

AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF MARITIME INSURANCE IN NIGERIA

By

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Abstract

Maritime insurance is a crucial part of the maritime sector and, by extension, plays a significant role in supporting the Nigerian economy. This means that it serves as a protection for shipowners, importers, exporters, and other stakeholders and protects them from potential risks and losses that may occur during maritime activities. A functional marine insurance industry promotes confidence among participants and also acts as a financial engine that furthers economic development. Premiums generated from marine insurance policies contribute to the growth of Nigeria's capital market, thereby reinforcing the financial structure of the maritime industry. Consequently, trade is stimulated, investor confidence is enhanced and general national economic advancement is encouraged. This article carried out a comprehensive review of the legal and institutional frameworks regulating maritime insurance in Nigeria. Using the doctrinal research method, this paper analyzed both the strengths and the weaknesses of these regulatory frameworks. The findings revealed that, despite the existence of fairly laudable legal structures, the industry is limited by challenges such as poor enforcement of the law, limited financial capacity, as well as a shortage of adequately trained professionals. This article recommended some solutions, including legislation of more modern and effective laws, initiatives to enhance

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capacity-building and more effective enforcement measures.

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1. Introduction

The role of maritime insurance in the maritime sector, and by extension, the Nigerian economy, cannot be underestimated, as it seeks to protect the interests of ship owners, cargo owners, and other stakeholders against potential maritime losses. Thriving marine insurance acts as a financial engine for Nigeria's maritime sector. Premiums collected from insurance policies fuel the industry, contributing significantly to the capital market. This financial strength translates into a robust maritime industry, which is crucial for Nigeria's economic development and growth.¹

Over time, Nigeria's maritime industry has experienced significant growth, driven by the country's expansive coastline and strategic position along major international shipping routes. However, this growth also exposes stakeholders to increased maritime risks, necessitating a robust insurance framework that includes an intricate web of laws and institutions.

The Marine Insurance Act 2004² is the primary legislation exclusively dedicated to the subject matter of marine insurance in Nigeria. The act mirrors the English Marine Insurance Act of 1906. Additionally, the Insurance Act 2004³ is noteworthy. According to Section 67 (1) of this Act,⁴ insurance on all imports into Nigeria must be covered by insurers registered under the law, which bolsters

¹ O Akinyeye, 'Evaluating Potentials of the Legislative Framework Impacting on the Nigerian Marine Insurance Industry' *The Maritime Newsletter* (2018) <<https://oal.law/wp-content/uploads/2018/01/The-role-of-marine-insurance-in-Nigeria.pdf>> accessed 23rd September 2024.

² The Marine Insurance Act, Cap M2, LFN 2004.

³ The Insurance Act (IA), Cap I18, LFN 2004.

⁴ Insurance Act 2004 s 67(1).

the domestic marine insurance business. We also have the Nigerian Maritime Administration and Safety Agency (NIMASA) Act, 2007, the Merchant Shipping Act, 2003, The National Insurance Corporation of Nigeria Act 2004⁵ and The Nigerian Reinsurance Corporation Act 2004.⁶

Despite Nigeria having a legislative framework for maritime insurance, challenges hinder its effectiveness, contributing to the industry's underperformance and there are concerns persisting regarding its effectiveness in harmonizing with global standards.

The Nigerian Maritime Insurance Institutional Framework has also faced scrutiny. NIMASA, as the primary regulatory body for maritime activities established under the NIMASA Act 2007, has been criticized for its capacity to monitor and enforce compliance with maritime insurance requirements.⁷ Also, the Nigerian Insurance Commission (NAICOM), established under the National Insurance Commission Act 1997, must enhance its oversight mechanisms to address the unique challenges of the maritime insurance sector.

Against this backdrop, this paper aims to critically evaluate the existing legal and institutional framework governing maritime insurance in Nigeria. By identifying strengths, weaknesses, and areas for reform, it contributes to the ongoing discourse on enhancing the maritime insurance landscape, ultimately fostering a more secure, efficient, and competent maritime industry in Nigeria.

2. Statement of the Problem

Despite the pivotal role maritime activities play in improving the Nigerian economy through international trade and transportation,

⁵ The National Insurance Corporation of Nigeria Act, CAP N54 LFN 2004.

⁶ The Nigerian Reinsurance Corporation Act, Cap N131 Law of Federal Republic of Nigeria 2004.

