross-sectional study design identifies characteristics that exist within groups because the focus is on information gathering as it ends in addition; it helped to determine the prevalence of government policies models practiced by multinational insurance companies in Kenya.

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[22] Armstrong, M. (2009) "*Armstrong's Handbook of Management and Leadership, A Guide to Managing for Results*", (Second Edition)
[23] Hiatt, Jeff. 2006. ADKAR: *A Model for Change in Business, Government, and Our Community.* Loveland Colorado: Prosci Learning Centre Publications
[24] Ibid pp 67

1.8.1 Data Collection Methods and Instruments

Depending on the closeness to which data was obtained for an event, two forms of data were collected: both primary and secondary data. The researcher sampled ten insurance companies that are foreign based and have been practicing in Kenya for the past five years. The ten were purposively sampled as they represent more than 20% of the total number of registered insurance companies in Kenya.

The sample chosen was a representative of the population since the sampling frame is based on the various continents with their unique cultural and management practices. Purposive sampling as a non-probability means of sampling was thought appropriate for this study because the researcher was looking at characteristics relating to cross cultural management practices that are specific and common among multinational companies.

1.8.2 Data Collection

During the entire investigation, primary and secondary data approaches were used. Primary data include information from a personal perspective which has not yet been documented in books or other media. Precise, current and unedited information is provided through primary data. In view of the benefits of a structured format, the use of a questionnaire was considered relevant to this study. The questionnaires were partially organized, including sections that were both open and closed. In the open ending segment, qualitative data was gathered whereas in the closing end, quantitative data are gathered. Where this is not possible, the questionnaire was submitted by the researcher personally and the questionnaire was forwarded via postal mail and called to complete it with the maximum possible precision.

Key informant interview was used on the managers in corporate communication department, finance, treasury, and legal departments of the selected companies to collect exhaustive information on the insurance industry, the government policies and how they are interlinked. Secondary data is material that has been previously collected that is utilized by a person other than the one who collected it[25]. The secondary data was found from Association of Kenya Insurers (AKI), Insurance Regulatory Authority (IRA), Central Bank of Kenya (CBK), financial statements and websites for the targeted insurance companies.

1.8.3 Data Analysis

Category of factors that included the characteristics of participants in terms of age, sex, education and income were analyzed descriptively. Factor analyzes were then used to evaluate the impact of government policies on insurance companies' business performance.

On the other hand, content analysis was employed for analyzing the main data from key informant interviews. It contributed to an extensive assessment of the status and the impact of government policies on the insurance business. The recipes received were thematically examined to evaluate the contents, conclude and construct the qualitative analysis of the essential recommendations.

1.8.4 Data Presentation

Categorical data was presented by use of frequencies and percentages in tabular form. Graphs on the other hand were used to display the business performance of the insurance companies over the years in a time series format. The graphs included the number of policies given, the number of claims settled and profits gained.

[25] Mugenda, O & Mugenda, A (2003). Research Methods*: Quantitative and Qualitative Approaches.* (1st edition). Nairobi: Africa Centre for Technology Studies

1.8.5 Research Quality

In the study the sample was selected and the data gathered, the data were processed, statistical techniques applied and ultimately the report was written. All of these have determined the quality and correctness of the conclusion. Certain methods were taken to establish the quality of the results. Validity is regarded as the concept of adequacy and precision as applied in research. [26]

Validity is the correctness and significance of the results that the study intends to capture where the extent to which the instrument is intended to measure is also measured. [27] A research tool is valid if it measures what it needs to measure and if the information it collects accurately reflects the ideas of the respondent.

The researchers ensured that the surveys were followed and that the questions were written in plain English, which the respondents understood, to assure validity of the instruments. The content of the instruments is valid to the degree that the tool adequately covers the research questions which guide the study.

The researcher sought help from research supervisors, and peer review with other members also looked for guidance as to whether questions would answer the study's aims. Pilot testing was performed with unclear questions and instructions. The responders also received important comments and ideas that enabled the researcher to increase instruments' efficiency.

1.8.6 Ethical Considerations

Permission to carry out the research was sought from the university and data collected was used for research purposes only. The researcher sought the permission of her interviewees

[26] Gass, S. M. & A. Mackey (2000). Stimulated recall methodology in second language research. Mahwah, NJ: Lawrence Erlbaum

[27] Kathuri, J.N & Pals, D.A (1993). Introduction to Education Research. Educational Media Centre. Njoro: Egerton University.

before interviewing them. The researcher did this by sending them the research instruments i.e. the Interview guide a few days before the interview date.

The researcher also explained to them everything about this study so that they make an informed decision of whether to participate in the study or not. The materials used were fully referenced and authors acknowledged. Findings from the study were presented to the actual scenario without the researcher's bias.

1.9 Chapter Outline

Chapter one basically an introductory chapter, it has laid the foundation of the study by providing the background of the study, statement of research problem and the objectives of the study. The main objective of the study is to examine the links between the government policy and investment generally on the insurance industry in Kenya. The chapter also discussed research questions, literature review which leads us to the theoretical framework adapted to the study.

The theoretical framework of the study highlights the main theory suited for the study which is the ADKAR change management model. The research methodology is indicated and the ways of analysing data. The data will be collected using questionnaires and it will be analysed qualitatively. Chapter two examines the links between government policy on investment more specifically on insurance industry. This chapter broadly reviews global literature on the government policies and the regulation frameworks on investment like the insurance industry.

Chapter three analyses the insurance industry, government regulation and policy environment in Kenya. This chapter will discuss at length or critique the insurance regulation regime in Kenya. Chapter four interrogates the effect of the government policy on the insurance industry in Kenya. This chapter examines at length the extent government policies promote or undermine the expansion of insurance industry in Kenya. A global view will be looked at in this chapter. Chapter five gives a synopsis/a summary of the whole study in a nutshell. It gives a clear outline on conclusion made on the study and offers recommendations to the study.

CHAPTER TWO: EXAMINATION OF THE LINKS BETWEEN GOVERNMENT POLICY ON INVESTMENT MORE SPECIFICALLY ON INSURANCE INDUSTRY

2.0 Introduction

The Financial Stability Board established in April 2009 has assumed the role of promoting reforms in international financial regulation and supervision[28]. In 2014, after completion of its regulation framework to global banks, it shifted its focus to the insurance industry. Majorly because the insurance industry has a banking approach framework. [29] The motivation for global insurance regulation was to enhance risk and crisis management plans.

Globally, various governments of different republics have initiated and put in place regulations in the insurance investment and the general industry in their respective companies. This has been done through setting up government bodies that play key roles in regulation of the industry, some examples across the globe include, National Association of Insurance Commissioners in the United States of America, Financial Conduct Authority in the United Kingdom, Insurance Regulatory and Development Authority of India, Financial Services Board of South Africa and Insurance Regulatory Authority in Kenya. The common concept of regulators is setting up guiding structures that introduce best practices that subsequently promote local markets. A well-versed local market consequently resonates from institution structures that have a bearing.[30]

The structures, however, differ, for example, various insurance companies of different market shares and influence in the local market have created disparity on how insurers are regulated. A key example is AIG Insurance Company with global appearance in comparison with

[28] Financial Stability Board, FSB, website (2020), available at https://www.fsb.org/history-of-the-fsb/, accessed November, 2020
[29] Financial Stability Board, FSB, (2013): Progress and Next Steps Towards Ending "Too-Big-To-Fail" (TBTF), (https://www.fsb.org/wp-content/uploads/r_130902.pdf?page_moved=1, accessed at September,2020
[30] OECD (2020), Policy Guidance on the Structure of Insurance Regulation and Supervision, www.oecd.org/finance/insurance/Policy-Guidance-on-the-Structure-of-Insurance-Regulation-andSupervision.htm, accessed July 12,2020

Kenindia Insurance Company of Kenya. This section explored the rationale on the various types of policies and how they affect the growth and development of the insurance industry. It also examined the pertinent issues on both historical, current and emerging front in the insurance industry.

2.1 Government Regulation of the Insurance Industry

All businesses located within the vicinity of different countries are regulated by the government with the aim to protect both the consumer and the producer. Insurance industry as a business, is also regulated due to the risks presented by the nature of their business. One of the vital roles of the government is facilitating a fluid flow of information between insurance and market participants to abet market failure. This is because, market failure is flagged as a violation of the conditions of workable competition, firm market power and imperfect information. Thus, in theory, regulation plays the role of primarily remedying market failures. The most common market failures in the insurance industry are information asymmetry, adverse selection and systemic risk.

Information asymmetry refers to the absence of information from the seller by the purchaser, which produces ignorant, non-interesting judgments for the buyer. The buyer's ignorance has adverse effects on the market and on society. Such cost is subsequently transferred to the economy as greater prizes in the insurance business. The government therefore needs to develop regulations to monitor this.

Failure to provide information also generates circumstances when insurers are unable to differentiate between various risks classes of policy holders known as adverse selection. Such scenarios cause a competitive market to have a major impact and ultimately lead to a lack of

static balance[31]. David Epstein in his book Why Generalists Triumph in a Specialized World on the need of government regulation in combating financial crisis stated:

> "An official with the U.S. Securities and Exchange Commission learned I was writing about specialization and contacted me to make sure I knew that specialization had played a critical role in the 2008 global financial crisis. "Insurance regulators regulated insurance, bank regulators regulated banks, securities regulators regulated securities, and consumer regulators regulated consumers," the official told me. "But the provision of credit goes across all those markets. So, we specialized products, we specialized regulation, and the question is, 'Who looks across those markets?' The specialized approach to regulation missed systemic issues.[32]"

The role of the Kenyan Insurance Regulatory Authority is to ensure effective regulations, insurance supervision and development, to formulate and enforce rules, to grant licenses to all persons, to protect interests of policyholders and insurance benefits, to promote development in the insurance industry, to ensure prompt reimbursement and at the same time to ensure that the claims are settled.

2.2 Potential Risk of Government Regulation

Some of the significant risks of insurance rules include risk moral dangers, rental behaviors and severe handling, but not limited to them. The fundamental aim of the regulatory activities of government is to empower consumers in the shifting market to protect themselves.

The moral hazard under the regulations on insurance concerns over risks taking by incentives insurance businesses without adequate safeguards and risk management techniques. In these instances, the prospective losses are covered by a government guarantee, but this might be

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31 Kukoc, K. Information Disclosure in a Competitive Insurance Market - The Government Role. Geneva Pap Risk Insurance Issues Pract 23, 224–246 (1998). https://doi.org/10.1057/g pp.668-670
32 David Epstein (2019): Range: Why Generalists Triumph in a Specialized World, Riverhead Books, New York

detrimental, since in the absence of government involvement, taxpayers can be over-loaded. This regulation may lessen the care of policyholders and reduce the principle of "caveat emptor" in the market. Therefore, reducing the risk of financial losses is important for the regulator, but not eliminating the danger entirely.

Intervention by government creates winners and losers, and rental seekers arise from them. They come about through a mixture or part of the advantages, such as lower competition, improved security and protection. The slow utilization of discretionary powers leads to economic inefficiencies, poor competition and significant social regulation costs. Heavy-handed methods are also a potential risk of government regulation. Heaviness causes a market collapse because of interference from the government and inefficiency in the marketplace. In fact, this will nullify the objective of regulations to increase the ability of a corporation to deal with the vibrant market trend.

