



**MIDLANDS STATE UNIVERSITY
FACULTY OF LAW**

DEPARTMENT OF PUBLIC LAW

**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF A BACHELOR OF
LAWS HONOURS DEGREE.**

RESEARCH TOPIC

**ANALYSING MICROINSURANCE REGULATION IN RELATION TO CONSUMER
PROTECTION IN ZIMBABWE.**

SUBMITTED BY:

LYNNET.EVE. PHIRI

REG NUMBER: R137495X

SUPERVISOR: MR E. MANDIPA

DATE DUE: JUNE 2018

APPROVAL FORM

The undersigned certify that they have read and recommend to the Midlands State University for acceptance, research project titled ANALYSING MICROINSURANCE REGULATION IN RELATION TO CONSUMER PROTECTION IN ZIMBABWE. Submitted in partial fulfillment of the requirements for the Bachelor of Laws Honours Degree.

.....
SUPERVISOR

.....
PROGRAMME /SUBJECT COORDINATOR

.....
DATE

DECLARATION

I, **LYNNET. EVE. PHIRI** do hereby declare that this dissertation is a result of my own investigation and research, save to the extent indicated in the acknowledgment, references and comments included in the body of the research, and that to the best of my knowledge, it has not been submitted either wholly or in part thereof for any other degree at any other University.

.....
SIGNATURE

.....//
DATE

DEDICATION

To my wonderful family for their incredible support for the past 5 years.

ACKNOWLEDGEMENTS

I would like to extend my profound gratitude to Mr E.Mandipa for his guidance and support without which the task of completing this manuscript would have remained a dream. I am also indebted to my colleagues and fellow classmates for their moral support and encouragement throughout the course of my research and preparation of this research project.

TABLE OF CONTENTS

Declaration	i
Approval Page	ii
Dedication	iii
Acknowledgment	iv
CHAPTER 1	
1.1 Introduction	1
1.2 Background to study	2
1.3 Statement of the Problem	5
1.4 Research Questions	5-6
1.5 Research Aims and Objectives	6
1.6 Research Methodology	6
1.7 Significance of Study	7
1.8. Literature Review	7-9
1.9 Chapter Synopses	10-11
CHAPTER 2	
2.1 Introduction	12
2.2 Conceptualisation of Insurance	12-13
2.3. Conceptualisation of Microinsurance	14
2.4. Historical Trajectory of microinsurance	14-15
2.5. Importance of microinsurance	15-16
2.6. Consumer Protection	17-18
2.7. Importance of Microinsurance	18
2.8. Need for legal regulation of microinsurance	18-19
2.9. Relationship between microinsurance and consumer protection	19-20
2.10. Conclusion	20

CHAPTER 3

3.1. Introduction	21
3.2 Legislative Framework	22
3.2.1 Insurance Act [Chapter 24:07]	22-25
3.2.2 Insurance Regulations	25-27
3.2.3 Consumer Contracts Act [Chapter 8:07]	27-28
3.2.4 Consumer Protection Bill	29-30
3.2.5. Microinsurance Regulatory Framework	31-35
3.3 Conclusion	35-36

CHAPTER 4

4.1. Introduction	37
4.2. Legal Framework	37-38
4.2.1 Insurance Act, 724 (2006)	38-42
4.2.2 Market (Microinsurance) Conduct Rules, 2013	42-47
4.2.3. Microinsurance Explanatory Note	47-49
4.3. Conclusion	49-50

CHAPTER 5

5.1. Introduction	51
5.2. Summary of Findings	51-52
5.2. Specific Recommendations	52
5.2.1. Constitutional Reform	52-53
5.2.2. Enactment of Microinsurance Act	53
5.2.3. Introduction of Market (Microinsurance) Conduct Rules	53
5.2.4. Explanatory Note	54

5.2.5. Microinsurance Regulatory Commission	54
5.3. General Recommendations	54
5.3.2. The Role of Actuaries	55
5.3.3. Consumer Education	56
5.4 Conclusion	56-57
Bibliography	58-59

CHAPTER 1

1. INTRODUCTION

Insurance is defined as a contract whereby, the insurer, in return for a sum of money called premium, agrees with the insured to pay a specified sum of money on happening of a future uncertain event called risk e.g. fire, burglary, death, sickness etc, or to indemnify the insured against any loss caused by the risk insured against.¹ The Microinsurance Regulatory Framework defines microinsurance as, *insurance that is accessed by low-income populations, provided by a variety of different entities, but run in accordance with generally accepted insurance practices. Put simply, microinsurance is that insurance, which is appropriate for the low-income market in respect to cost, terms and conditions, coverage and delivery mechanisms.*² Microinsurance thus is insurance with a specific target, or group and in this case, low income households.