⁷ E Etuk, NIMASA'S Lacuna's in the Discharge of its Regulatory Functions in the Management of Oil Spills Pollution in Nigeria, (2023) 10 (6), *Advances in Social Sciences Research Journal*; 98 – 107.

there exists a plethora of challenges bedevilling the efficacy and reliability of maritime insurance within this sector. The legal and institutional frameworks governing maritime insurance are riddled with issues such as financial adequacy, insurance companies, regulatory inadequacies and implementation lapses. These shortcomings not only impede economic growth but also pose risks to stakeholders ranging from shipping companies to cargo owners.

This paper seeks to examine these legal and institutional barriers, assess their impact on stakeholders' risk management capabilities, and propose viable remedies for enhancing the robustness and responsiveness of maritime insurance mechanisms in Nigeria.

3. Scope of the Study

In the context of Nigeria, where maritime activities play a significant role, this paper aims to discuss maritime insurance, with emphasis placed on comprehensively evaluating the existing legal provisions and institutional mechanisms governing maritime insurance. Thus, there will be an assessment of the existing legislations, regulations and judicial precedent, whether they are sufficient and where inadequacies lie. Additionally, this paper seeks to analyse key institutions such as insurance companies and regulatory bodies.

This paper seeks to suggest clear and feasible recommendations that will help improve efficiency, manage some of the problems and improve Nigeria's Maritime Insurance system.

4. Conceptual Framework

4.1 Insurance: Risk and uncertainty, though adverse, are phenomena that pervade our existence as human beings. Recognizing this element of risk and uncertainty as inevitable features of our lives, as rational, intelligent and creative beings, we have had to decide methods of combating and hopefully managing

the possible adverse effects.⁸ This is why we developed insurance to serve as a risk management tool.

Similar to many concepts, Insurance is incapable of being specifically defined. In *Department of Trade v St. Christopher Motorist Association Ltd. (1974) AL ER 395*, opined that it was undesirable that there should be an all-embracing definition because of the tendency to obscure and occasionally exclude that which ought to be included. However, that doesn't mean it should be left without a definition of any sort. Conversely, several attempts have been made towards defining insurance.

Insurance may be defined with emphasis on its financial nature as an arrangement which redistributes the cost of unexpected losses.⁹ Portman explained that throughout human history unexpected economic losses have occurred. Such losses, he opined, would continue to occur regardless of whether or not a system of insurance was devised by man. But through the operation of an insurance system, losses can be predicted.¹⁰

From the legal perspective, an insurance contract represents the insurer's agreement to accept risks, exchange for money paid as premium. Insurance, per Lawrence J. in *Lucena v Crawford (1805) 127 ER. 630*, is a contract by which the one party (insurer), in consideration of a price paid to him adequate to the risk, becomes security to the other, that he shall not suffer loss, damage, or prejudice by the perils specific to certain things which may be exposed to them.

It can also be described as a transaction in which the insurer (insurance company) for a certain consideration (premium)

⁸J O Irukwu, *You and Insurance* (BIMA Publication, Lagos 2003).

⁹S Portman, *A handbook of Marine Insurance* (Pitman Publishing, London 1983).

¹⁰S Portman, *A handbook of Marine Insurance* (Pitman Publishing, London 1983).

promises to reimburse (indemnify) the insured or render services in the case of incidental losses suffered during the subsistence of the agreement. Insurance is a contract of indemnity against a contingency. The insurer assumes the risk of a contingency in consideration of payment of a premium so that the insured who suffers loss or damage will be compensated from a common insurance fund.¹¹

Inferring from all of this, clearly an insurance contract, like other forms of contract, is between two contracting parties, namely the insurer and the insured, with its attendant reciprocal rights and duties.

4.2 Marine Insurance: Marine insurance is the matriarch of all insurance. This form of insurance is oldest form of insurance with a history dating back to 1600. It began with the aim of encouraging marine commerce by reducing the risk merchants were to bear when venturing on sea voyage for trade.¹²

To define it, marine insurance is a contractual relationship in which an insurer agrees to undertake liability for maritime risks or perils that could arise from the entrepreneurial activities of an insured ship owner or maritime trader, upon payment of a consideration referred to as a premium. It is a contract of indemnity in which the insurer undertakes, in consideration of a premium, to indemnify the insured against loss occasioned by perils incident to a marine adventure.

