CHAPTER 1

1.0

THE CONCEPT OF INSURANCE

The practice of insurance in Nigeria is patterned after the British practice by virtue of the fact that Nigeria was a former British colony. Prior to the arrival of the British colonial masters in Nigeria, the early primitive Nigerians practiced an insurance-like self-help scheme fondly called "isusu".

Isusu is a process whereby groups of people come together and agree to pool funds for the benefit of any member who may have suffered a form of loss. Where no loss occurred, depending on the terms of their agreement, individual members received lump sums of money at regular intervals.

Insurance evolved because of the need for financial re-assurance for losses, which usually occurred. Generally, it is believed that insurance, as it is practiced today in Nigeria, is traceable to the era of marine trading. With he prevalent marine engineering technology, the enterprising merchants suffered regular losses. These were Babylonians who traded between (4000 - 3000 BC). The Hindus in 600 BC and the ancient Greeks in 400 BC.

Two insurance bonds, namely Bottomry bonds and Respondent bonds were introduced to cushion the effects of the maritime losses.

Bottomry bond was tailored to provide loans for the merchants at troubled times to ensure that the voyage was completed. The ship/vessel served as collateral for the loan so granted. The

The bond provided that where the ship was lost loan would not be repaid but if the ship arrived safely the loan would be repaid with stone interests from where the premium would be paid for the maritime risks. In the case of the respondentia bond, the cargo was pledged as the collateral as against the ship in the Bottomry bond. (Okonkwo, V.1. (2002)p.9.

However the Italian maritime merchants came up with a new scheme which favored the spreading of the losses amongst them by contributing to a common fund at the end of the voyage. The unlucky merchants whose goods got lost were settled/compensated from the fund. It is widely believed that those contributions were the earliest form of what we now call insurance premium. The British maritime merchants, by 1600 AD improved upon the Italian scheme when a group of them agreed to underwrite the risks associated with marine trade for a payment of a prescribed fee by any merchants or group of merchants who might be willing to pay. The Chamber of Assurance Act Legalized the practice.

1.1
WHAT INSURANCE IS ✓

The essential feature of insurance is when a loss is shared by many it is lighter and heavier when shared by a few. H.A. Cockerel (1976) P. 11. Insurance is a legal contract between two parties the insured and the insurer. It is effected when the insured transferred from his own shoulders the financial burden of some potential misfortune, to the boarder shoulders of the insurer who in return for agreeing to assume a potential risk of loss, receives a payment known as premium.

The insurer, by collecting sufficient amount of premiums, rely on the probability that only some of the losses they insure against will actually occur within any be left with a profit. The insured, having freed himself, by means of insurance from certain types of worry, is better enabled to risk his capital in trade, since he knows that he cannot control certain fortuitous event, such as fire or shipwreck, will not cause him to lose his investment.

1.2
DEVELOPMENT OF INSURANCE IN NIGERIA

The earliest form of insurance in Nigeria is traceable to British Colonial traders who sought to protect their businesses throughout the West Coast of Africa in 1879. In Nigeria the nature of their business was namely, bringing in finished goods while taking away our raw materials. Since these goods were usually shipped, they were faced with the perils of the sea and hence their desire to arrange some insurance protection.

Prior to the emergence of the Royal Exchange Assurance in Lagos in 1921, the colonial traders did the underwriting back home in London while making use of the local agents (in Lagos), who merely issued cover notes. Many more companies followed namely: the Northern Assurance Company (established by the Royal Niger Company), now know as United Nigeria Insurance Company Plc, in 1930. In 1949, Norwich Union

Fire Insurance Society set up an office in Lagos in the name of Tobacco Insurance Company Limited and was subsequently known as Legal and General Assurance Limited. The African Insurance Company Limited emerged as the first indigenous insurance company in 1950. The Nigerian General Insurance Company and the Lion of Africa Insurance Company were established in 1950 and 1952 respectively. Victor Ike Okonkwo. (2002) 11

1.3

THE NIGERIAN INSURANCE DECREES

The Federal Government of Nigeria (then under military dictatorship) issued the first Insurance Decree in 1968, which encouraged the establishment of more insurance companies. The National Insurance Corporation of Nigeria came on board via Decree No 22 of 1969. It was charged with the responsibility to; (a) develop insurance practice in Nigeria, (b) to ensure adequate insurance coverage of all federal government assets and (c) to accept some re-insurance from other insurance companies.