2.3 Protecting Consumers

Controlling and managing the insurance company just like any other financial institution involves monies that belong to policy beneficiaries, policy holders, policy claimants and shareholders. This is particularly seen in the Life Insurance Policy that include pension as well. A collapse of an insurance company subsequently has serious repercussions to all stakeholders as earlier mentioned. To avoid this from happening, regulation and close supervision of the insurance industry is key. Life Insurance policies globally have been mapped as investments and as such strict supervision measures have been set by regulators to ensure policy holders premiums are accounted for to the latter. On the other hand, the underlying government regulation targeting insurers is preventing insolvencies amongst insurance companies in the local market.

The regulations set by the government thus ensures insurance companies within the national or local market are of sound financially and do not involve themselves in suspicious and irresponsible transactions. One of the major policies implemented across the globe; in countries such as United States of America, Australia and Kenya, is the need of insurance companies to disclose material facts and warranted information to their targeted consumers. All this is to enlighten the consumer with the insurance company financial prowess in the national market.

Tough penalties and conditions have been set to insurance companies suppose they fail to disclose their financial statements and transactions. This policy has protected consumers from information asymmetry on the insurer part[33]. In United States insurance industry for example under McCarran Ferguson Act passed in 1945 whose objective was to ensure state-imposed regulation served the general public holds that:

> "If a defendant's insurer rejects a reasonable settlement demand within the policy limits, takes the case to trial, and loses, the insurer could be liable for the entire judgment amount, even if it exceeds the policy limits.[34]"

2.4 Regulation of Reinsurers

Insurance companies invest on themselves by purchasing reinsurance protection. However, major government regulations on insurance companies do not extend to reinsurance companies. However, in the United States, reinsurers are regulated just the same way the direct insurers are[35]. On the other hand, United Kingdom regulatory authority, Financial Conduct Authority, FCA, has a different view and approach that insurance companies doing direct business are

[33]Ellis H. (1990) Government Regulation of Insurance Companies. In: Diacon S. (eds) A Guide to Insurance Management. Palgrave Macmillan, London. https://doi.org/10.1007/978-1-349-07495-2_17

[34] https://www.justia.com/consumer/consumer-protection-law/insurance/ , accessed November 15,2008

[35] Kimball, S.L. and W. Pfennigstorf (1981) *Regulation of Insurance Companies in the US and the European Communities*: A Comparative Study (International Insurance Advisory Council, Chamber of Commerce of the United States)

dependent upon financial protection to whom they have ceded business to[36]. This has seen other countries like Kenya treating the ceding insurer as an intermediary thus prohibiting the regulated insurers from dealing with reinsurers that have not been licensed through the regulator.

2.5 Market Regulation

Insurance market regulation is normally approached differently by various countries globally. Frequently cited major reasons for market imperfections include consumer protection that are tied to licencing and systematic risk that is tied to investment risk[37]. Thus, to provide a conducive insurance market to serve the interests of consumers and the general public, government regulations must be put in place to streamline the industry.

On the other hand, both the products they sell and the format policy used should be approved by insurance firms. This ensures that the form does not contain any coverage gaps that mislead and leave consumers exposed.

Market practices involving sales agents and contracting activities are handled as outlined in the insurance agreements to comply with defined standards and claims. This refers to abusive tactics such as faked illustrations of sales and the payment of delayed claims that are unfair to the consumers.

Market development around the world has occurred through insurance regulation and monitoring. Regional integration units, for example, such as the EU, have had impacts on regulatory and supervisory systems in different nations. This is because there could be uniform standards set at regional level that ought to be met at the national level. According to Insurance

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36 Ellis, T.H. and J.A. Wiltshire (1986) *Regulation of Insurance in the UK and Ireland* (Brentford, Middlesex: Kluwer Publishing Limited), (continuously updated).
[37] Robert P. Hartwig (2002): The Role of Governments in the Insurance Industry, available at https://www.iii.org/sites/default/files/docs/pdf/regulation.pdf

Core Principles, ICP, as set internationally by International Association of Insurance Supervisors on levelling of the playground:

> "The ICPs establish the minimum requirements for effective insurance supervision and are expected to be implemented and applied in a proportionate manner. Therefore, proportionality underlies all the ICPs. Supervisors have the flexibility to tailor their implementation of supervisory requirements and their application of insurance supervision to achieve the outcomes stipulated in the Principal Statements and Standards.[38]"

2.6 Market Practices

Timely resolution of customer's complaints and conducting market examinations are some of the ways in which insurance departments regulate market practices. The birth of call centres, social media and establishment of customer service units for complaints resolution has given customers communication platforms to engage with their insurers. The regulator on the other hand, scrutinises complaints to determine their merit based on the constituted set laws when called upon either by the insurer or customer. Market examinations are done periodically to review company's policy and claim files to ensure compliance with set state laws and regulations.

2.7 Rate and Form Regulation

Kenya has rating laws that ensure rates are not inadequate, excessive or unfairly discriminatory. This is evident for short-term business-like health insurance and general insurance business. The business is cash and carry a set-up, where clients are required to make full payment before

[38] Gunilla Löfvendahl and Jeffery Yong (2018), Proportionality in the application of insurance solvency requirements, Bank for International Settlements (BIS)

receiving the product. The regulator flags and disapproves where the regulatory requirements are not met.

On the other long-term business-like life insurance, premiums are not subjected to regulatory approval although IRA seeks to ensure policy benefits are commensurate with premiums charged[39]. This has enabled clients compare quotes of different insurance companies in suit with their pocket. According to Russell Rabichev, Marketing Director of Internet Marketing Company[40],

> "Certain events can affect the price paid on car insurance. To avoid surprises, drivers are recommended to compare online car insurance quotes once at every six months"

2.8 Solvency Regulation

The regulations on government effect both Kenya's insurance market structure and its performance. The entry into insurance markets and scope of goods and prices can be supported by strict restrictions on solvency. A typical example is Kenya, where authorities do not allow insurers to put 100% of their capital in riskier non-investment bonds to ensure high credit rates for pension plans. Consumers' readiness to accept solvency constraints in the financial risk of insurers has emerged to safeguard their interests in fulfilling their commitment; this is in accordance with Section 3A of the Insurance Act for insurance company compliance.

2.9 Financial Monitoring

As a financial sector, the insurance industry may be exploited for purposes of money laundering. This is because the items and transactions in question offer money launderers with

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[39] Robert W. Klein (2010): The Role of Government in Risk Management and Insurance, available at https://www.researchgate.net/publication/270502925_The_Role_of_Government_in_Risk_Management_and_Insurance

[40] Russell Rabichev, Marketing Director of Internet Marketing Company,(2020), https://apnews.com/press-release/accesswire/lifestyle-business-industry-regulation-government-business-and-finance-government-regulations-2bed774b6acd2df7b45f5a41e41e8a70, November 15,2020

an opportunity. Insurance firms may, as the industry is vulnerable, be involved in the vice willingly or unconsciously. In compliance with its purpose to regulate, develop and oversee the sector, the regulator, the Insurance Regulatory Authority developed guidelines for the fight against money laundering and took additional safeguards in the transaction of the business in 2011.

Internationally, a taskforce by the name Financial Action Task Force (FATF) was formed to combat the vice of misuse of financial systems through money laundering[41]. FATF's recommendation is backed by the International Association of Insurance Supervisors (IAIS), of which Insurance Regulatory Authority is a member.

The recommendations adopted and set the Insurance Regulatory Authority in Kenya highlighted clear methods on customer identification, flagging of suspicious activities, record keeping and reporting suspicious activities to the regulator for further scrutiny and investigations.

These set guidelines to the insurance industry players have made insurers develop instruction manuals that have helped them set out procedures to; customer acceptance, customer due diligence, record keeping, identification and flagging suspicious transactions and staff screening and training.

2.10 Statutory Accounting

The main aim of insurance businesses' financial reporting is to give financial information that ensures that clients can then choose educated decisions that always meet their responsibilities. Well renowned financial reporting organisations, such as the IASB, the International Association of Insurance Supervisors, IAIS and the FASB, have established international standards for ensuring the adequacy of financial reporting. This includes financial accounting

[41] Financial Action Task Force (2020) Website available at www.fatf-gafi.org Accessed September 15,2020

standards. The Statutory Accounting Principles (SAP) ensure the conservation of assets and liabilities and that non-liquid assets are not included in insurer surplus calculations.

The insurance law in Kenya requires comprehensive information to be made available by insurance providers under CAP 487 sections 59 to 66. In addition, the Act states that it allows both parties to decide informedly at the edge of contract. On the other hand, the sections 54 to 56 demand insurance firms in a well-structured and time-frame manner to prepare and present financial statements and records, to which the insurance company would be punished.

Reporting adequately is a key and critical performance tool used by the insurance company to guide the consumers of insurance services as well as investors to enable them to make informed judgment on their investment. On the other hand, this information is critical to insurance company's' ability to attract both local and international capital.

Civil Suit 32 of 2018 of UAP Insurance Company Limited of Kenya versus Canadian Baptist International is one case that highlighted the need for full disclosure of financial records before a contract is signed. In this case, the plaintiff, who was UAP Insurance Company Limited of Kenya accused Canadian Baptist International of obtaining a policy without fully disclosing material facts and falsified representation of material particulars.[42]

2.11 Intervention and Receiverships

To prevent and minimize losses to policyholders, Insurance Regulatory Authority is key in ensuring companies going down due to financial constraints are managed by setting up appropriate regulatory measures in ensuring the same. The regulator rehabilitates troubled insurers through two different action points: to prevent a financial troubled insurance company

[42] Kenya Law (2018): Civil Suit 32 of 2018, available at http://kenyalaw.org/caselaw/cases/view/186945, accessed at December 6,2018

from becoming insolvent and delinquency proceedings against an insurance company with the intention of rehabilitation and liquidating the insurance company.

Well known examples in Kenya happened in 2019 where Access Insurance Company Limited, Lakestar Insurance Company Limited, Kenya National Assurance Company Limited, Standard Assurance Limited, Stallion Insurance Company Limited and Liberty Assurance Limited were all deregistered after failing to comply with various requirements capped under the Insurance Act. On the other hand, BlueShield Insurance Company, United Insurance Company Limited and Concord Insurance Company were all put under statutory management after mismanagement and stakeholder wrangles rocked the insurance firms. [43]

2.12 Guaranty Associations

Guaranty Association by the state was established to protect policyholders, beneficiaries and claimants against fiscal losses due to insurance companies' insolvencies. According to Cummins, 1988, most stakeholders support insolvency guaranties but some experts criticize the current system of moral hazard problems.

Fundamentally, the goal of insolvency guaranty of association is to cover insolvent insurer's financial obligations within statutory limits. An example in Kenya is on health insurance where across all insurance companies, certain medical conditions such as maternity, chronic and pre-existing conditions have a one year waiting period. In Mississippi state, which records one of the lowest rates of insolvencies in the United States of America, Mississippi Insurance Department headed by Mike Chaney, guaranty of associations stepped in to pay claims to policyholders of an insolvent insurance company when the company's assets run insufficient

[43] The Star Newspaper website (2019): *IRA accused of protecting dodgy insurers*, accessed on March 28,2019

to meet their obligations to their policyholders. These claims monies came from assessments made against all insurers that are members of the respective guaranty association. [44]

[44] Mississippi Insurance Department website (2020), https://www.mid.ms.gov/consumers/guaranty-associations.aspx, accessed December 6,2020

CHAPTER THREE: A CRITICAL ANALYSIS OF THE INSURANCE INDUSTRY, GOVERNMENT REGULATION AND POLICY ENVIRONMENT IN KENYA

3.0 Introduction

The Kenya insurance market has improved over the years. Kenya was ranked as Africa's most mature insurance market spaces according to EY 2016 survey, this was after a significant 6% growth forecast was noted annually.[45] However, this has improved significantly to an annual income of 2.2 billion dollars in 2018, an increase of 0.4 billion dollars recorded in 2014. Despite all indicators pointing to the market's growth, the industry has encountered a fair share of challenges too. An overview into the years 2015 and 2016 outlined a below-par market performance subsequently leading to stunted growth. Issues related to fraudulent claims mostly in the medical and motor business line and insurers struggling to break and penetrate the market coverage mostly to target low-income earners came up.