According to R. Thomas, a contract of marine insurance is a specialized contract of indemnity that protects against physical and other losses to movable property and associated interests, as well as

¹¹ W A Nneji, 'Overview of the importance of Marine Insurance to Inland Water Transport in Nigeria *Renaissance (RNUL)* [2021] (1) *University Law Journal*; 50-60.

¹² D R Thomas (edn), *The Modern Law of Marine Insurance* (Lloyd's of London Press, London, 1996).

against liability occurring or arising during the course of a sea voyage.¹³

Mirroring the definition of marine insurance in the UK's Marine Insurance Act 1906, Nigeria defines marine insurance as follows:

‘A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.¹⁴In conclusion, Marine insurance is a contract of insurance relating to trade by sea. where the insurer, for a fee called premium undertakes to indemnify the insured against injury/losses from the perils of the sea.

4.3 Consideration/Premium

Insurance being contractual makes it imperative that consideration being forgone by the insured. The assured and the insurer must furnish consideration to sustain the insurance contract. While insurer undertakes to indemnify the assured, in the event of the peril contemplated, the latter is obliged to pay a price called *Premium* to the insurer for assuming the risk.¹⁵

Generally, In the absence of fraud, an acknowledgement of receipt of premium on the policy effected is a prerequisite for an insurance contract. The ‘no premium—no insurance’ principle reigns supreme. This means that unless you’ve paid the premium, you’re not covered. **Section 50(1)** of the **Insurance Act 2003**, reinforces this by stating that the receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk, unless the premium paid in advance.

¹³D R Thomas (edn), *The Modern Law of Marine Insurance* (Lloyd's of London Press, London, 1996).

¹⁴ MIA 2004 s.3.

¹⁵National Open University of Nigeria, *Law of Marine Insurance II* (ISBN 2022).

However, in Marine Insurance in Nigeria, there's a bit more flexibility because of the phrasing of Section 53 of the Marine Insurance Act. Which states;

Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer shall not be bound to issue the policy until payment or tender of the premium.

The phrase, '...unless otherwise agreed...' implies that the parties can carry out the marine insurance contract on their own agreed terms. Which means the time of payment of premium may be fixed by parties. If a specific event triggers an additional premium, and that event happens, the insurance remains valid even without an immediate premium arrangement. However, you'll need to pay a reasonable premium later.

When determining premiums, Insurers consider various factors, such as the nature of the risk, vessel details (for hull insurance), and cargo specifics (for cargo insurance).

4.4 Principle of Indemnity

At the heart of a marine insurance contract lies the principle of indemnity. This means that the insurer is obligated to compensate the insured for any marine losses incurred, up to the agreed-upon limit. The rights and liabilities of the parties are dictated by this basic concept, and the amount recoverable by the assured, which is measured by the extent of his pecuniary loss, is also governed by it. This should not come as a surprise, for the very purpose of effecting a policy of insurance, marine or non-marine, is for indemnity for loss.¹⁶ As Lord Wright aptly noted in *Rickards v Forestal Land*,

¹⁶S Hodges, *Law of Marine Insurance* (Cavendish Publishing Limited, Great Britain, 1996).

Timber and Railways Co (1941)³ All ER 62, 76, the law aims to uphold the core principle of indemnity in marine insurance, adapting to the complexities of maritime adventures.

This concept was further emphasized by Brett J in *Castellain v Preston*, who stated that marine and fire policies are solely contracts of indemnity. The insured is entitled to full compensation for losses but should never receive more than is necessary to restore them to their original financial position.

Under the Marine Insurance Act 2004, the insurer's liability to the insured is measured by the financial loss suffered due to a covered peril.¹⁷ This loss can be categorized as total or partial. A total loss occurs when the ship is deemed irretrievably lost, either through sinking or disappearance (actual total loss)¹⁸ or when the damage is so extensive that repair is economically impractical (constructive total loss).¹⁹ In the latter case, the insured must notify the insurer and abandon the vessel.

Partial losses can be classified as particular average or general average. Particular average occurs when damage is caused by a specific insured peril, affecting only a portion of the ship or cargo. In contrast, general average losses result from deliberate sacrifices or expenditures made to preserve the entire adventure from a common peril. These sacrifices or expenditures are shared proportionally by all parties involved in the venture.

4.5 Subrogation

In the words of Lord Justice Brett in *Castellian v Preston*²⁰, subrogation is '... a corollary of the great principle law of indemnity', and it is from this principle that an assured is not

¹⁷MIA 2004, s.68.

