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The rise of (dis)regulation in the insurance industry in Africa

The International Association of Insurance Supervisors (IAIS) is the global standard-setting body responsible for developing and assisting in the implementation of principles, standards and guidance, as well as supporting material for the supervision of the insurance sector¹. Currently, there are twenty African members of the IAIS, representing 33 countries. While the African continent is home to almost eighteen percent of the global population, the insurance industry in Africa represents less than three percent of insured catastrophe losses worldwide.

Despite the low levels of insurance uptake, there continues to be increased interest and focus from major international investors, brokers, insurers, reinsurers and other stakeholders². What is pleasing to note is that the regulatory frameworks across the continent are evolving to ensure governance, compliance and supervision in the sector with varying levels of maturity; an important contributor in ensuring the sustained attractiveness from the international market.

As reflected on the right, the regulatory supervisory mechanisms in place across Africa, such as having dedicated prudential and conduct authorities established to appropriately supervise financial and insurance institutions, are well evolved.

¹ <https://www.iaisweb.org/>

² <https://www.statista.com/topics/4206/insurance-industry-in-africa/>

Key financial services regulators across Africa



Botswana
Non-Bank Financial
Institutions Regulatory
Authority (NBFIRA)



Tanzania
Tanzanian Insurance
Regulatory Authority (TIRA)



Nigeria
National Insurance
Commission (NAICOM)



Kenya
Kenya Insurance
Regulatory Authority (IRA)



Ghana
National Insurance
Commission (NIC)



South Africa
Prudential Authority (PA)
and Financial Sector
Conduct Authority (FSCA)



Rwanda
National Insurance
Commission (NIC)



Mauritius
Financial Services
Commission (FSC)



Financial Action Task Force (FATF) grey list

At the time of writing this article twelve of the 21 countries on the FATF grey list are from the African continent, with weak anti-money laundering regimes, failure to prosecute financial criminals and inherent weaknesses in applying a risk-based approach being among the common deficiencies identified in respect of these countries. While it is well understood that being included on the FATF's grey list impacts a country's ability to raise foreign direct investment, with associated capital inflows decreasing on average by 7.6% of GDP³, it would be equally important to consider the impact of the grey listing on the regulatory frameworks in these countries' insurance sectors.

African countries currently grey listed by the FATF



Burkina Faso



Namibia



Cameroon



Nigeria



Democratic Republic of Congo



Senegal



Kenya



South Africa



Mozambique



South Sudan



Mali



Tanzania

³ Kenya's independent, self-funded, multi-sectorial, non-political and apex non-profit Federation committed to consumer protection, education, research, consultancy, litigation, anti-counterfeits campaign and business rating on consumerism and customer-care issues (<https://cofek.africa/about-us/>).

Mauritius was removed from the grey list in 2021 after a remarkable turn-around, spending only one year on the notorious naughty list. The Mauritian Central Bank, Bank of Mauritius, made a concerted effort to address the technical deficiencies identified by the FATF in record time. This swift action renewed much needed trust in the Mauritian financial services sector. Had such timely intervention not taken place, this would have had a negative impact on insurers. Reinsurers and international partners would have been reluctant to partner with Mauritian insurers, while enhanced due diligence and know-your-customer (KYC) requirements would have increased the cost of doing business for stakeholders.

In 2023 two of Africa's largest economies were added to the grey list - Nigeria and South Africa. These countries are going to need to show an increase in financial crime prosecutions to have this indictment lifted. South Africa has since amended six laws that are key to the effectiveness of South Africa's anti-money laundering (AML) and combating the financing of terrorism (CFT) measures. While the FATF has commended South Africa on its significant progress made in addressing the deficiencies identified, there is still much work to be done and the global watch dog will be taking careful note. In Nigeria, NAICOM recently published AML related regulations with which insurance companies need to comply, which are expected to increase insurers' focus on robust customer due diligence and KYC protocols.

Kenya and Namibia are the most recent African countries to be added to the FATF grey list as of 23 February 2024, resulting in a flurry of regulatory activity as the regulators in both countries come to grips with the technical and strategic deficiencies identified in their respective mutual evaluations. In 2023 Kenya issued the AML Amendment Act 2023 and will need to complete a national terrorist financing assessment.