On the other extreme, improved performance in the insurance industry in Kenya has been energized with widespread digital transformation trends, big data analytics, talent and product development in the automation age and mergers and acquisition trends. This has enabled the country to solidify and widen its reach to other African insurance markets, leading to a pull of investors the country's way[46]. From a regulatory perspective, the government has established a statutory government agency that supervises, regulates and develops the insurance market space through laws. The statutory government body ensures that all insurance players are consistent with the provisions set up in the Insurance Act[47].

This chapter discussed comprehensively the insurance industry in Kenya focusing specifically on insurance regulations put in place by the regulatory government agencies, critical analysis

[45] Oxford Business Group (2017), Available at https://oxfordbusinessgroup.com/kenya-2017/insurance
[46] Deloitte (2019), Available at https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/financial-services/ea_insurance_outlook_report_2019.pdf, accessed at September, 2019
[47] Insurance Regulatory Authority, IRA, website, available at https://www.ira.go.ke/, accessed November 2020

of government institutions in the country and strengths and weaknesses of the already set laws and their effect in the insurance industry in Kenya.

3.1 An Overview of the Insurance Industry in Kenya

Insurance companies have been in existence in Kenya since the pre-colonial era where most of them were owned by the British insurance firms who took opportunity to establish agencies that served the colony's insurance need. After Kenya attained independence in 1963, majority of the branches were transformed to fully-fledged insurance companies. The Government of Kenya (GOK) saw the need to have control over the insurance industry as majority of them were foreign based and were governed by Companies ACT 1960. There was no competent body to supervise the industry thus the need to localise the branch offices of the foreign insurance companies within the country to benefit the local investors. The insurance industry in Kenya is governed by the Insurance Act[48] which was enacted in the year 1985.

The companies have grown steadily since independence and by January 2020 Kenya had 56 registered insurance companies and 5 reinsurance companies[49], which signals a good sign of development in the sector. Kenya leads in East Africa against Tanzania and Uganda and it is the key player in the COMESA region.

Insurance Act CAP 487 was enacted in 1986 and enforced in January 1987. The act provided for the office of a regulator and the requirements for registration of insurance companies, reinsurance companies and other players in the field like the agents and brokers. This office was created as a department in the Ministry of Finance whose core mandate is to supervise the insurance industry. To achieve autonomy, the government delinked the department from the ministry and in 2006, the insurance regulatory authority (IRA)[50], a statutory government

[48] Cap 487 of the Laws of Kenya
[49] Insurance Regulatory Authority, IRA, (2020) website available at https://www.ira.go.ke. Accessed on September 7,2020
[50] Ibid

agency was established under the insurance act, CAP 487 of Kenyan Laws to regulate, supervise and develop the insurance industry. It also advocates for a quick settlement of insurance claims without court cases and the implementation of the no fault insurance system.

Kenya is and remains a commercial hub for MNCs such as insurance firms this is because it has a large consumer market and it acts as a regional base for MNCs (126 million people), this expansion has extended to the neighbouring countries. The expansions are through the Southern African Development Community (SADC), East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA) that form a free trade area that reach more than 520 million people. The annual World Bank economic memorandum has pointed out Kenya as a country with a good score when it comes to ease of doing business. The word bank report released for 2019 ranked Kenya 56th worldwide and 3rd among African nations[51], meaning Kenya is a favourable environment for starting and operating an insurance firm.

3.2 Regulatory Framework in Kenya: Institutions and Legislative

An extensive institutional structure developed to perform insurance regulatory functions in Kenya is known as the Insurance Regulatory Authority (IRA)[52] .It is charged with regulating, supervising and developing the insurance industry in Kenya. Regulation involves ensuring that all the players in the insurance industry comply fully with the provisions of the insurance act CAP 487. Supervision is an oversight function on the operations of the insurance companies and includes ensuring: the viability of applications for licensing; all board members and senior management staff are qualified; insurers have adequate capital at any given time; approval of insurance products; and auditing of accounts.

[51] World Bank Ease of Doing Business Report (2020) Available at https://www.doingbusiness.org Accessed on September 7,2020

[52] Ibid

It is headed by the board of directors and run by the commissioner of insurance. The structure of the IRA is as show in Figure 1.

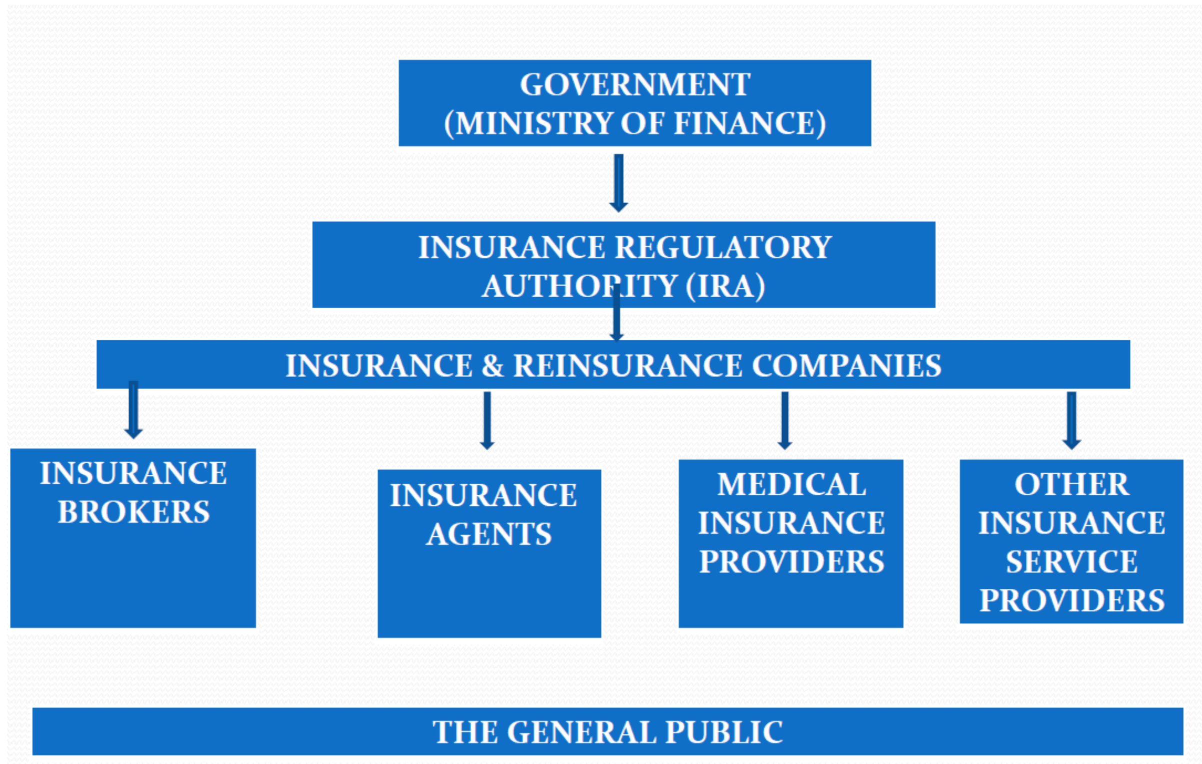

Figure 3. 1 Structure of IRA

Source: Insurance Regulatory Authority, Kenya (2021).

3.2.1 Functions of IRA

Insurance Regulatory Authority, IRA, has key roles to play in the insurance industry in Kenya. Its roles include:

3.2.1.1 Supervision

This is enforcement of rules and standards guiding the insurance business conduct in Kenya. This entails the off-site and on-site company inspections with the aim of checking compliance levels in line with the set regulations to ascertain capital sufficiency, professional running of the companies, payment of claims is done as per the set policy terms, appropriate products are offered to consumers and ensuring companies report their financial transactions before issuance

of annual licenses[53]. Apart from the mentioned, IRA, also performs risk-based supervision to ensure smooth and transparent market space.

3.2.1.2 Regulation

Insurance Regulatory Authority, IRA, also regulates the insurance industry in Kenya and ensure proper functioning of the industry. This is made possible by IRA to the industry under regulations and schedules highlighted under the Insurance Act Cap 487. Guidelines and circulars are normally issued by the Chief Executive Officer, CEO, and Commissioner of Insurance of IRA giving details on the provisions intermediaries and insurance companies are bound to comply with. The guidelines issued include rules of corporate governance, intermediaries and anti-money laundering.

3.2.1.3 Development

Through research carried out, IRA, identifies and establishes consumer requirements with the view of improving and enhancing development in the insurance industry in Kenya. On the same breath, insurance companies are urged to adopt innovation to respond to customer needs. This has been noted from insurance companies like Jubilee Insurance where one can purchase motor insurance online with necessarily physically visiting their main office or branches[54].

Through the awareness commended by the regulator, insurance companies in Kenya such as CIC Group Insurance Company have come up with crop and as well as livestock insurance to meet client needs[55]. The regulators research insights have seen the uprising of banc assurance, which has increased the industry's customer base since it is innovation. This innovation has

[53] Insurance Regulatory Authority, IRA, (2011), available at https://www.ira.go.ke/attachments/article/112/ROLE%20OF%20IRA.pdf, accessed at November 11,2011
[54] Jubilee Insurance of Kenya, (2020), available at *https://bit.ly/3mOid2p*, accessed October, 2020
[55] CIC Group (2020), available at https://cic.co.ke/product/livestock-insurance/, accessed September 2, 2020

seen insurance companies' partner with banks and subsequently improving on market penetration[56].

3.2.1.4 Consumer Education

Insurance Regulatory Authority, IRA, organizes consumer education programs which always seek to educate the public on the benefits and importance of insurance policies, policy holders' obligations and rights, provision of viable information as captured in the policy terms as well as the importance of going through the policy document. Subsequently, the education and insights received from IRA programs enable consumers to make and have informed decisions before and after purchasing insurance policies.

3.2.1.5 Consumer Protection

In the insurance market space in Kenya, IRA, has a key responsibility of ensuring policy holders and beneficiaries contract is adhered to by insurance companies. Any customer complaints received by the authority's consumer protection unit is scrutinized and responded to with the seriousness it deserves. Assistance is provided to consumers at a toll-free charge. At the same time under consumer protection, IRA, ensures policy terms and wordings are standardized to protect consumers from overseeing statements that might end up interfering with their returns.

3.3 Retirement Benefit Authority (RBA)

Retirement Benefits Authority (RBA) is a government regulatory body under the National Treasury that was established under Retirement Benefits Act. The Retirement Benefits Act was enacted to address the many problems that have hitherto faced the retirement industry through

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[56] Finaccord Report (2020): *Bancassurance in Kenya: Current State and Future Perspectives to 2020,* available at https://www.finaccord.com/Home/reports/Bancassurance-in-Kenya-Current-State-and-Future-P , accessed October 14, 2020

harmonized legislation[57]. Retirement Benefits Authority, RBA, in Kenya as a regulatory body is mandated to; supervise and regulate the establishment and management of retirement benefit schemes, protect members and sponsors interests in the retirement benefits sector, to promote and ensure development in the retirement benefits sector, to advise and give guidance to the National Treasury on national policies to be followed in the retirement benefits sector and to ensure implementation and compliance of all government policies related to the retirement benefits industry.