¹⁸MIA 2004, s. 58.

¹⁹MIA 2004, s. 61(1).

²⁰(1883) 11 QBD.

permitted to recover more than his actual loss. When an insurer pays for a loss, they are entitled to assume the insured's rights and remedies against third parties responsible for the loss. This process, known as subrogation, is based on the principle that insurance contracts are indemnity agreements. According to *section 80(1)* of the Marine Insurance Act 2004, if the insurer pays for a total loss, they take over the insured's interest in the subject matter and are subrogated to all the insured's rights and remedies from the time of the loss.

Subrogation is fundamental to insurance law. If a third party is liable for the loss, the insurer, after compensating the insured, can claim against the third party. This only arises after the insurer has admitted and paid the claim. The insurer cannot recover more than the amount paid.

4.6 Insurable Interest

Insurable interest is a fundamental principle in marine insurance that ensures the insured has a genuine financial stake in the subject matter of the insurance. This prevents fraudulent claims and maintains the integrity of insurance contracts.

Defining insurable interest, Section 7(2) of the Marine Insurance Act states that a person is interested in a marine adventure if they stand to benefit from the safety or arrival of insurable property or may be prejudiced by its loss, damage, or detention, or may incur liability in respect thereof.

According to *section 6 (2)* of the Marine Insurance Act (MIA) 2004, a contract is deemed a wagering contract if the assured has no insurable interest as defined by the Act and enters the contract without expecting to acquire such an interest.

An assured has insurable interest if they benefit from its existence or suffer from its destruction. This interest must be enforceable, real,

and pecuniary. Mere hope of acquiring an interest is insufficient. Insurable interest does not exist if the assured does not stand to suffer any loss from the event.

In the case of *Broadgrain Commodities Limited v Continental Casualty Company*²¹, the plaintiff had no insurable interest because they had already been paid in full for the goods. The court ruled that the insurer was not liable for the loss.

5. Assessment of the Legal and Institutional Framework

Marine insurance plays a pivotal role in the global trade ecosystem, providing essential risk management for maritime ventures. In Nigeria, with its extensive coastline and bustling ports, marine insurance is crucial for safeguarding the interests of ship owners, cargo owners, and other stakeholders involved in maritime activities.

5.1 Importance of Marine Insurance in Nigeria

Primarily, marine insurance provides essential protection for ship owners, cargo buyers and sellers, financiers, and third parties involved in maritime activities. Hull and machinery coverage ensures vessel safety. And as vessels have grown in size and value, insurance has become increasingly crucial to mitigate financial risks associated with loss or damage. On the other hand, cargo insurance safeguards valuable shipments. To handle large-scale risks, insurers often collaborate through co-insurance or re-insurance arrangements. This allows insurers address potential perils such as collisions, injuries, pollution, and other liabilities, offering essential safeguards for the maritime industry.²²

²¹(2017) ONSC 4721.

²² National Open University of Nigeria, *Law of Marine Insurance I* (NOUN Press 2022).

As a coastal nation with extensive inland waterways, Nigeria relies heavily on maritime transport for trade, services and tourism. The country plays a significant role in the global maritime industry, with crude oil exports forming a major source of revenue. Imports of essential goods, machinery, and technology also transit through Nigeria's waterways.

Countries that engage in maritime trade and tourism have a shared interest in protecting and respecting each other's economic interests. This fosters international cooperation and diplomacy. Marine insurance serves as a crucial safety net for international investments. The guarantee of compensation encourages trade and finance by mitigating risks. Today, marine insurance goes beyond risk management and plays a vital role in facilitating global commerce.²³

5.2 Types of Marine Insurance

Marine insurance encompasses various classes tailored to address the specific risks associated with maritime activities.

Hull insurance is specifically designed to cover physical damage sustained by a ship or vessel. This type of insurance not only provides coverage for damages incurred due to perils at sea but also typically includes a collision liability clause. This clause protects the owner from liabilities arising when the vessel collides with another ship or causes damage to another's cargo. By virtue of Marine Insurance Act, *section 4(2)*, insurance contracts can cover losses related to the vessel itself, highlighting the critical nature of hull insurance in maritime operations.