Conduct and a culture of fair treatment of customers

Whilst South Africa still awaits the proclamation of the Conduct of Financial Institutions Bill, the FSCA declared in its 2024 regulatory plan that developing the conduct regulatory framework is a priority for the conduct regulator over the next three years. This transition project is envisaged to be a multi-year project with implementation implications cutting across the sector. Nigeria has made great strides in the realm of market conduct, having published revised market conduct standards for insurers and reinsurers in January 2024. These standards can be distinguished from the principles-based market conduct regime envisaged for South Africa, with the NAICOM standards outlining specific aspects for enhancing fair treatment of customers, including guidelines on interacting with customers, examples of what fair treatment of customers entails and the responsibilities of senior management. We can clearly see that the Nigerian environment is more prescriptive and rules-based and it could be argued that this is simpler to implement. However, looking a bit deeper into the purpose of market conduct regulations, a principle-based framework allows for agility, flexibility and room for nuances in the financial services sector to achieve the broader goals.

Kenya's IRA declares that treating customers fairly (TCF) is the new normal for financial services firms and states that this is not merely a compliance exercise but a cultural shift in the way firms treat its customers. The regulator has also provided a self-assessment tool which creates an opportunity for firms to evaluate their organisation against the stipulated TCF requirements. The IRA issued the Insurance Amendment Bill in 2023, adding offences and penalties for management in insurance companies, with the main objective to increase accountability.

The Financial Services Commission in Mauritius, perturbed by lack of transparency and complex product structures as far back as 2013, has prioritised competency standards, benchmarking international standards and best practices to ensure that the Mauritian market is aligned with its peers. This was then followed by a market conduct evaluation of the industry, inspired by the Australian Securities and Investments Commission interventions.

With remarkable progress in the market conduct area of regulation, I would argue that vulnerable customers can look forward to fairer outcomes in the financial services sector. What remains to be seen is how intrusive regulators will be and how this supervision will practically play out. Will we see prohibitive fines and intense scrutiny changing behaviour or will this be white elephant regulation that has the best of intentions but no teeth?

Data privacy matters across the continent

As of January 2024, 36 out of 55 African countries (65%) have established data protection laws, with Ethiopia, Namibia and Malawi in the process of considering draft legislation to protect privacy in these territories. However, this still leaves almost a third of the continent without active data privacy regulations. The number of data protection laws in Africa has more than doubled in the last decade, and a third of these laws were passed in just the last five years. Seychelles, Tunisia and Bukina Faso were seen to be leading the charge with their data privacy rules established as early as 2004, while Nigeria only passed the Nigerian Data Protection Act in 2023⁴.

However, the mere enactment of the law does not necessarily mean strict or effective enforcement and in many countries, regulators are still finding their feet. It appears that as regulatory authority monitoring regimes mature, we can expect increased scrutiny and more penalties for non-compliance.

According to the Association of Kenya Insurers, future looking trends in the insurance industry revolve primarily around data. Kenya has a dedicated data protection body - The Office of the Data Protection Commissioner (ODPC) established under the Data Protection Act (DPA) in 2019. In September 2023, the ODPC issued three penalty notices totaling KES 9,375,000⁵, setting a crucial precedent in the enforcement of data privacy rights and compliance with the DPA. This finding was in respect of a digital credit provider operating mobile lending apps and misusing personal information obtained from third parties.

The South African Information Regulator issued its first administrative penalty under the Protection of Personal Information Act, with a fine of R5 million imposed against the Department of Justice and Constitutional Development⁶ for failing to comply with an enforcement notice and requiring improvement to its cybersecurity controls.

The increasing prevalence of next generation technology is another trend that is being outlined by the Association of Kenya Insurers, calling for a heightened need for cybersecurity related regulations. The Kenyan government issued a roadmap, plotting the path from 2022 to 2027 addressing its plan to overcome risks of cyber threat. In South Africa, the joint standards pertaining to Information Technology Governance and Risk Management, and Cyber Security and Cyber Resilience Requirements, have also recently been finalised.

Across the continent data privacy seems to be a hot topic and regulators are enforcing this regulation with much enthusiasm for the rule of law. This may be an area that sets Africa on a new trajectory, protecting the rights of individuals to secure its privacy and recognise the sovereignty of data.

Regulation matters in Africa

We need constant vigilance by our regulators and regular reflection on the ultimate purpose of each piece of regulation to ensure the protection of the man on the street and his hard-earned money. Much work remains to reach this goal and with this work comes much opportunity to create a safe and robust insurance sector for the people of Africa.

⁴ <https://dataprotection.africa/nigeria/>

⁵ <https://iapp.org/news/b/kenyas-odpc-issues-kes9-375m-in-data-protection-fines>

⁶ [Infoeregulator.org.za](https://infoeregulator.org.za)