3.4 Regulation Wins in Kenya

Insurance regulation in Kenya by the government regulatory body, IRA, has enabled the industry win in different aspects. By coming up with set guidelines and procedure that are enshrined in the laws of Kenya, the regulator has been able to help govern the industry. Below are highlighted acts that have played critical parts in ensuring sanity in the insurance industry in Kenya.

3.4.1 Crime and Anti-Money Laundering Act

The Anti-Money Laundering Guidelines as issued and captured pursuant section 3A of the Insurance Act has enabled and assisted insurance companies deal with crimes related to money laundering. Under the guidelines, insurance companies have the mandatory duty to develop and set up structures that can detect, deter and subsequently report any possible incidences of money laundering in the industry. This is because the insurance industry in Kenya is in a vulnerable state of being misused for money laundering purposes from the products and transactions provided by insurance companies.

[57] Retirement Benefits Authority, RBA, (2020), http://portal.rba.go.ke/, accessed at May 8, 2020

Insurance companies can get involved either knowingly or unknowingly in money laundering practices thus exposing their clients and the company to legal, operations and reputational scrutiny. The role played by IRA, internationally is played by Financial Action Task Force (FATF)[58], this is backed up by International Association of Insurers Supervisors, IAIS, which gives and guides on insurance standards. This act by the IRA, has seen Kenyan licensed insurance companies combat money laundering to meet Financial Action Task Force recommendations[59].

The Insurance Act on money laundering has enabled the regulatory body, IRA, to empower the general public and insurance companies on transactions and products that can be more vulnerable to money laundering for their attention and consumption. Subsequently, more precautionary steps are vital when dealing with these transactions. Examples of vulnerable transactions and products include: Matured or surrendered life policies which corresponds to funds becoming available to policy holders or beneficiaries.

However, beneficiaries are sometimes changed before maturity of a policy for the payments to be made available to the new beneficiary. This in the financial industry where insurance sector fall is interpreted as a policy being used as collateral to purchase other financial instruments. These investments and transactions are a a web of complex transactions whose sources are not known in the financial system. General insurance business is vulnerable to money laundering through inflated and unwarranted claims that are fake, for the investor to make a kill and recover part of the investment illegitimately. On the other hand, insurance intermediaries get themselves involved in money laundering by failing to carry out due diligence on their customer or being flagged for facilitating illegal transactions within the insurance industry. The

[58] Insurance Regulatory Authority, IRA, report (2011): Guidelines to the Insurance Industry on Implementation of the Proceed of Crime and Anti-money Laundering Act, accessed July 1,2020
[59] Institute for Security Studies (2006): *Detecting and Investigating Money Laundering in Kenya*, accessed at https://issafrica.org/chapter-4-detecting-and-investigating-money-laundering-in-kenya

re-insurance are vulnerable and can be used for money laundering activities by establishing fictitious insurance companies and intermediaries that disguise their sources of funds or deliberately filling their books by proceeds of crime. Long term insurance contracts have also been highlighted as a vulnerable avenue of money laundering since individuals who purchase annuities or purchase policies then make lump sum contributions do so with proceeds of crime. However, one dissatisfied respondent underscored IRA's role in crime and anti-money laundering stating:

> "The crime and anti-money laundering act is good, however, the process is very slow. Once one finds him/herself in the middle of it, you'll understand the process is super slow. The regulator needs to be pro-active and move away from only sitting on the act[60]"

In other words, the respondent did not see IRA as productive regulator when it came to the anti-money laundering act. On another hand another happy respondent stated,

> "IRA has done great, they have set heavy penalties when an insurance company gets itself in laundering of cash, making them fear getting in the practice.[61]"

3.4.2 Licensing of Insurance Intermediaries

Pursuance of section 184 of the Insurance Act in Kenya, by October 2020, IRA, went ahead and gave licenses to one hundred and ninety-eight insurance brokers and ten thousand nine hundred and ten insurance agents.[62] Distribution of insurance products is cumbersome and the need to have a link between the insurance companies and consumers is key. It is from this that insurance intermediaries play a critical role in distribution and purchase of insurance products

[60] Researcher, Interview with Susan Njonjo-Insurance Undewriter-Jubilee Insurance Company, Kenya, November 15,2020
[61] Reseacher, Interview with Asha Wesusa-Client Service Manager-Jubilee Insurance Company, Kenya, November 15,2020
[62] Insurance Regulatory Authority, IRA, (2020): 2020 Registered Insurance Intermediaries as at 19th October 2020.

and services. However, in a market space where all manner of deceit is likely, the role of IRA to license the intermediaries was timely. This has protected both insurance companies and consumers from being defrauded their hard-earned cash by people who purport to be insurance intermediaries, only for them to disappear with premiums meant for policy purchased.

On another positive aspect, licensed intermediaries have improved the insurance market space in Kenya by; coming up with innovative marketing approaches and disseminating insurance information to consumers, dissemination of insurance information to the market space has helped spread the insurers' risks and has also helped in reducing insurance cost and has resulted into a sound competition[63]. Figure 2 below shows the number of trained sales agents by Executive Certificate of Proficiency in Insurance. A significant increase from one thousand and seventy-four in 2002 to five thousand and seventy-three in 2018 was noted thanks to Insurance Regulatory Authority.

County	No. of Participants	Date
Siaya	130	19th February – 3rd March 2018
Tana River	118	26th February – 10th March 2018
Lamu	124	16th – 28th April, 2018
West Pokot	123	14th – 26th May, 2018
Marsabit	127	11th – 23rd June, 2018
Turkana	100	13th – 25th August, 2018
Nyandarua	100	3rd – 15th September, 2018
Mombasa	100	5th – 17th November, 2018
Vihiga	100	19th November – 1st December, 2018

Figure 3. 2 Number of trained sales agents by Executive Certificate of Proficiency in Insurance

Source: Insurance Regulatory Authority, Kenya (2018).

The significant increase in agency force since 2002 is attributed to insurance penetration to the general masses. Satisfaction drivers on the licensing requirement from the regulator has always

[63] World Federation of Insurance Intermediaries (2017) website available at https://www.ciab.com/wp-content/uploads/2017/04/RoleOfInsInt.pdf, accessed March 15,2017

been prompt which has helped; maintain quality standards in the insurance marketspace, ensured professionalism as a key tool of engagement, enabled services to be achievable from good services, enabled intermediaries to work without fear and it has ensured trust to be a key attribute between the insurance companies and consumers [64]. From the research, a respondent who was very satisfied with the licensing act stated:

> "The licensing bit has really assisted us weed rogue agents and intermediaries who have been conning policy holders their hard-earned cash. However, IRA should have a plan of reviewing the licenses on a particular time not just when they receive a complaint[65]"

3.4.3 Consumer Protection

In any market industry, consumer protection is key to the growth of the industry. In Kenya, this is enshrined in the Insurance Act 2013 with provisions; 3, the IRA's mandate, 5, contracts, 74 & 75, rates, 76, rights to pay, 77, defaults of insurer, agent and broker, 80, policy documents, 120, winding up,156, premiums, 164, adverts, 196A, registration and lastly, 203, claims[66].

In seeking to protect insurance consumers, IRA, has striven to address received complaints as per the Insurance Act provisions of the industry. Which calls for the complaints to be looked at a wider broad scope to ensure insurance consumers are protected from bad practices in the insurance industry. The measures put in place to realize this include: enforcement of the provisions of the Insurance Act in the insurance industry, enforcing compliance on the already set guidelines to the industry, establishment of Consumer Protection department that has solely handled consumer arising issues. The department has strived to address complaints lodged by the policy holders, agents and brokers against insurance companies.

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[64] Teresa Oino, (2011*):* Analysis of Factors Affecting Growth of Agency Force in Kenya IRA, Nairobi, pp 23-25

[65] Reaseacher, Phone Interview with David Wanyama-Risk Analyst-Zamara Insurance Brokers, Kenya, 11th December 2020

[66] Insurance Regulatory Authority, IRA, (2020), available at https://www.ira.go.ke/images/docs/TREATING%20CUSTOMERS%20FAIRLY.pdf, accessed March 12,2013

Policy holders who are dissatisfied by a decision of an insurance company have always sought redress from IRA. IRA has also in the recent times organized public education programs after recognizing the general lack of understanding of the industry's products. It thus embarked on educating consumers of the benefits of taking insurance products at the same time the importance of going through the policy document. The department has targeted all cadres of insurance consumers in the industry from individuals, businesses and corporates.

At the same time, the regulator IRA, has established an Insurance Fraud Investigation Unit in partnership and collaboration with the Kenya Police Service to investigate any form of fraud malpractice in the insurance industry. Every market shareholder from individual, agents, brokers and insurance companies have been urged and encouraged to report any suspected case of insurance fraud to the unit for investigations to be done[67].

Constitution of Kenya 2010

– Article 46 (consumer rights)

Goods/service of reasonable quality

-information to gain full benefits from goods/services

– Article 35 (right to information)

– Article 47 (fair administrative procedure)

– Article 22 (enforcement of bill of rights)

Consumer Protection Act 2012

Section 3 (4) on purpose of the Act:

- Promoting fair and ethical business practices
- Protecting consumers from improper trade practices
- Improving consumer awareness and informed consumer choices and behavior
- Promoting consumer confidence and empowerment

Insurance Act 2013

The provisions run through the Act including:

3, IRA's mandate

5, contracts

74 & 75, rates

76, right to pay

77, defaults of insurer, broker agent

80, policy docs

87, cooling off

114, T & A

120, winding up

156, premiums

164, adverts

179, PCF

196A, register

203, claims

Competition Act 2010

- One of the objectives of the Act is to protect consumers from unfair and misleading market conduct.

- Creates the following offences:

= False and misleading representations

=Unconscionable conduct in business practices

[67] Insurance Regulatory Authority, IRA, (2020): Safeguarding the Rights of Consumers of Insurance Services, available at https://www.ira.go.ke/images/docs/Safeguarding_the_Rights_of_Consumers_of_Insurance_Services.pdf, accessed at November 5, 2020

Figure 3. 3 Regulatory Framework for Customer Protection

Source: Insurance Regulatory Authority, Kenya (2021).

From the respondent's insurance customers showed their overwhelming statements when it came to IRA's hand in customer protection, one of the respondents stated,

> "Without IRA, the insurance industry in Kenya would have be in the woods, customers would have been suffering as a result of expensive insurance products, rogue agents, insurance companies failing to pay claims and subsequently clients losing their hard-earned cash, it would have been bad, bad for sure.".[68]

The statement summed up on the different service points clients have been saved by the existence of Insurance Regulatory Authority.

3.4.3.1 Policyholder Protection

In September 2014, UK's Prudential got into an agreement deal of Ksh 1.5 billion and bought Shield Assurance from Blue Shield, a Kenyan based insurance company. Part of the funds received from the deal was earmarked in paying outstanding benefits on matured policies[69]. This was after the intervention of the regulator IRA after realizing the insurance company was in shambles at the same time policyholders were uncertain of their already paid premiums.

Contributions to the Policyholders Compensation Fund was first set up in 2005 but later altered and changes made to the terms in 2015. The amendment regulation required insurers to contribute 0.5% of the total premiums collected from general and life business, previously, insurance companies and the policyholders each contributed 25%. An add on and benefit from

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[68] Researcher, Interview with Collins Otieno-Life Insurance Customer with ICEA Lions, Kenya, 27th November 2020

[69] Oxford Business Group, (2020),: New regulatory framework bringing Kenya in line with international best practices, available at https://oxfordbusinessgroup.com/analysis/shifting-gears-new-regulatory-framework-bringing-sector-further-line-international-best-practices, accessed at November 6,2020

the amendment made is individual policyholders are to benefit and receive a maximum compensation fund of Ksh 100,000 suppose an insurance company succumbs to liquidation or closes shop.