Cargo insurance serves to protect the shipper against the loss or damage of goods during transit. Policies in this category can be tailored for individual shipments or structured as an open cargo

²³National Open University of Nigeria, *Law of Marine Insurance I* (NOUN Press 2022).

policy, which automatically covers goods for regular shipments without a set expiration date. This flexibility is essential for businesses engaged in frequent shipping activities. The Marine Insurance Act, *section 5(1)* provides that every lawful marine adventure may be the subject of a contract of marine insurance. Following that, in line with *section 5(2)(c)*, there is a marine adventure where-goods or other movables are exposed to maritime perils. Thus, Goods and cargo can be a subject of a contract of marine insurance.

Protection and Indemnity (P&I) insurance operates as a separate contract, providing comprehensive liability coverage for shipowners against claims for property damage or bodily injury to third parties. This insurance protects against a myriad of potential liabilities, including damage caused to piers, docks, and harbour installations, as well as injuries sustained by passengers or crew. The Marine Insurance Act, *section 5(2)* allows for the inclusion of liability risks to a third party within marine insurance contracts, affirming the relevance of P&I insurance in maritime law.

Freight insurance, on the other hand, indemnifies shipowners against the loss of earnings resulting from the non-delivery of goods due to damage or loss. This type of insurance ensures that shipowners can recover lost freight income when unforeseen circumstances prevent delivery. Whilst *section 5(2)(b)* MIA 2004 allows for the inclusion of freights, *section 71* provides for the measurement of indemnity in case of partial loss of freight. It stipulates that subject to policy terms; partial freight loss indemnity is calculated as a proportion of the insured sum or insurable value. This proportion is determined by comparing the lost freight to the total freight at risk under the policy.

In Nigerian marine insurance coverage for hull and cargo are quite common, but this doesn't extend to P&I insurance. In fact, there is

no domestic Protection & Indemnity (P&I) Club in Nigeria. However, some insurance companies have partnered with foreign P&I clubs to offer this type of coverage to local shipowners.

5.3 Insurance Act

The Insurance Act (IA) Cap I18 LFN 2004²⁴ is the principal legislation governing insurance business in Nigeria.²⁵ The Act applies to two main classes of insurance that are life insurance business and general insurance business.²⁶ The act explicitly classifies marine insurance as a category of general insurance business under *section 2(3)(d)*. By virtue of this, marine insurance is subject to the same regulatory standards and oversight as other types of general insurance.

Section 67(1) of the IA 2003 mandates that insurance for goods imported into Nigeria must be secured with an insurer registered under the Act. This provision is designed to promote the Nigerian marine insurance industry by ensuring that local insurers are patronized for marine insurance needs.

The Act includes protectionist measures to support local marine insurance companies. For instance, *section 67(4)* imposes sanctions on importers, brokers, or agents who fail to comply with the requirement to use local insurers, with fines up to 500,000 Naira. This helps prevent capital flight and supports the local economy. By mandating the use of local marine insurance providers, the Act aims to create employment opportunities, earn foreign currency, and improve the standard of living. It also seeks to protect local marine insurance companies from adverse foreign competition, fostering a more robust domestic insurance market.

²⁴ Hereinafter referred to as Insurance Act or IA 2003, interchangeably.

²⁵ O Akinoye (n1)

²⁶ IA 2003, s.2(1)

While *section 67(3)* of the IA 2003 appears to contradict *section 67(1)* by stating that letters of credit for imported goods should be on a carriage and freight basis, not including cost of insurance, the general intention of *section 67* is to ensure local marine insurance coverage. There is an argument for amending *section 67(3)* to align with the protectionist spirit of *section 67(1)*.

In conclusion, the Insurance Act, 2003 is a principal provision in the robust legal framework that supports and regulates marine insurance in Nigeria, promoting local industry participation and economic benefits.

5.4 Marine Insurance Act

Nigerian Marine Insurance Act (MIA) Cap M2 2004²⁷ serves as the primary legislation for marine insurance in Nigeria, closely modelled after the English Marine Insurance Act 1906. This alignment ensures that Nigeria's marine insurance practices are consistent with established international standards.

The act provides and governs several aspects of marine insurance within Nigeria to ensure to cater for the complexities that usually occasion marine insurance contract. For instance, it defines insurable interest, ensuring that only those with a legitimate stake in the marine adventure can obtain insurance.²⁸ It also codifies the common law principle of utmost good faith, requiring full disclosure of all material facts by the insured.²⁹

The Act requires that marine insurance contracts be documented in a policy, detailing the subject matter, valuation, and premium.³⁰ Furthermore, the act makes provisions on various warranties, such as the implied warranty of seaworthiness and legality, which are

²⁷Hereinafter referred to as MIA 2004.