In 1976, came the more detailed and embracing insurance decree that brought about more regulations and supervision of the insurance sector of the Nigerian

economy. Decree No 49 of 1977 brought to life the Nigeria Re-insurance Corporation of Nigeria (the Nigeria Re). It took over re-insurance operation from National Insurance Corporation of Nigeria (NICON) and also the supervision of re-insurance operation in all insurance companies. It also got involved in the human resource development of the industry.

The Nigeria Agricultural Insurance Corporation, which came to being via a decree in 1987, had since begun the underwriting of non-life insurance such as fire and motor, aside its traditional role of provision of cover for agricultural risks.

The decrees were by no means exhaustive as many more were later issued namely:-

(a) The Chartered Insurance Institute of Nigeria Decree (CIIN) No 22 of February 1993.

(b) The National Insurance Commission Decree No 1 of 1997 and

(c) The Insurance Decree No 2 of 1997.

There has been a tremendous growth in the number of companies in the industry over the years alongside the insurance brokers and the loss-adjusters. The premium income has also significantly risen.

1.4

THE NATURE OF RISK AND ITS CLASSIFICATIONS

Every person in whatever field of human endeavor has a definition for the word "risk", be he a student, an accountant, finance or bank manager or even a layman. However risk exists where the future is unknown. It could be a chance of loss or the uncertainty of loss. It is worth the while to note that "risk" in insurance usage could be referred to as any of the following: -

(a) The subject matters of insurance, e.g. Life, motor car or the item being insured.
(b) The insured peril, which is usually the cause of the loss, like negligence, fire, explosion, theft, etc.
(c) The sum assured or the financial value of the item being insured, which the insured is liable to pay for when the insured event occurs, and
(d) The undesired or uncertain future event

1.4.1

RISK CLASSIFICATIONS

There are three categories of risk namely: -

(a) Fundamental and Particular Risks
(b) Pure and Speculative Risks and
(c) Dynamic and Static Risks

- **Fundamental Risks**

Risks which losses are socially extensive (but not personal) are said to be fundamental. Examples are tornadoes, earthquakes,
drought, social and political changes like discordant economic systems, wars, strikes, terrorism, coups, inflation, unemployment and devaluation of currencies.

- **Particular Risks**

These are risks, which origin and effects emanate from personal acts, i.e. acts that are traceable to an individual or local event with socially no extensive effects. Note that it is the extensive nature of the effect of the loss on the society that determines the difference between fundamental risks and particular risks. Some examples of particular risks are - property losses by fire, theft or explosion, injuries or death from motor accidents and malicious damage.

- **Pure Risks**

These are risks that offer only two options, i.e. the prospect of loss, no loss or no-loss-no-gain (usually referred to as the "status quo" situation). They are insurable risks which financial losses could be transferred to another person. Some examples are - negligence, fraud, accident, fire, theft, burglary, death, etc.

- **Speculative Risks**

Speculative risks, unlike pure risks, present three prospects namely: - chance of loss, chance of gain and chance of no-loss-no-gain (i.e. status quo situation). Its financial losses are not transferable. It is usually associated with business because of its speculative nature. A few examples are political risks, production risks and market risks.

- **Static Risks**

These are risks, which are linked with the actions of nature like drought, flood and earthquake or volcano, as well as those undesired human acts such as negligence or burglary/theft. There is hardly any difference between static risks and pure risks save the "no action" which results to losses. The use of the word "static" means that there was no action which ought to have sought an improvement on the well being of the insured items to reduce or prevent losses.

- **Dynamic Risks**

As the word "Dynamic" implies, these are risks brought about by changes related to human demands, requirements, tastes, technological improvements, innovations and economic systems. In the business sector, the examples are re-engineering, product pricing and business diversification and expansion. Outside the business organization (i.e. persons), the examples are: - change in technology, (thus creating obsolescence), taxation, population tastes and the purchasing power (i.e. value) of money. Dynamic risks may also be called speculative risks.

1.5 OTHER FORMS OF COMPLIMENTARY INSURANCES IN NIGERIA

Prior to the practice of modern insurance in Nigeria, there were some complimentary insurance practices (some of that were culture-oriented) that are currently in existence. Some of them are: -

(A) Traditional Insurance Practice

This rather crude, but effective traditional practice of insurance had long been in existence. This practice offers financial relief to members who had some misfortune resulting in losses. There are also the age-grade associations, craft/trade associations, musical groups, and rotational farming labour group and clan town unions.