The fund had accumulated assets of up to Kes 3.6 billion by the end of June 2014, Kes 2.8 billion more in comparison with the previous year, 2013, as per the annual 2014 report [70].No payouts have been made since its launch; however, four insurance companies were under statutory management and compensation would have been available to the policyholders in the worse event the court declared the four insurance companies' insolvent.

Additionally, consumer protection measures by the regulator have incorporated "cash and carry" rules that require insurance companies to assume risk when they receive a premium. Over the years, this has been an issue when it comes to claims. Insurance Regulatory Authority, IRA, has gone ahead and included new penalties on delays in claim settlement, IRA, set a target timeline for claims settlement to be within 30 days after a claim is lodged. A respondent backed this statement by stating,

> "I had a very bad customer experience with one insurance company, they failed to pay my claims after getting involved in an accident, this forced me to move to a competitor. My policy matured and I was to be paid, I experienced delay at first and reached out to the regulator, can you imagine, by end of the week after raising it with the regulator, I received my cash." [71]

[70] Ibid
[71] Researcher, Phone Interview with Jeremy Mwihaki-Customer of Life Insurance Company, Jubilee Insurance, Kenya, November 3,2020

3.5 Increased and Risk-Based Capital

In June 2017, the treasury spelt out a phased increase in basic capital requirements for insurance companies. General insurance companies were urged to boost capitalization from KSh300m to KSh600 million and life insurance companies from KSh150 million to KSh400 million. On the other hand, general reinsurers were urged to increase their capital from KSh500 million to KSh1 billion and life reinsurers from KSh300 million to KSh500 million. Businesses offering combined lines were urged to increase capital significantly to show that they cover each line separately. The new rules spelt out a hybrid system which consolidated the market and subsequently encouraged risk-based compliance, this is according to Association of Kenya Insurers, AKI, Executive Director Tom Gichohi[72].

> "The options (for non-compliant insurers) will be either you merge to raise your capital levels or if you do not find anybody to merge with or prepared to invest in your company, then you offer yourself to be bought out. Whether we shall have increased buyout or mergers will be determined by the implementation of RBC."

3.6 Takaful Rules

Muslims make up to approximately 15% of Kenya's population of about forty-seven million people based on the 2019 Kenya National Bureau of Statistics census results[73], but Islamic banking comprises only about 2% of total banking business. This made the regulator, IRA, under Insurance Act CAP 487 introduce new guidelines for Takaful insurance products. Generally, Islamic insurance is based on the principle of mutuality in which the Takaful company oversees a pool of funds contributed by all individual policyholders, as it sits

[72] Ibid

[73] Center for Affordable Housing, (2020): *2019 Kenya Population and Housing Census Reports*, http://housingfinanceafrica.org/documents/2019-kenya-population-and-housing-census-reports/, accessed February 28,2020

currently only two companies provide Takaful schemes. Kenya Re also developed a sharia-compliant reinsurance product.

After the introduction of Takaful guidelines, companies that offered both forms of insurance needed to report their Takaful windows from the mother firm and keep the funds separate. At the same time, the operating model was to be approved by the board of religious scholars and the Sharia Supervisory Council; these rules were effected in June 2015 for compliance by the end of December 2015. [74]

3.7 Electronic Regulatory System

In January 2014, Insurance Regulatory Authority, IRA, directed all insurance companies to submit their annual audited returns through the Electronic Regulatory System platform. The Electronic Regulatory system was to assist with the submission of online returns, streamlining on data outputs and analysis, saving on delays and online registrations for agents and brokers after the launch of the platform, this was completed in 2016. This regulation was a step to digital innovation, and it helped move away from the traditional manual ways of performing such duties.

3.8 Challenges Facing Insurance Industry in Kenya

Despite well set insurance regulation in the industry, numerous challenges have faced Insurance Regulatory Authority, IRA, in pursuit of its mandate. The challenges have made the industry experience set back in regulation and has resulted in unethical competition, low market capitalization, drop in professionalism standard and mismanagement of insurance companies because of embezzlement of funds by top management. However, a deep dive analysis on the

[74] Ibid

challenges shows gaps from the office of commissioner of insurance, individual policy holders, intermediaries and insurance companies[75]. The challenges identified include:

3.8.1. Licensing Requirement

Despite the pros of licensing requirement in the insurance industry in Kenya by the regulator IRA, it has experienced some challenges. Some of the challenges experienced include too many requirements that slow the licensing process, despite the licensing requirement, IRA has failed to eliminate rogue agents in the insurance industry, high penalty for late registration, high licensing fee, failure to exempt long-term serving agents from Certificate of Proficiency, COP, requirement and the regulator's failure to safeguard agents welfare[76].

In Kenya, licensing challenges have had the regulator on the receiving end. The instant mushrooming of insurance companies has led to congestion and subsequent price wars. The congestion has also been attributed to investment banks which are non-insurers whose presence in the market has eaten the market-share as well making the industry a highly competitive space to the regulator. In the congested insurance industry, insurance companies have also been accused for not sharing information amongst each other this has subsequently led to the regulator's supervisory role in developing the insurance industry[77].

Insurance companies and intermediaries complying to Insurance Regulatory Authority, IRA, set laws has seen the regulator provide legal requirements to its players to ensure sound business practices are maintained. At the same time insurance companies that have been licensed are expected to have set defined objectives and standards of intervention to remain solvent and viably operational. Over eighty insurance brokers permits were denied by IRA due

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[75] Koima Augustine Kibet,(2003): A study on the Challenges in the Regulation of the Insurance Industry in Kenya, University Of Nairobi, http://erepository.uonbi.ac.ke/handle/11295/40228, accessed on November 6,2003

[76] Ibid

[77] Vyonna Bondi (2015): Problems and Challenges facing the Insurance Regulatory Authority in Kenya, wordpress, https://hitchhikersguidetolaw.wordpress.com/2015/06/16/problems-and-challenges-facing-the-insurance-regulatory-authority-in-kenya/#27036711, accessed June 16,2015

to non-payment in February 2020, Nelson Omollo, Chairman of Association of Insurance Brokers of Kenya (AIBK), made his voice heard during the fourth February conference by saying,

> "The registration process is still ongoing, and we are sure more will be cleared. Non-remittance of premiums was one of the conditions in a host of other criteria which brokers were supposed to meet[78]"

This was after members of AIBK raised concerns of high fees imposed by IRA and lack of prompt process on insurance of the permits. This threw IRA to the receiving end since brokers are key insurance stakeholders that aid in insurance penetration in the insurance market. From the study, one respondent shared the same sentiment by stating,

> "There are too many requirements for one to be licensed, the process is slow, and the regulator does not take into account the views of the stakeholders, it's like they make pillow decisions then want us to follow them[79]"

3.8.2 Customer Education through Public Awareness

The education of insurance consumers in the Kenya market has over the years been left to insurance companies leading to low level public awareness on the insurance market. The regulator, IRA, has been pinpointed for disseminating insurance information to the public only when unveiling annual reports and in their annual general meetings. This has subsequently led to customers feeling not fully supported because of not getting avenues of giving sufficient feedback on insurance malpractices in the industry. A respondent from the study highlighted this as,

[78] Business Daily (2020); IRA denies over 80 brokers permits on non-payments, https://www.businessdailyafrica.com/bd/corporate/companies/ira-denies-over-80-brokers-permits-on-non-payments-2281544, accessed February 24,2020

[79] Researcher, Phone Interview with James Mbithe-Insurance Broker, November 2nd, 2020

"They only wait for customers to come to them with complaints instead of preventing the complaints by cascading insurance information first.[80]"

This clearly highlighted a gap in information asymmetry in the insurance industry in Kenya with most interviewed respondents feeling that they have been left in the hands of agents and brokers who withhold certain information for one to purchase the insurance product.

3.8.3 External Political Interference

The law functions and relates to politics in three basic aspects, as a goal, as a means and lastly as an obstacle[81]. In Kenya's insurance regulation sector, obstacle as an aspect has been a challenge to the industry. The lack of full autonomy of the regulator, IRA, has crippled the agency by hampering its ability to evaluate, formulate and enforce its own policies. This has been attributed to the fact that the political elite, own, have majority shares or have interests in majority insurance companies as well as high end intermediary firms. It is for this reason that some insurance players have complained of biasness from the regulator[82]. The fact that the regulator, IRA, is under Treasury also creates an avenue for direct political interference, as shown in Figure 1. One respondent who sought anonymity due to the sensitivity of the matter stated,

"Most of major insurance companies in Kenya are owned by the who, decision makers in the government, as such, most of the regulations they come up with only favor their businesses leaving upcoming insurance companies to play second fiddle.[83]"

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[80] Researcher-Interview with Joyce Mukami-Medical Insurance Policy Holder with Minet, Kenya, 19th November,2020

[81] Cerar, Dr. Miro (2009) "The Relationship Between Law and Politics," Annual Survey of International & Comparative Law: Vol. 15: Iss. 1, Article 3. Available at: http://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/3

[82] https://www.cnyakundi.com/the-ksh-324-million-kws-medical-insurance-tender-that-has-exposed-jubilee-insurance-crooked-boss-julius-kipngetich/, accessed September 25,2019

[83] Researcher-Phone Interview-Anonymous Respondent, November 9,2020

3.8.4 Weak Insurers

Despite Insurance Regulatory Authority, IRA, setting up financial laws under the Insurance Act that requires insurance companies to always share their financial transactions and books, crafty insurance companies have cooked books to stay afloat in the insurance business. Subsequently, individual policyholders, intermediaries and beneficiaries have suffered in the hands of such insurance firms when truth finally reaches the public domain. This has in many instances exposed the vulnerable policyholders to panic moves which reflects bad on the regulator which has always been occasioned to delays in resolving their issues and concerns.

3.9 Conclusion

This chapter has undertaken an in-depth analysis of government regulation in Kenya's insurance industry and discussed comprehensively on government regulatory bodies in Kenya, their key functions and their role in the industry. A critical analysis on the government institutions and their role in insurance regulation has given us the impact to the marketplace in terms of strengths and weaknesses of the set laws and how they have affected the insurance industry in Kenya. What has come out clear is the need of the regulator to work extra hard to improve on customer protection and anti-money laundering laws which seem to be at the heartbeat of the regulator's' mandate. At the same time, external interference in insurance legislation and more specifically the political space is a great challenge to Insurance Regulatory Authority.

> "IRA's role has brought the competition down to customer service and customer experience since pricing among insurance companies are almost the same. This has pushed insurance companies to have Customer Experience Department to enable their clients get a wow service[84]."

[84] Researcher-Interview with Asha Wesusa-Client Service Manager-Jubilee Insurance Company, Kenya, November 20,2020

CHAPTER FOUR: AN INTERROGATION ON THE EFFECTS OF THE GOVERNMENT POLICY ON THE INSURANCE INDUSTRY IN KENYA

4.0 Introduction

The insurance industry is highly regulated in Kenya by the government through the Insurance Regulatory Authority (IRA). Being a service industry, the business transaction type calls for a lot of promise with a future commitment of compensation in case loss occurs. Insurance industry being a financial industry falls in the same category as the banks thus the industry covers unforeseeable risks as purchased by the policyholder. Therefore, regulation and supervision are carried out by IRA, with the blessings of the government.