²⁸ MIA 2004, s 3.

²⁹ MIA 2004, s 17.

³⁰ MIA 2004, s 25.

essential for the validity of the insurance contract.³¹ These are just some of the several provisions of the act geared towards regulating marine insurance activities withing Nigeria

While the MIA 2004 provides a robust legal foundation by adopting the principles of the English Marine Insurance Act 1906, it does not fully address the unique needs of the Nigerian marine insurance industry. Apart from the fact the Marine Insurance Act 1906 was enacted to cater for peculiarities of marine insurance in the United Kingdom, the Act is also archaic which prevents it from capturing the complexities of modern times.

Again, unlike *section 67* of the Insurance Act 2003, which includes provisions to promote the local insurance industry, the MIA 2004 lacks specific measures to support and develop Nigeria's marine insurance sector. This absence of tailored provisions may hinder the growth and competitiveness of the local industry.

In summary, the Nigerian Marine Insurance Act 2004 establishes a solid legal framework based on international principles but falls short in catering and promoting the local marine insurance industry. This gap suggests a need for amendments or additional regulations to better support the unique needs of Nigeria's maritime sector.

6. Strengths of the Current Legal and Institutional Framework in Nigeria

The following will be apt in strengthening of the current legal and institutional framework in Nigeria.

6.1 Robust Legal Framework: Nigeria's marine insurance industry is blessed with a substantial number of laws; constitution and other legislations; that govern the workings of the industry. Primarily, we have the Insurance Act 2003 and Marine Insurance Act 2004. While the Insurance Act governs all forms of insurance

³¹ MIA 2004, s 33.

business within Nigeria, the Marine Insurance Act is exclusive to Marine Insurance. Simply put, the Marine Insurance Act provides detailed provisions on the formation, terms, and conditions of marine insurance contracts, ensuring that both insurers and insured parties are adequately protected.

Apart from the primary legislation, there are some other legislations that are relevant to marine insurance in Nigeria. Conversely, the National Insurance Commission Act 2004 is one those legislation. This legislation establishes the National Insurance Commission, a body primarily responsible for regulating the insurance in Nigeria. In addition, other relevant legislation include; the Nigerian Reinsurance Corporation Act 2004, the National Insurance Corporation of Nigeria 2004, the Merchant Shipping Act 2007, the Nigerian Maritime Administration and Safety Agency Act, etc.

Theoretically, the amount of legislation that are directly or indirectly relevant to marine insurance are substantial enough to ensure that the industry is regulated properly and business flows smoothly.

6.2 Institutional Support: As an aspect of insurance, marine insurance enjoys the regulatory oversight of several institutions tailored to oversee insurance generally. One of such institutions is National Insurance Commission. The National Insurance Commission (NAICOM) serves as the primary regulatory authority for the insurance industry in Nigeria. It is responsible for overseeing prudential regulation and the conduct of business within the sector. Consequently, individuals or entities must be registered with NAICOM to engage in marine insurance or act as marine insurance intermediaries. Additionally, the Nigerian Reinsurance Corporation and NICON are also institutions authorized to conduct marine insurance business.

NIMASA is another key organisation relevant institution. It is more tailored for general maritime activities than specifically for marine insurance. However, the Nigerian Maritime Administration and

Safety Agency (NIMASA) plays a crucial role in regulating and promoting maritime safety and security. NIMASA's oversight helps ensure compliance with international maritime standards and conventions, thereby enhancing the credibility and reliability of marine insurance in Nigeria.

There are also institutions, such as the Nigerian Insurers Association (NIA) and the Chartered Insurance Institute of Nigeria (CIIN), that provide support and training for professionals in the marine insurance sector, helping to maintain high standards of professionalism and expertise within the industry.