(B) Nigerian Social Insurance Trust Fund (NSITF)

The NSITF took over the assets and liabilities of the defunct National Provident Fund (NPF) established soon after the Nigerian Independence in 1961. NPF had the function of providing financial benefits to the contributors to the fund on retirement from service or employment, long period of unemployment or illness or permanent relocation outside Nigeria. Contribution to the fund came from both the employer and the employee. Private enterprises with not less than ten members of staff and non-pensionable employees of both the federal and state public service were Statutorily bound to contribute to the fund. The NSITF came into being by virtue of Decree No

73 of 1993. Having inherited the assets and liabilities of the NPF, the NSITF had to pay the contributors their benefits such as retirement grant and pension, invalidity grant and pension, survivors' grant and pension and at times funeral grants.

The private enterprise whose staff strength is more than five or self-employed volunteers (but must be below 65 years old), qualify for the NSITF scheme.

(C) National Health Insurance Scheme (NHIS)

This scheme has a statutory backing by virtue of the National Health Insurance Decree of 1999, with its section 5 providing its detailed objectives and modes of operations. Its prime objective is to give financial support to the contributors to the scheme (i e the insured) and their dependants with a view to having access to fine quality and affordable health services. The NHIS has three arms, namely: -

(a) The governing council, which duty is to see to the implementation of the provisions of the enabling decree.

(b) The health-care providers who are registered and well-equipped hospitals certified by the governing council.

(c) The private and public health maintenance insurance organizations. These organizations (may not be real or conventional insurance companies), must be insured with insurance companies which must be approved by the governing council. It is the governing council that enters into contract with the health-care providers. The council also has the responsibility of collecting the contributions from the qualified contributors (usually comprising the qualified employers and employees as well as the volunteers). .

(D) Contract of Wagers

The wagering contract (often likened to an insurance contract) is not enforceable at law because of the absence of insurable interest. It is merely a game of chance between two persons in which one wins and the other loses. It is a game of luck, which does not require any special talent or knowledge. Some of the games in which a wager contract applies include pool betting, ludo, raffle draws and snooker.

1.6

THE ADVANTAGES OF MODERN INSURANCE IN NIGERIA

Some of the advantages are as follows: -

(a) It provides indemnity where the insured suffers losses by paying the insured or his beneficiaries, the sum assured, thereby enabling them to contribute towards the Gross Domestic Product (GDP) of the country.

(b) It creates many employment opportunities thereby reducing social ills.

(c) It creates the desired confidence, which enables investors to make further investments.

(a) The application of the insurers' safety recommendations improves the industrial safety measures and loss minimization. Insurance acts as a financial broker as the premium collected from the insuring public is ploughed back into the economy by way of investment to ensure its growth.

1.7
PRE-CONDITIONS FO~~U~~R INSURANCE

(Large numbers and homogenous risks)

Insurance is based on the law of averages or law of large numbers. For any insurance company to be solvent to meet its financial obligations, more particularly at claims' time, it must have in its portfolio, a very large number of homogenous risks to insure against the ~~portability~~ probability that not all the insured will suffer losses. To transact insurance profitably at whatever equilibrium premium, the insurer requires writing sufficient number of business of the same exposure for the law of large numbers to operate.

1.7.1.
Advantages Spread of Risks

The insurer must not only satisfy himself that he has written sufficient number of business, he must be very careful to ensure a good spread of the risks. Claims from fire insurance in respect of many buildings or houses linked together might be catastrophic. Care must also be

taken to insure risks that are well spread geographically to avoid accumulation of local risks.

1.7.2
Statistical Data

It would be unprofitable for any insurer to transact insurance business in the absence of any statistical records or experience about the risks to ensure an appropriate premium rate application. Before now, life assurance rating was problematic not until the mathematicians came up with the mortality table for persons or group of persons of different ages.

1.7.3
Capital Base/Premium Income

In fixing the limit of liability under any particular type of risk, the insurer must take cognizance of its capital base and premium income. It then naturally follows a lowly capitalized company with low premium income will prefer insuring a private house, against fire, to a fire-work factory which losses are light heavy respectively.