The mandate further extends to the regulator ensuring public confidence at the same time keeping insurance companies in check by ensuring they are well liquidated to avoid collapse as result of heavy losses. This chapter discussed potential pitfalls of government regulation in the insurance industry through the lenses of Insurance Regulatory Authority regulation policies. In order to facilitate an understanding to this, the chapter outlined both the positive and negative effects of government policies in the insurance industry. A look at the positive example shows insurance regulation has enabled product pricing in the motor insurance industry which had previously incurred huge losses leading to possible collapse[85].

The immediate effect of this was hugely felt in the market. This among many other reasons for the positive impact of insurance regulation made in the industry was outlined and explained in the chapter. On the other hand, the same regulation guideline has installed fear feeling to the industry since some insurance companies felt the need for the regulator to consult them as stakeholders and market players before implementation. At the end, the chapter recommended

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[85] Samson Kabugi Njau Mweru,(2014), The Effects of Price Regulation of Motor Insurance on its Sales Volume, Kenya,http://erepository.uonbi.ac.ke/bitstream/handle/11295/95397/Mweru_The%20Effects%20Of%20Price%20Regulation%20Of%20Motor%20Insurance%20On%20Its%20Sales%20Volumes%20In%20Kenya.pdf?sequence=1, accessed at October 14,2020

the need for all industry stakeholders to work together to ensure an economically stable and viable industry, capable of meeting its financial obligations together with that of the Insurance Regulatory Authority. Thus, generally the chapter was on laws and supervisory arrangements regarding intervention and enforcement.

4.1 Regulation and Supervision Milestones in Kenya

Over the years, Kenya has seen huge developments in the regulation and supervision of the insurance industry. At the same time, improvements in information to the general public and insurance companies embracing technology has seen the regulator adopt and come up with policies that have enabled a level playground for market stakeholders. Below is a table showing the years that have been flagged as milestones as far as insurance regulation and supervision is concerned in Kenya[86].

Table 4. 1 Regulation and Supervision Milestones in Kenya

Year	Item	Detail
1987	Insurance Act came into force with regulations	
1997	The passing of Kenya Reinsurance Corporation Act, this was effected in August 1998	Originally Kenya Reinsurance Corporation Act under Insurance Act was converted to a limited liability company
2006	The 2006 Insurance Amendment Act was passed	This created an autonomous Insurance Regulatory Authority, IRA.

[86] Available at http://documents1.worldbank.org/curated/en/234971577687429663/text/Insurance-that-Works-What-Drives-Insurance-Sector-Development-in-Kenya-What-are-Some-Opportunities-Ahead.txt, accessed January 7,2020

2006	The HIV and AIDS prevention and control Act	Required insurance companies to cover the diagnosis to reasonable limits at the same time prevented insurance companies from making policy holders do HIV tests before taking up a policy
2007	Insurance Regulatory Authority, IRA, became operational	
2011	The proclamation of The Unclaimed Financial Assets Act	Under Section 7 of the Act, it requires the Insurance Regulatory Authority, IRA, to cooperate with Unclaimed Financial Assets Authority, UFAA.
2012	Insurance Regulations amended by Insurance Amendment Regulations of 2012	
2012	The coming in place of Insurance Amendment of Schedule Order of 2012	Amended the paid-up capital required for reinsurance companies
2013	The Financial Act Number 57 done in the year 2012 amended the Insurance Act Chapter 487 and the Banking Act Chapter 488	The banking amendment intention was to bring on board bancassurance at the same time amend the insurance supervisory and statutory returns by insurance companies.
2013-2015	The Finance Act No 38 of 2013 amended the Customs and Excise Act imposing excise duty on insurance companies.	

	However, this was later exempted in 2015	
2014	Insurance Amendment Act No 1 of 2014	Majorly about East Africa Community integration and a third local ownership requirement, this was extended to a third East Africa Community ownership
2015	Finance Act No 14 of 2015 whose scope was localization of marine insurance, establishment of micro-insurance policy, ensuring insurance agents are trained under the program Executive Certificate of Proficiency in Insurance, Takaful development	Amended capital requirements increased market penetration by increasing the product scope of life, non-life and re-insurance
2016	Insurance Amendment Act 2016	In January 2017, the Act aligned solvency calculations for life and non-life insurance companies for Insurance Regulatory Authority, IRA, prescription
2017	Statute Law Act 2017 (Miscellaneous Amendments)	Under this Act, Section 71A pulled away banks from prescribing life insurance underwriters and brokers for credit, increased more severe fines, postponed capital reform from 2018 to 2020 and dropped the renewal annual registration requirement

Source: Research Data (2021).

4.2 Positive Effects of Government Policies and Insurance Regulation in Kenya

Kenya's dream as outlined in Vision 2030 is achieving sustainable development come 2030. Thus, under the Kenyan Vision 2030, financial services sector critical strategy is to create an aggressive and competitive global financial services sector in Kenya. This will subsequently create jobs to the general public and enhance savings to finance the country's economic development plans and strategies[87]. This means major pension sector reforms will definitely affect the insurance companies as it is the main product they offer to the insured clients and various policy holders. To an extension, the expansion and development of the bond equity markets will further widen insurance companies operating scope as it involves moving to regional financial centres. Below are positive effects of government regulations and policies in the insurance industry in Kenya.

4.2.1 Regulation on Product Pricing.

The Guidelines on the Insurance Products are laid forth in accordance with section 3A of the Insurance Act issued by the Insurance Regulatory Authority on 1 July 2012 for insurance firms, agencies and intermediaries. The main objective and aim of the guideline is to ensure that insurance products set in the market to be sold to the consumers by insurance companies, agents and intermediaries are fairly priced and suitable to the target consumers. The scope of guidelines on insurance products cover is to offer guidance on principles to be followed in product design, product pricing, product marketing, advertisements and the way forward on how subsequent applications for new and repackaged insurance products are made to the

[87] Kitaka, Johannes Mwangangi; Kiragu, David Ndung'u; Marwa, Simmy Mwita (2019): Government Regulation and Sustainability of Kenya's Insurance Companies, http://repository.dkut.ac.ke:8080/xmlui/handle/123456789/820, accessed February 8,2019

Insurance Regulatory Authority.[88] One of the respondents from the study appreciated the regulation on product pricing by stating,

> The regulator, IRA, has brought the element of customer service and customer experience to insurance players since product pricing to insurance stalk holders are almost uniform. This has pushed insurance companies to have Customer Experience Department to enable their clients get a wow service[89].

4.2.1.1 Objective of Product Pricing

The key objectives of product pricing as outlined by the Insurance Regulatory Authority, include: to ensure that designed insurance products are a fair treatment to the targeted customers, to ensure that transparency during marketing and promotion of insurance products is clear and has no intent of misleading the consumer, to ensure that market customers are issued with informative, adequate, comprehensive and understandable information before, during and after purchasing insurance products, to ensure that during insurance product design the interests of customers are taken into account [90], to ensure that products achieve the intent during product design and finally to ensure insurance products comply with the provisions as outlined in the Insurance Act or any other applicable laws.

4.2.1.2 Product Design

Product pricing has taken care of low-income earners and to an extent increased and improved on insurance market penetration. On the other hand, insurance companies, agents and intermediaries have come up with different insurance products targeting low-income earners. This is seen in the design of microinsurance products in the Kenya's insurance industry. One of Kenya's biggest insurance company Jubilee Health Insurance Company has over the years

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[88] Insurance Regulatory Authority, IRA, website https://www.ira.go.ke/images/docs/Guidelines_on__Insurance_Products.pdf, accessed June, 2012
[89] Researcher-Interview with Asha Wesusa-Client Service Manager-Jubilee Insurance Company, Kenya
[90] Ibid

adopted and developed microinsurance products like Ji-inue product[91]. These products have been made affordable and at the same time cover the expected risks on the administration costs incurred while developing the product. This has subsequently made insurance underwriters move away from underwriting products which previously were bundled together such that one product was covering various types of risks[92]. Through the regulator's guidelines and policy interventions the general public has been shelved off bad insurance products. A respondent appreciated this by stating,

> "Medical expenses being the most expensive product in Kenya, IRA has enabled affordable products to be tailored targeting low-income earners and this has reached out well to the general public. I appreciate this greatly since it made me purchase a medical insurance for my sixty-five-year-old, previously insurance medical products were only limited to sixty years.[93]"

4.2.1.3 Disclosures

Product pricing has enabled insurance companies, agents and intermediaries take reasonable and critical steps in ensuring that consumers are given adequate and appropriate information about the policies they take in a timely and comprehensible form, this is to enable customers make informed decisions about the proposed product they are to purchase. This is done by ensuring: that the customers are given the appropriate information to make informed decisions before and at the point of sale, that clear and genuine information is provided regarding the insurance product, that the information concerning the insurance product shall be provided in writing or in any other long-lasting or lasting format, that policy details contained in the purchased product.[94] One of the respondents appreciated disclosure by stating,

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[91] Jubilee Insurance of Kenya Limited (2020) website, available at https://jubileeinsurance.com/ke/, accessed January 12,2020
[92] Insurance Regulatory Authority. (2014). The Kenya Microinsurance policy paper. Nairobi
[93] Researcher-Phone Interview with Joan Ingosi-Jubilee Insurance Medical Policy Holder, November 20,2020
[94] Ibid

"Thanks to the disclosure clause, I can raise a complaint to IRA for any misinformation and non-disclosure of information not issued from the onset. Previously, insurance companies have withheld crucial information to have an upper hand on policy holders which turned t be unfair."

4.2.2 Creation of Solvent, Competitive Markets

Kenya's market access as far as the insurance industry is concerned has tremendously made strides over the years. However, this does not ensure fair and vigorous competition in the insurance market space. Thus, the need for Insurance Regulatory Authority, IRA, guidelines and reforms to facilitate the same. Critics have severally highlighted that regulatory guideline has over the years impede effective and reliable market access as a result of tilting the competitive balance in favour of established insurance companies or to favour new entrants, regulation in the industry has been a blessing generally[95].

Insurance companies in the Kenyan marketspace have experienced better times in comparison with their financial performance in the recent years. The operating environment in line with the regulator's guidelines have made the marketspace more competitive with premium rates to policyholders revised downwards in dynamic business classes. On property and equity markets, optimal investment returns have been adopted as safe houses to compensate losses incurred during underwriting[96]. As of 2019 according to the Economist Intelligence Unit EIU, Kenya's gross domestic product increased to 6.3% in 2018 and was expected to moderate to 5.7% by 2019 and an extension was expected to remain strong by an average of 5.9% a year in 2020-23. This was attributed to competitive market in both the agricultural and financial sector

[95] Harold D. Skipper, Jr. and Robert W. Klein (2000): *Insurance Regulation in the Public Interest: The Path Towards Solvent, Competitive Markets*, The Geneva Papers on Risk and Insurance Vol.25 No.4(October 2000) pp. 482-504

[96] Deloitte (2019): Insurance Outlook Report 2019/2020: https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/financial-services/ea_insurance_outlook_report_2019.pdf, accessed September 20, 2019. Nairobi

which the insurance industry fall. A look at the same report the insurance industry was expected to experience premium gross in line with historically observed growth patterns[97].