These institutions working together in synergy will without a doubt lead to substantial development in the marine insurance industry in Nigeria. For example, to check the proliferation of fake insurance certificate in the sector, the Nigerian Insurers Association, NIA, came up with the marine module of the Nigeria Insurance Industry Database, NIID, to allow for online verification of insurance certificates.³²

7. Challenges of the Current Legal and Institutional Framework in Nigeria

Although it might appear that the legal and institutional framework of marine insurance in Nigeria is substantial, that is not the case in reality. A study by Oxford Economics revealed that marine insurance constitutes 37% of maritime business services in the European Union. In the United Kingdom, marine insurance services contributed a substantial £2 billion to the economy in 2013. A positive correlation exists between the growth of the maritime sector and its associated ancillary services in developed countries. Unfortunately, the state of marine insurance in Nigeria is

³² The state of marine insurance in Nigeria - Ships & Ports.
<<https://shipsandports.com.ng/state-marine-insurance-nigeria/>> accessed 25th November, 2024.

significantly underdeveloped, mirroring the broader challenges faced by both the insurance sector and the maritime industry.³³

There are several challenges faced by the Marine Insurance Industry in Nigeria. They include;

7.1 Limited Financial Capacity of Insurance Companies:

Although local legislation and international conventions aim to boost the Nigerian marine insurance industry, these efforts often fall short. A major hurdle is the insufficient financial strength of insurance companies to cover essential products. For instance, much of Nigeria's crude oil is exported under FOB (Free on Board) terms because local insurers are either unwilling or unable to provide coverage. This is primarily due to their lack of financial resources to manage the significant liabilities that could arise from an oil spill.³⁴

Encouraging strategic partnerships and mergers among local insurance companies by consolidating resources and expertise, may help these companies enhance their financial capacity and risk management capabilities. Forming more alliances with international insurers could provide access to global best practices and additional capital, enabling local insurers to offer more comprehensive coverage.

7.2 Inadequate Enforcement of Legislation:

A significant challenge facing the current legal framework for marine insurance is the lack of effective enforcement. Despite existing regulations requiring vessels operating within Nigerian waters to have insurance coverage, many vessels remain uninsured. The absence of a robust enforcement mechanism allows these vessels to operate without

³³The state of marine insurance in Nigeria - Ships & Ports.

<<https://shipsandports.com.ng/state-marine-insurance-nigeria/>> accessed 25th November, 2024.

³⁴ O Akinyeye (n1).

complying with statutory requirements, hindering the growth of the marine insurance industry and depriving Nigerian insurers of potential premium income.

To curb this, government will have to strengthen regulatory oversight and enforcement mechanisms. This could involve setting up a dedicated maritime insurance enforcement agency (like the National Marine Insurance Bureau) with the authority to conduct regular inspections and impose penalties on non-compliant vessels. Enhanced enforcement would ensure that all vessels operating in Nigerian waters adhere to insurance requirements.

7.3 Lack of Competent Professionals: In the world over, the field of marine insurance is a complicated field. Consequently, skilled professionals are needed to navigate these complexities. Sadly, it appears Nigeria lacks in this department. A report by the Marine Insurance Committee of the Nigerian Insurers Association highlights that the country is losing billions of naira due to a shortage of domestic marine insurance professionals. It's estimated that the lack of expertise in this field results in annual losses exceeding N50 billion. This deficiency can be attributed to the limited maritime industry-specific training provided by Nigerian universities. Consequently, some shipowners opt for foreign insurers, leading to capital flight. This situation persists despite the presence of 41 licensed marine insurance companies in Nigeria.³⁵

Stakeholders should invest in training programs for Nigerian seafarers and maritime professionals to enhance local expertise and skills. Collaborations with international maritime institutions can be beneficial for knowledge transfer.

³⁵ The state of marine insurance in Nigeria - Ships & Ports.
<<https://shipsandports.com.ng/state-marine-insurance-nigeria/>> accessed 25th September, 2024.

7.4 Lack of Awareness: There is poor public education on Marine Insurance for people engaging in maritime activities, especially ocean trade. For instance, customs regulations mandate that all imported cargo into Nigeria be locally insured. However, many shippers disregard this requirement, deliberately violating a legal importation stipulation. This non-compliance introduces additional complications. Customs regulations impose a fine on individuals without insurance certificates. To expedite customs clearance, shippers often choose to pay the fine. Those seeking to avoid hefty fines may resort to fraudulent insurance agents who provide counterfeit certificates. Sometimes, shippers patronize fake agents to evade exorbitant insurance premiums. This behavior reflects a lack of industry knowledge, as genuine insurance premiums are often more affordable than the fines imposed for non-compliance or the discovery of fraudulent certificates.³⁶With this problem, even though there are eventually proper legislations and institutions on marine insurance in Nigeria, the people may still not be aware of them.

Regulatory bodies should push to educate stakeholders, including importers and shippers, about the importance of obtaining legitimate insurance. This can be done through workshops, seminars, and media campaigns.