1.7.4
Voluntary Selection Of Risks

The insurer must guard against any prospective insured that opts for a particular type of risk to insure against. Naturally a prospective life assured will readily opt for an endowment assurance for a heavy sum assured, knowing full well that he has a terminal illness. Such a prospective life assured must be subjected to full medical examination to determine his insurability or otherwise.

1.7.5
Adverse Risk Selection

Insurers should also guard against adverse selection of risks of the same category. Consequently a newsprint manufacturer will be compelled to insure his factory, not only against fire but also burglary.

1.8
FIXING PREMIUM RATES / COMPETITION

The marine office committee and the fire office committee of the Nigerian Insurance Association (NIA) have from time to time advised the member companies on uniform premium rates. This, they do, in concert with the National Insurance Commission (NAICOM). Where the member companies of the NIA sharp-practice or rate-cut, they are disciplined, when detected. It is equally true that lower capitalized insurance companies that cannot effectively compete with the heavily capitalized companies engage massively in sharp practices and rate cutting. Regrettably, most of these offending companies are not members of the NIA, which membership is not compulsory now.

The NAICOM has stepped up its efforts with a view to sanitizing and harmonizing the practice in the insurance industry, to regain the confidence of the Nigerian insuring public.

1.9
PROPOSAL FORMS

In modern insurance marketing, a proposal form (prospectus) is a formatted document. On it the particulars of the risk suggested for insurance (usually given to the prospective insured as an "invitation to treat" by the insurer) are completed, signed and returned to the insurer, as an offer to buy an insurance cover. In most types of insurance, completion of the proposal form is almost customary.

The proposal forms vary in length and questions therein asked, depending on the type of insurance. All the proposal forms must bear the name and the corporate head office of the insurer, the name and address of the proposer, the type of insurance for which the proposer is making an offer and the age and occupation of the proposer. There is also a provision in the form for the proposer to state if he has a policy in force (with another insurer) in respect of the same risk, and if so, whether a claim has been previously made by him. Another provision in the form requires the proposer to state whether the renewal of the said policy had been declined or had special conditions imposed by the insurer.

The remaining portion of the form comprises questions about the proposed insured item. The answers to these questions enable the degree of the probable loss, and where it is insurable, the appropriate premium to charge. Most proposal forms end with a declaration by the proposer in which he states that all the answers to the questions in the proposal form are true and exhaustive and without any material facts withheld by him. The proposer agrees that the contents of the completed and signed proposal form shall form the basis of the insurance contract and that he will accept the resultant policy in conventional form.

1.10 POLICIES

A policy is usually a form of an evidence of an insurance contract. The earliest forms of policy documents were usually in small prints and were full of legal jargons and terms, thereby making them very difficult (especially laymen) to read and understand. That format had since been improved upon to make for easy reading and understanding.

A policy document comprises 5 (five) major parts, namely:- the preamble or the recital clause, the operative clause, the attestation clause, the policy conditions and the schedule.

(a) The Preamble

This is a recitation to the effect that there are, in the insurance contract, two parties, namely: - the insurer and the insured and that the insured has made a proposal to insure.

(a) The Operative Clause

This part of the policy document explains the circumstances in which the insurance operates. It also lists the perils insured against as well as listing the perils or risks whish by market agreement are excluded and thereby uninsurable due to the following: -

i. Lack of the knowledge of the risk by the insurer.
ii. The unquantifiable nature of the risk in financial term.
iii. Catastrophic nature of the probable loss.

(b) The Attestation Clause

Here, the insurer authenticates the policy in a peculiar form of words by signature.

(c) Conditions

The conditions here could either be express or implied. The insured's insurable interest in a subject t matter of insurance (except in life or marine contracts) is a good example of an implied condition which is enforceable at law. The other conditions commonly found in the policy documents are namely: -

(i) Notice of Claim

The insured is by condition, bound to notify the insurer of the occurrence of any likely to result to a claim against him (the insured) and or the insurer. Often times, the insurer imposes a time limit.

(ii) ***Cancellation***
This condition gives the insurer the right to cancel a policy that is in force (particularly in accident insurance) subject to a specified notice and a return of a proportionate premium to the insured. Similarly, the insured, by the same condition, is given the right to cancel a contract that is current.

(iii) ***Arbitration***
Some policies have a provision, should there be any disagreement on a claim settlement, arbitrators are appointed by both parties with a view to an amicable settlement. It should, however be noted that, this condition is only applicable where the disagreement is on the amount of claim as against a case of denial of liability by the insurer.