Table 4. 2 Trends in Insurance Parameters and the Economy

No.	Item	Years				
		2015	2016	2017	2018	2019
1	Gross Direct Premium (KES Bn)	172.5	195.2	207.6	214.9	227.9
2	Gross Direct Premium Growth Rate (%)	10.7	13.2	6.3	3.5	6.1
3	GDP (Current Prices in KES Bn)	6,284.2	7,194.2	7,749.4	8,905.0	9,740.4
4	GDP (at Current Prices) Growth Rate (%)	16.3	14.5	7.7	9.3	9.4
5	Insurance Penetration Ratio (%) (at Current Prices)	2.75	2.71	2.68	2.43	2.34
6	Population (Mn)	44.2	45.4	46.6	47.8	47.6
7	Insurance Density (Gross Direct Premium/Population) KES	3,904	4,300	4,455	4,525	4,788
8	Total No. of Lives Covered (Mn)	4.4	3.8	4.3	4.3	11.7
9	Insurance Cover (Lives/Population) %	9.9	8.3	9.1	9.0	24.5
10	Total No. of Policies (LT & GB) Mn	2.7	3.4	3.1	3.4	4.0
11	Insurance Coverage (Total Policies/Population) %	6.1	7.5	6.7	7.2	8.4
12	Rate of Inflation (%)	6.6	6.3	8.0	4.7	5.2
13	Real Gross Direct Premium Growth (%)	3.9	6.4	-1.5	-1.1	0.8

Sources: KNBS and IRA[98]

Regulations set by the Insurance Regulatory Authority has seen the insurance industry have its contribution share to the economy by mobilising savings through life insurance products, providing financial security and playing a direct hand promoting both direct and indirect investments. Through the licencing act, the regulator has licensed ten thousand four hundred and seventy-one by 2019 annual IRA report. This has driven the market to a competitive path to ensure consumers are moved the insurers' way. Insurance companies, agents and intermediaries have come up with technology driven and customer centric strategies that have ensured and seen the insurance density increase this was evident as a drop of insurance penetration was recorded by the end of 31st December 2019.

[97] Economist Intelligence Unit, Country Report, Kenya, May 14, 2019
[98] Kenya National Bureau of Statistics, KNBS, (2019), available at https://www.knbs.or.ke/?page_id=1591, accessed October, 9,2019

Thus, government's role in crafting insurance regulation through the regulator has limited market imperfections that when not contained contaminate the market. A proactive approach therefore that warrants government intervention into the insurance market should meet the below outlined conditions: the existence or potential existence of a market imperfection, causes of the market imperfection or preferable what might have caused the imperfection and the potential and meaningful harm to consumers and the general public and lastly the government's action to ameliorate the market harm.

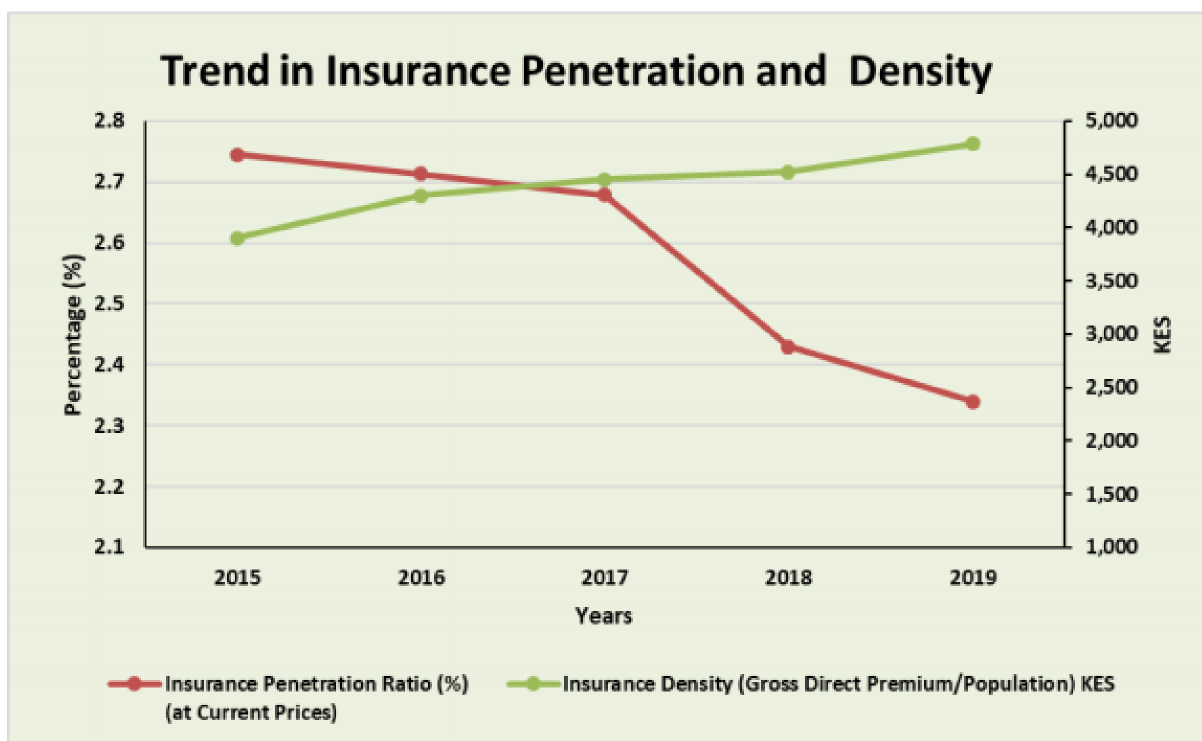

Figure 4. 1 Insurance Penetration and Density

4.2.2.1 Product Innovation

Competition in the insurance industry has led to insurance companies, intermediaries and insurance agents innovate new products to meet consumers preference. According to Insurance Regulatory Authority 2017 report, twenty-one new and repackaged insurance products were approved in 2017 while ten new products were approved in the medical and health business. In comparison with 2016, medical had five new or repackaged products.

The life insurance business, twenty-seven new products were innovated in 2017, one more in comparison with 2016. Products such marine insurance, livestock insurance and crop insurance have provided the consumers with a scope of range to choose from therefore increasing on premium density in the insurance business in Kenya. By 2019 quarter two, eight new and repackaged products were approved by Insurance Regulatory Authority after being filed by various insurance companies. Britam Insurance had three of their insurance products approved by the end of the regulator's review. In general insurance business, they had Milele health plan while life insurance business line they had a group critical illness product.

During the same period other insurance companies with new insurance products included Geminia and Monarch under general insurance business line. ABSA and Sanlam life had products under long term insurance companies. Highlights on the performance of insurance companies in the industry on various metrics lens show good performance as below.

Table 4. 3 Listed Insurance Companies H1'2019 Earnings and Growth Metrics

Listed Insurance Companies H1'2019 Earnings and Growth Metrics								
Insurance Company	Core EPS Growth	Net Premium Growth	Claims Growth	Loss Ratio	Expense Ratio	Combined Ratio	ROaA	ROaE
Britam Holdings	50.0%	(0.4%)	(12.1%)	59.3%	70.5%	129.8%	(1.4%)	(6.1%)
Liberty Holdings	45.8%	3.4%	(0.5%)	80.3%	71.7%	152.0%	1.7%	8.3%
Jubilee Holdings	(1.6%)	7.7%	(8.5%)	94.1%	31.4%	125.5%	3.5%	14.8%
Kenya Re	(12.5%)	16.6%	48.8%	67.3%	41.0%	108.3%	4.7%	7.4%
CIC Group	(95.2%)	0.4%	7.9%	70.9%	49.9%	184.8%	(0.9%)	(3.7%)
Sanlam Kenya*	N/A	10.8%	(18.8%)	72.1%	63.4%	135.5%	0.7%	10.0%
H1'2019 Weighted Average**	3.2%	5.7%	0.0%	77.2%	49.1%	133.7%	1.6%	5.7%
H1'2018 Weighted Average**	(0.6%)	(8.2%)	(1.8%)	84.2%	60.2%	144.4%	0.9%	3.9%

*Sanlam's EPS cannot be calculated since it has registered losses in H1'2018

**The weighted average is based on Market Cap as at 22nd October 2019

Source: IRA (2019).

4.2.3 Customer Protection

The Government of Kenya through its Vision 2030 Strategy outlined a range of goals that included promotion of financial inclusion, affordability and transparency of financial services Competition increase in the sector, all to the benefit of consumers and customers and to an extension the overall economy. A look through the Kenyan constitution shows a focus of customers by the provision on consumer rights. The insurance industry being a financial sector has not been left out.

The agenda over the years in the insurance industry has grown out of concerns tied to regulation, the exposure of customers to substantial losses through fraudulent insurance companies, agents and intermediaries, and the need to breakdown complex insurance products and the blurring of lines between different types of insurance companies' products[99]. Consumer engagement research shows consumer welfare is always compromised by lack of effective and proper disclosure of prices and key terms, insufficient, dispute and abusive resolution mechanisms and practices[100].

In the same research breath, on insurance performance during the year 2012, a study conducted by the Insurance Regulatory Authority, IRA, covering chief executive officers of the forty-six polled registered insurance companies then attributed challenges experienced in the insurance industry to low business retention due to lapsed policies, low market penetration, inadequacies on a look on distribution channels and economic environment affiliated to inflation and high interest rates[101].

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[99] Financial Sector Deepening Kenya. (2011). Financial consumer protection in Kenya: Key Research Findings and Policy Recommendations -Issue 03. Nairobi, Kenya
[100] Ibid
[101] Lina Wangari Waithaka Report (2014): Influence of Customer Retention Strategies on Performance of Insurance Companies in Nairobi, Kenya

The Insurance Regulatory Authority, IRA, through Insurance Act CAP 487 has been tasked with the responsibility to protect policy holders who are the consumers of insurance products. The regulator has taken consumer complaints to different level by ensuring they are channelled to an already set up department to specifically handle and resolve the complaints. In the authority's consumer protection department, lodged complaints against insurance companies, insurance intermediaries, insurance medical providers, agents, valuers, motor assessors, risk managers and members of the authority are tackled to conclusion.

Through the complaints lodged, the authority analyses the feedback about products and services offered by insurance players then come up with guidelines that give direction to the industry moving forward. So ideally, complaints enable the regulator to assess the market and the impact that it has on insurance services and products with the aim of responding to such enquiries adequately and to the customer's satisfaction.

The Customer Protection Department in IRA ensures information is reliable and easily accessible to insurance consumers. This is by ensuring member education programs which aim to educate consumers on insurance products and services are put in place. This was after the identification that there is generally lack of insurance understanding in the market therefore the authority to launched customer education programs to educate the general public[102].

The Insurance Regulatory Authority has also progressively implemented a Treating Customers Fairly, TCF, framework that has addressed how insurance companies ought to treat customers in the course of their interaction when transacting their business. The framework has been comprehensively outlined into six key headings that revolve around corporate culture, product design, information clarification, ideal advises, policyholders' expectations and after sale access. TCF framework has enabled, the establishment of information helpdesk that has

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[102] Ibid

enabled policy holders' complaints to be passed through the complaints channel. The creation of Insurance Regulatory Authority website has also helped disseminate information of insurance products and services too.

4.3 Pernicious Effects of Government Policies and Regulation in Kenya

Competition in the insurance industry has long played an uneasy role in cases where consumers cannot easily deduce the financial health of their insurance companies. Competition between insurance companies pulls premiums down to the extent where the high risk of failure is experienced. Over the years the regulatory response has been on premium entry limit, which has led to special exemptions to the insurance sector under the competition laws. A recent look at the insurance industry shows that, regulatory reforms have led to even stiffer competition in the insurance industry[103]. Insurance industry has experienced pernicious effects as a result of government policies and regulation in the industry, these include:

4.3.1 Regional Regulation

The regionalization of the insurance industry in the East Africa Community which Kenya is a bonafide member is a reality that can be embraced and deepened with equal measure. An overview at the regional nature of the market has triggered imperative competition across the respective sole jurisdictional market. Subsidiaries to Kenyan insurers are currently experiencing operational challenges in countries like Tanzania and Rwanda. An example is in Tanzania where there is a requirement for insurance intermediaries' to be at least two-thirds or sixty six percent owned and controlled by citizens of the parent country which is Tanzania.