A low-income household is one whose income is low, relative to other households of the same size.³ Low-income households are more susceptible to risk and economic shocks. One viable way for the poor to protect themselves is through microinsurance. By helping low-income households manage risk, microinsurance can assist them to maintain a sense of financial confidence even in the face of significant vulnerability.⁴ Microinsurance is therefore an insurance policy that targets and is accessed by low-income people for protection against specific risks in exchange for the payment of specific regular payments. It is insurance that targets the percentage of the population that is likely not to afford regular mainstream insurance coverage, mostly as a

¹ K. Abbott *et al* Business Law 8th Edition (2007) 299.

² Microinsurance Regulatory Framework available at www.munichre-foundation.org (Accessed 13 September 2017).

³ Low-Income Household. Available at <http://kwhs.wharton.upenn.edu> (Accessed 1 April 2018).

⁴ C. Churchill *Protecting the poor: A Microinsurance Compendium* (2006) 2.

result of being employed in the informal sector. It is quite similar to mainstream insurance except for the specific targeting of a group of people, the low income demographic of the population.

In light of the above, this dissertation analyses microinsurance regulation as a tool to ensure protection of the policy holders. It also analyses the importance of regulation of microinsurance in relation to consumer protection in Zimbabwe. A comparative analysis with Ghana on legal regulation of microinsurance is made before conclusion of the research.

2. BACKGROUND TO STUDY

The Microinsurance Regulatory Framework⁵ defines microinsurance as *insurance that is accessed by low-income populations, provided by a variety of different entities, but run in accordance with generally accepted insurance practices.*⁶ Regulation of microinsurance is an integral aspect of providing checks and balances to the microinsurance sector. The Insurance regulator in Zimbabwe, the Insurance and Pensions Commission, in June 2017 introduced the Microinsurance Regulatory Framework with the aim of regulating microinsurance policies within the country. The Regulations were issued in terms of Section 6⁷ of the Insurance Act that grants the Commissioner the authority to formulate standards for conduct of insurance businesses. This is meant to promote the development of microinsurance in Zimbabwe by establishing a basis for the regulation of microinsurance activities and protection. Its objectives include the protection of the insuring public. The rationale for the Framework comes as a result of realisation that there is a need for regulation of microinsurance initiatives as the policy holders are individuals that are vulnerable to risk and loss.

⁵ Ibid 2.

⁶ Ibid 2.

⁷ Insurance Act [Chapter 24:07].

Microinsurance is not a new phenomenon In Zimbabwe. A prime example being that of EcoLife⁸ Zimbabwe, launched in August 2010. Ecolife was a loyalty based microinsurance product provided to Econet⁹ subscribers through First Mutual Life¹⁰. Within a month there were over 300 000 subscribers. However due to a fallout between Econet and its investor the Ecolife scheme collapsed and over 1 million subscribers lost their microinsurance cover¹¹. It appears that the failure of Ecolife was primarily as a result of lack of adequate legal regulation of microinsurance and consumer protection in Zimbabwe.

The International Labour Organization has a long-standing commitment to improve financial access for the working poor. Under its Social Finance Programme, Microinsurance and Microfinance are two of its core activities. The focus is on assisting microinsurance access by the low-income population in Africa through support to key stakeholders¹².

This dissertation analyses the role and importance of legal regulation of microinsurance in relation to its importance in protection of the policy holder. International best practices and standards are used as the yardstick. It is recognized that regulation can either promote or restrict insurance provision for lower income groups. A well-designed regulatory framework is a major factor for the effective and efficient provision of microinsurance services.¹³ This is due to the fact that the consumers in microinsurance policies are already vulnerable to risk and as such

⁸ This was a loyalty based microinsurance product provide to Econet subscribers. This was a life insurance product offered at affordable premiums paid by subscribers sporadically.

⁹ Econet is the largest network operator in Zimbabwe and was the provider of the EcoLife microinsurance product.

¹⁰ It is a wholly owned subsidiary of First Mutual Holdings Limited. Its primary business activities involve the provision of life insurance, retirement benefit products and other long term financial benefits.

¹¹ J. Leach, S. Ncube *Regulating microinsurance in Zimbabwe: Managing risk while facilitating innovation* (2014) Focus Note. 6.

¹² Y. Asseffa 'The role of the Regulator in Microinsurance Market Development' in R. Gruijters (Ed) "Promoting Microinsurance in Ghana : Microinsurance as a means of insurance sector development" (2012) 19.

¹³ M. Wiedmaier-Pfister 'Regulation and Supervision of microinsurance' (2004) Division 41 *Financial Systems Development* .1.

cannot survive the risk of failure to claim from their insurance policies. Regulation of microinsurance will simplify the processes of insurance claims so as to ensure that the insured actually benefits from the scheme. This could be in terms of simpler claims processes, lower premiums and less obligations being imposed on the insured as a way to even out the bargaining power between insurers and the insured unlike in traditional insurance policies.