(e) The Policy Schedule

Here the details, which are special to a particular policy, are stated. They include the policy number, name and address of the insured. The subject matter of insurance is very well described. The amount of premium paid and the sum assured are clearly stated. The policy duration is not left out of the schedule.

1:11
POLICY CONDITIONS *(further classified)*

There are two methods of classifications: -

(A) Conditions written or not written in the policy document and
(B) Application of the condition as per timing.

Conditions written or not in the policy document are as follows:

(i) **Express conditions** (formally stated in the policy document) change in line with the type of insurance. Express conditions are further broken down into two divisions namely: - *General and Particular Conditions.*

General Conditions

General conditions (familiar with common law cases) provide for fraudulent acts, misrepresentations, changes in the policy document, excluded covers, claim settlement modalities, subrogation rights, arbitration clause and the rights of both the insurer and the insured.

Particular Conditions

These refer to special warranties like premium payment warranty or modification/extension of cover granted beyond that formally stated in the policy document.

d. **Implied Conditions**

Are usually unwritten in the policy document but are recognized by law in any insurance contract. Good examples are the existence of insurable interest, the contractual duty of "utmost good faith" by both parties and the presence of recognizable subject matter of insurance.

Application of condition as per Timing *(after the contract)*

These are conditions applicable after the contract must have been entered into. Good examples are notifications of changes in the occupation of the insured, to the insurer, particularly in personal or group personal accident insurance. The insurer must be notified if the location of the subject matter of insurance is changed as in fire insurance. It must be noted that the above conditions (which could be either general or particular) are expressly written in the policy document.

Application of Condition as per Timing *(before the contract)*

For any insurance contract to be valid, all the implied conditions listed earlier, as a pre-condition, must be effected

Application of Condition as per Timing (before liability is admitted by the insurer).

A good example is that the insured must notify the insurer of any loss/claim within the specified duration, formally, as is indicated in the claim guidelines in the policy document.

1:12

POLICY RECTIFICATION

Where a policy falls short of the intention and expectation of both parties, the policy could be rectified mutually by both parties, but if there is further disagreement, either party may sue the other in a law court. The court will examine the legality of the case as well as the intention of both parties *"ab initio"* before granting the rectification order or otherwise.

1:13

OTHER DOCUMENTATIONS

(A) COVER NOTES:

In insurance practice, cover notes are often used. They are used as interim policies. They may be typewritten, printed or issued in manuscript. They are used for convenience sake. Information found in them comprise the name of the insured, type of cover, effective and expiry dates of cover and the amount of premium paid with a provision for the balance. They are commonly used by authorized agents

Advantages of Cover notes

The advantages are as follows:-

- It affords the insurer the time to prepare the policy document.

- It gives the insured the opportunity to break the premium payment to lessen the burden of lump sum payment. This has however given way to the "cash and carry" mode of premium payment.
- It also gives the insured the time to compare covers from other insurers with a view to getting better coverage or lower and more competitive premium quotations.
- The insurer may seize the opportunity to investigate the risk further. Cover notes usually have a duration of not more than 30 (thirty) days in the first instance. However in Nigeria, the use of cover notes, by virtue of the provision of the "no premium no cover" section in the Insurance Act of 1997, is now being discouraged, as most insured fail to pay up the balance of the premium until there was a claim. The insurers, relying on the "no premium no cover" provision, (since it is assumed that the premium must have been paid in full) will, in most cases, refuse to settle such claims unless accommodation or "ex gratia" basis.

(B) ENDORSEMENTS:

Endorsements are very peculiar terms in insurance documentation, notably, policy documents. They are printed extracts usually pasted on the policy documents with a view to over-riding the more general provisions in the policy itself. They have now been accepted to be part of the policy itself. The over-riding nature of endorsement is usually meant to delete or include a mutually agreed clause in the policy document.

(C) CERTIFICATE OF INSURANCE

Insurance companies, as evidence of having satisfied statutory requirements issue these. They are commonly used in motor and marine insurance businesses. The Motor Vehicle (third party) Insurance Ordinance 1945 has clear provisions in the motor insurance certificate. The provisions are namely:- Policy number, certificate number, index and registration number of the vehicle, effective and expiry dates of insurance, persons authorized to drive the vehicle, type of cover (usually typed or stamped),name of the policy holder. Lastly, the authorized insurer, certifying that the certificate was issued in line with the statutory requirements must sign a declaration.