Whereas in Kenya, smaller insurance companies have had to increase their capital base or merge to stay afloat in the insurance market because of regulation on capital guideline by IRA

[103] Organization for Economic Co-operation and Development, OECD,(1998): Competition and Related Regulation Issues in the Insurance Industry, available at https://www.oecd.org/regreform/sectors/1920099.pdf,, accessed June 9,1998

in sections 3A (a), (b) and (g) of the Insurance Act, insurance companies are registered under the Insurance Act Cap 487[104]. One respondent from the study, highlighted his dissatisfaction on regional regulation as

> "It has really hampered growth of major insurance companies across its borders. One has to partner with local insurance company to have a smooth sailing in the other country which tend to be too bureaucratic.[105]"

4.3.2 Premium Undercutting

Insurance companies in Kenya over the years have been battling the market share leading to price and premium undercutting due to stiff competition created by Insurance Regulatory Authority's guidelines on product pricing. Premium undercutting sometimes called predatory pricing has been a dubious strategy where insurance companies set insurance prices very low with the sole intention of having an upper hand over their competitors or create a barrier to upcoming new competitors.

In Kenya, the vice has been a major cause of underwriting losses as a result of cut-throat competition which has resulted to low insurance penetration, insurance product mispricing and has limited insurance investment in new ways that would be required to break out the cycle. Nancy Karigithu, Principal Secretary for Maritime Affairs summed the premium wars as:

> "The rates are falling, and it is not good for business. We must guard against the repeat of what happened in the motor vehicle third-party insurance. We want professionalism; we want realistic premiums that will be able to support claims in marine cargo insurance[106]."

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[104] Insurance Regulatory Authority (2020) website https://www.ira.go.ke/images/docs/Draft_Risk_Based_Capital_Adequacy1.pdf
[105] Researcher-Phone Interview with James Mbithe-Insurance Broker, November 12,2020
[106] TradeMark East Africa,(2020), Undercutting premiums will hurt trade, PS warns insurers, available at https://www.trademarkea.com/news/undercutting-premiums-will-hurt-trade-ps-warns-insurers/, accessed at April 7,2020

4.4 Conclusion

This chapter has undertaken an in-depth analysis of government regulation in Kenya's insurance industry and discussed comprehensively on government regulatory bodies in Kenya, successes and pernicious effects in the industry. What has come out clear is the positives of government polies and regulation over the negatives to the insurance industry in Kenya. Growth of the insurance market, customer centric regulations, licencing of insurance companies, intermediaries and agents, product and digital innovation are positives that came out in the chapter from government policies on regulation in insurance industry in Kenya while premium pricing, premium undercutting and regional regulation are negatives that came out in the chapter. From the outlines, we can conclude that government policies and regulation in insurance industry in Kenya have been a success to the market.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This study sought to examine the impact of government policies and investment more specifically in the insurance industry. To achieve this broad objective, the study narrowed down to three main objectives. To start off, the study examined the links between government policies and investment generally and more specifically on the insurance industry, this objective allowed a broad review of global literature on government policies, regulation, and frameworks on investment in the insurance industry. This objective was tied up to the study hypotheses which expressly specified that there is an inverse relationship between government policies and regulations and the growth of an industry on a global scope.

Secondly, the study critically analysed the insurance industry, government regulation and policy environment in Kenya. The objective called for a discussion and critique to the insurance regulation framework regime in Kenya. This objective was also linked to the study hypotheses which highlighted the impact of government policies and regulation to the insurance industry in Kenya. The third study objective interrogated the effects of government policies and regulations on the insurance industry in Kenya. It went ahead to discuss the extent to which government policies and regulations have promoted or undermined the growth of insurance industry in Kenya. The third objective was linked to the study hypotheses that stated that the relationship between government policies and regulation in influencing performance in the insurance industry. These objectives and hypotheses were examined through the theoretical

framework in the attempt to explain why there are government regulations and policies in the investment industry and more specifically the insurance industry.

5.1 Chapter Summaries

This section offers summaries and conclusions of individual chapters. With regards to the first objective which was to examine the links between the government policy on investment more specifically on insurance industry. The chapter sought to elaborate on how the insurance industry has evolved and operated in the past in comparison with its current state, the traditional, contemporary and emerging issues in the insurance industry today and the various perspectives around the issues. It further illustrated this kind of debate at length with the global lens in mind.

Secondly, regarding objective two which was to critically analyse the insurance industry, government regulation and policy environment in Kenya the study discussed, potential risks of government regulation, customer protection, regulation of reinsurers, market regulation, solvency regulation, financial monitoring, guaranty associations and statutory was discussed at length as subtopics in the chapter.

Chapter three offered a detailed in-depth analysis on the insurance industry specifically in Kenya, no global overview was discussed in this chapter. The chapter looked at insurance industry in Kenya and its regulatory framework that is in terms of the norms, laws and institutions. It also critically analysed the laws that have been put in place and government institutions that help put up these regulations and policies to the insurance industry in Kenya. Strengths and weaknesses of the said laws and regulations and how they affect the insurance industry in Kenya are also discussed in this chapter.

Chapter four presented the findings of government policies and regulations in the insurance industry in Kenya. The section sought to discuss both the positive and negative effects of government regulation and policies in the insurance industry in Kenya. The chapter also

discussed the challenges that the insurance industry has been experiencing and went further to outline ways of improving the insurance industry in Kenya.

The chapter outlined major regulatory milestones that shaped the insurance industry in Kenya in terms of regulation and supervision of the industry is concerned. Laws, sections and clauses that were either amended, inserted or deleted are outlined in this section and the impact they had to the general insurance stalk holders of the industry which include the general public, insurance companies, intermediaries and re-insurers and to an extent the regulatory bodies day to day activity. Regulation on product pricing, creation of solvent competitive markets and consumer protection are highlighted in the chapter as positive reasons for government policies and regulation in the insurance industry in Kenya. Whereas premium undercutting and regional regulation as pernicious effects of government regulation in the insurance industry in Kenya.

5.2 Study Conclusions/Findings

This chapter concluded the study by revisiting main hypotheses that is linked to chapter three and four conclusively. A look at chapter three insightfully discusses government roles, policies and regulation in the insurance industry in Kenya at the same time chapter four outlines vital policy regulation laws that have had an impact to the insurance industry in Kenya. These two chapters have a close link on the hypotheses that sought to determine if there is an inverse relationship between government regulation and policies and the growth performance of insurance industry.

Based on the detailed clauses and laws and their impact on the insurance industry in Kenya, it can be stated that insurance stalk holders which include the general public, intermediaries, insurance companies and re-insures have benefitted from government policies and regulation. This is because the study determined a level playground has been created from government regulation thus eliminating exploitation which has been the norm as detailed in chapter two

which had a look on the historical outlook of the insurance industry where close to minimum government regulatory laws were in place in comparison with the current outlook where government regulations play a critical role in the day-to-day operations of the insurance industry.

The study established that customer protection has been the biggest win from government regulation and policies in the insurance industry. This is as a result of chapter three of the study which outlined lack of insurance product knowledge as the main reason of low insurance penetration of insurance industry. Thus, the intervention brought about by government policies and regulations have provided customer education through the insurance regulator all in the need to sensitize the public on insurance industry. Through these education programs, insurance companies have increased their clientele thus improving on their premium density. The study therefore has confirmed the hypothesis of there is a direct relationship between government regulations and policies and performance in the insurance industry.

Further, the study recognized pernicious government laws and regulations that subsequently have pernicious impact in the insurance industry. The study noted that premium undercutting has been the major negative impact insurance industry has been facing as a result of government policies and regulation. This is because, the market has been made stiff and competitive making insurance companies and intermediaries to come up with ways of pulling consumers their way and the quick fix has been premium undercutting. The issue of government regulators delaying in issuance of licences and making laws that favour major insurance companies in the industry was also highlighted in the study. Whilst, these conflicting dynamics vary from different insurance company to another, the common need of the regulator looking into the highlighted vices is key.

5.3 Recommendations

Findings of this study in conjunction with the discourses brought about by government laws and regulations in Kenya triggered this section to present some recommendations.

5.3.1 Enhance Capacity of Insurance Companies

Competition not only enhances economic efficiency, but it also enhances choice and value. This gives consumer the fulfilment of their needs and wants. Thus, in the absence of market imperfections, a competitive market requires government's oversight to avoid only buyers from benefiting. From the study, we've noted the justification for regulatory interventions stems from the existence of information asymmetry between either the policy holder and the insurance company or the policy holder and the intermediary[107]. Thus, the efficiency of government intervention to address a specific market imperfection should be evaluated from cost-benefit standpoint, this will assist in stopping private insurers not providing products which consumers demand for example pandemics in health insurance e.g. COVID-19 treatment. This will also sort the issue of premium undercutting as highlighted as a challenge from the study. In this regard, the first recommendation emanating from this study is the need of the government to have a wide scope of standpoints before making market laws that might tend to lock out consumers from the industry[108].

5.3.2 Balanced Regulatory Approaches

From the study, most complaints raised as per the regulator's complaints log come from individual policy holders. However, this is not to say, individuals covered under corporate firms have no complaints. Generally, governments regulate insurance purchased by individual's policy holders more stringently than their corporate consumers because of the

[107] Federal Insurance Office, U.S Treasury Department (2013): How to Improve and Modernize the System of Insurance Regulation in the United States of America
[108] The National Association of Insurance Commissioners (2011): State Insurance Regulation, https://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf

assumption that corporate policyholders have more insurance information than individual policy holders. This has seen the reinsurance sector in the insurance industry receiving minimal regulatory oversight because both buyers and sellers are usually well informed[109]. In this regard, the second recommendation emanating from the study is the need of the regulator to have and adopt and even regulatory approach to all stakeholders.

5.3.3 End Fraud in the Insurance Industry

From the study, fraud and anti-money laundering are major vices in the insurance industry. Despite the Insurance Regulatory Authority setting up regulatory policies and laws, insurance companies still complain of the vice. This calls for the third recommendation from the study. The need for the Insurance Regulatory Authority to start moving away from referring to the already set fraud and anti-money laundering laws and policies and to start being pro-active in ensuring fraud and anti-money laundering is kicked out in the insurance industry is key and critical. This will only ensure revenue collected from insurance sales are clean but will also ensure that insurance companies, insurance providers, intermediaries or policy holders that get themselves in the wrong side of the fraud law are apprehended.

5.3.4 Review Insurance Contracts

From the study, one key role of the regulator is to ensure a customer is given the right information before consenting to a policy. However, the need for the regulator to review the already written contracts is key. For example, policy holders with life insurance policies have been the most affected. From the regulator, if one terminates a policy without that policy

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[109] **Monicah W Thirima (2010): Strategic responses to challenges of insurance regulation in Kenya by the Insurance Regulatory Authority, http://erepository.uonbi.ac.ke/handle/11295/5945#:~:text=The%20challenges%20include%20high%20risk,infrastructure%20and%20insufficient%20capital%20base.**

achieving a surrender value, he or she is not entitled to any return. Remember for a life insurance policy to attain a cash value, it ought to be in force for at least three years. Thus, the fourth recommendation, the need for the regulator to review insurance contracts during hard economic time is key, another example, is during pandemics where private insurance companies do not pay and the regulator has no say[110].

[110] Teresa Oino and Robert Koluba(2011): Analysis of Factors Affecting Growth of Agency Force in Kenya, accessed July 12,2011

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