Consumer protection has always been an issue even in mainstream insurance policies with the insured being in a disadvantaged position. In the case of *Little John v Norwich Union Fire Insurance Society*,¹⁴ the court noted that:

Insurance policies are crowded with so many onerous conditions that it has often been a matter of surprise, that the insured ever recovers anything from the insurer. The vigilance that is exacted from an insured is something phenomenal...Insurance law places at the disposal of insurers a plethora of technical defences by which liability under their insurance policies.

Within the Zimbabwean context, the *Radar Holdings v Eagle Insurance*¹⁵ case is also a prime example of the disadvantaged position of the insured. Regulation of microinsurance is therefore necessary as a tool of consumer protection so as to balance the bargaining positions of the insured and the insurer. Traditionally, microinsurance in Zimbabwe had no specific legal regulation but rather was regulated in terms of the Insurance Act. Ecolife was an insurance product and thus fell under the regulatory and supervisory authority of the insurance supervisor. The applicable insurance legislation and regulations pertaining to microinsurance were in the Insurance Act, Insurance Regulations¹⁶ and their subsequent amendments. The introduction of the Microinsurance Regulatory Framework introduces specific legislation meant to deal with the concept of microinsurance and hopefully offer adequate consumer protection in this regard.

¹⁴ Little John v Norwich Union Fire Insurance Society 1905 T.H 374.

¹⁵ Radar Holdings v Eagle Insurance 1998 (1) ZLR 479.

¹⁶ Insurance Regulations , Statutory Instrument No. 49 of 1989 .

In order to provide protection to the consumers of insurance products certain requirements must be considered in regulation of the microinsurance policies. There is need to use non-traditional distribution means. These entail getting rid of brokers and agents, design of portfolios that are affordable and scalable as well as supplying sufficient information. The importance of these and other considerations and their role in protecting insurers will be looked at in the dissertation.

3. STATEMENT OF THE PROBLEM

It appears that insurance products have been imbalanced and have favoured the insurer at the expense of the insured for quite some time. It also appears that mainstream insurance ‘discriminates’ low-income households in terms of qualification and acceptance. Low-income households are more vulnerable to risk and economic shocks. Thus low-income households get salvation from microinsurance. However, the problem in Zimbabwe is that despite the rise of microinsurance policies, there is no specific legal regulation of the microinsurance sector. The current legislative framework has left consumers for microinsurance vulnerable and there is an urgent need to address the regulation thereof.

4. RESEARCH QUESTIONS

The main research question is, ‘To what extent, if any, is microinsurance legally regulated in light of consumer protection in Zimbabwe?’

In answering the main research question, the following sub-research questions shall be addressed:

- (a) What role does microinsurance play in relation to consumer protection in Zimbabwe?

- (b) What are the international best practices and standards on legal regulation of microinsurance emanating from other jurisdictions can inform Zimbabwe
- (c) What recommendations, general and specific, can be made with regards to regulation of microinsurance in relation to consumer protection in Zimbabwe?

5. RESEARCH AIMS & OBJECTIVES

- (a) To discuss the role of microinsurance in relation to consumer protection in Zimbabwe.
- (b) To analyse the extent to which the legal framework regulating microinsurance is adequate in light of consumer protection in Zimbabwe.
- (c) To compare the Zimbabwean position with international best practices and standards emanating from other jurisdictions in relation to legal regulation of microinsurance in light of consumer protection in Zimbabwe. Ghana is used as the comparative.
- (d) To proffer specific and general recommendations on legal regulation of microinsurance in light of consumer protection in Zimbabwe.

6. RESEARCH METHODOLOGY

Desktop approach and a comparative analysis with Ghana were used. The desktop approach involved the use of all sources found in the library such as textbooks, internet sources, international conventions and case authorities. With respect to a comparative analysis, comparisons between Zimbabwe and Ghana were made. The comparative analysis assisted in drawing up specific and general recommendations on legal regulation of microinsurance in light of consumer protection in Zimbabwe.

7. SIGNIFICANCE OF STUDY

The significance of this study is that traditionally people with low incomes have been vulnerable to economic shocks as they have been portrayed as possessing undesirable risk by insurers. Microinsurance offers salvation to low-income households and as such, legal regulation of microinsurance ensures protection of the consumers. At the end of the study, specific and general recommendations would be proffered as to how the legal regulation of microinsurance could borrow from international best practices, in light of consumer protection in Zimbabwe. Thus the study assists in bridging the gaps emanating from inadequate regulation of microinsurance in light of consumer protection Zimbabwe. To some extent, the study has potential to contribute to law reform.