7.5 Archaic laws: This is, arguably, one of the most prevalent issues. When you want an industry to develop, you cannot continue to rely on old legislation. It is out of place to say that operational laws guiding marine insurance in Nigeria are out-dated. The Marine Insurance Act is a verbatim reproduction of the Marine Insurance Act 1906 of the United Kingdom, which has been reviewed in the UK to reflect current realities, with its most recent amendment being

³⁶Ibid.

in 2016.³⁷ It is difficult to see how the sector can progress when the operational legal framework is predicated on a law that is over a century-old. Times have changed and there is need to repeal the law to reflect current realities.

This is one of the reasons Hon. Mohammed Garba Gololo of the House of Representatives sponsored a bill for an Act to establish the National Marine Insurance Bureau, to take charge of and collect insurance levies on all Cargos of Crude or Gas leaving shores of the Country and to check the Billions of dollar capital flight which Nigeria loses to foreign insurance companies who monopolize and specialize in marine insurance in the Country, otherwise known as the National Marine Insurance Bureau (Establishment) Bill, 2016.³⁸ Till date, that bill hasn't been passed, which buttresses the fact that old laws are indeed an issue.

8. Conclusion and Recommendations

Nigeria, as a coastal nation poised to benefit significantly from ocean trade, must prioritize the development of a strong maritime sector. A crucial component of this sector is the marine insurance industry. As a risk management cornerstone, a proficient marine insurance industry fosters stakeholder trust, encouraging them to engage in larger-scale trades with confidence in the event of loss or injury.

While Nigeria's legal framework provides a foundation for marine insurance, it may not adequately address contemporary industry realities. To enhance the industry's effectiveness, it is essential to

³⁷ Marine Insurance Act 1906, Legislation.gov.uk
<<https://www.legislation.gov.uk/ukpga/Edw7/6/41>> accessed 25th November, 2024.

³⁸ The state of marine insurance in Nigeria - Ships & Ports.
<<https://shipsandports.com.ng/state-marine-insurance-nigeria/>> accessed 25th September, 2024.

review and modernize the legal and institutional framework, adopting a more pragmatic approach.

Despite current challenges, the Nigerian marine industry offers substantial growth potential. By promptly implementing targeted reforms, we can contribute to the overall economic development of the nation.

Addressing the issues plaguing the legal and institutional framework of marine insurance in Nigeria requires a multi-faceted approach. Here are some recommendations:

8.1 Strategic Partnerships and Mergers: To enhance financial capability, local insurance companies should be encouraged to form strategic alliances or mergers to pool resources and expertise. This could enhance their financial strength and risk management capabilities. Creating a consortium of insurers could also facilitate access to reinsurance markets. Also, they should establish partnerships with international marine insurers to leverage global best practices and gain access to additional capital, thus allowing local insurers to provide comprehensive coverage for high-risk sectors like oil and gas.

8.2 Establishment of a Regulatory Body: The government should create a dedicated maritime insurance enforcement agency, such as the proposed National Marine Insurance Bureau, with authority to conduct inspections, enforce compliance, and impose penalties on non-compliant vessels. This would promote adherence to statutory insurance requirements.

8.3 Investment in Human Capacity Development: Stakeholders should collaborate with academic institutions and international maritime organizations to develop specialized training programs for marine insurance professionals. This would enhance local expertise and reduce reliance on foreign insurers. They should Promote scholarships and internship opportunities in marine insurance to

attract young professionals into the field, ensuring that they gain practical experience and skills.

8.4 Public Awareness Campaigns: Regulatory bodies should conduct comprehensive public education campaigns targeting stakeholders, including importers, shippers, and the general public, to raise awareness about the importance of marine insurance and the legal requirements for compliance. They should organize workshops and seminars to educate stakeholders on the benefits of marine insurance, the legal framework governing it, and the consequences of non-compliance.

8.5 Repeal and Replace Old Legislation: They should be an urgent review and amendment of the Marine Insurance Act to reflect current realities and challenges in the industry. This could involve drafting a new Marine Insurance Bill that considers modern practices and emerging risks. Alternatively, just in case it still exists lawmakers should be pressured to prioritize the passage of the National Marine Insurance Bureau Bill and other necessary reforms to support the growth of the marine insurance sector.

By implementing these solutions, Nigeria can enhance its marine insurance framework, promote local participation, and ultimately strengthen the industry to better serve its maritime economy.