8. LITERATURE REVIEW

The Microinsurance Framework, in its preamble, notes the development of the financial services sector in developing countries over the past few decades has been characterized by two distinct but related myths. The first of these held that people with low incomes are high risk and therefore credit cannot and should not be extended to them. A second myth held that insurance does not work among the low-income groups and the poor as they cannot afford premiums. Both myths have since been discredited.”¹⁷ This therefore points to the fact that traditionally people with low incomes have been vulnerable to risk as they have been portrayed as possessing undesirable risk by insurers. Microinsurance provides a way to provide cover to such individuals.

¹⁷ Preamble (n 3 above).

According to Churchill,¹⁸ consumer protection is linked to client education, but can also include legally-mandated guidelines for the terms used in insurance policies, and complaint systems to collect client grievances. Policymakers at both the global and national level, are aware of the potential microinsurance possesses in terms of dealing with risk. These risks range from ill health and death to loss of assets, agricultural risk, and life-cycle events such as marriage or old age.¹⁹ Microinsurance therefore creates an opportunity for the low income demographic of the population to have access to insurance. In Zimbabwe this section of the population is comprised mostly of people employed in the informal sector such as small scale farmers and vendors. Having established the need for microinsurance initiatives, it is also imperative to note that in developing microinsurance initiatives, it is necessary for adequate consumer protection mechanisms have been put in place. Article 3²⁰ of the Microinsurance Framework listed one of the objectives of the Framework as protection of the insuring public.

Consumers acquire protection through regulatory frameworks that provide adequate checks and balances through supervision of microinsurance providers. This includes the Consumer Contracts Act. While assessing the Philippines microinsurance environment from a social policy perspective, Llanto²¹ proposes the need for a regulatory system that assures protection for policyholders while supporting the development of microinsurance markets. The South African Microinsurance Regulatory Framework²² lists as an objective of the framework the need to enhance consumer protection within this market segment through appropriate prudential and

¹⁸ 486 (n 1 above).

¹⁹ Consumer protection in Microinsurance" <https://www.giz.de/downloads/discussion-paper> (Accessed 20 July 2017).

²⁰ Article 3 (n 2 above).

²¹ Llanto, G. M 'Policy and Regulatory Issues and challenges in microinsurance :Philippine case (2007) 34(1) Philippine Journal of Development 61-68.

²² South African Microinsurance Regulatory Framework (2011).

business conduct regulation and consumer education. Carmago, A,²³ asserts insurance consumer protection techniques have adopted contractual protective formalism as the preferred way to protect insurance consumers. Thus if information is given in writing and the consumer consents by signing, the consumer is thus supposedly aware of the contractual conditions. This contractual protective formalism could in fact not be protecting the microinsurance consumer at all.²⁴

On an international level, consumer protection is covered in the UN Guidelines for Consumer Protection²⁵ which reiterates that as part of its objectives is the recognition that consumers face imbalances in economic terms.²⁶ It also lists as general principles, that the guidelines are intended to promote availability of effective consumer redress as well as consumer education.²⁷ Consumer protection as a principle is guaranteed at international law, thus the regulation of microinsurance policies is necessary to provide such protection to consumers. The consumers of microinsurance policies are already in a vulnerable and risky position, microinsurance should provide adequate protection. To conclude on this section it should be noted that the need for regulation of microinsurance as way of protecting consumers is being implemented by other countries such as Ghana. It is a result of recognising that efficient microinsurance initiatives are backed by regulation of the policies through regulatory frameworks.

²³ A Camargo 'Protection of Microinsurance Consumer: Confronting the impact of poverty on contractual relationships' (2012) Research Paper No. 27 International Labour Organisation.

²⁴ Ibid 22.

²⁵ United Nations Guidelines for Consumer Protection (UNGCP) available at www.un.org (Accessed 7 September 2017).

²⁶ Part I (n 25 above).

²⁷ Part II (n 25 above).

CHAPTER SYNOPSES

CHAPTER 1

This Chapter gives an introduction and background to the study. The Chapter further contains the statement of the problem, research questions, an outline of the research aims and objectives, the research methodology, significance of the study, literature review and this synopses of chapters.

CHAPTER 2

This Chapter focuses on conceptualization of insurance, microinsurance, as well as consumer protection. It also outlines the historical trajectory of microinsurance. It further discusses the importance of microinsurance and the need to have a solid legal regulatory framework for the same. Finally, the Chapter discusses the link between microinsurance and consumer protection.

CHAPTER 3

This Chapter analyses the extent to which microinsurance is legally regulated in Zimbabwe in light of consumer protection laws including the Consumer Contracts Act. The Chapter therefore exposes the gaps in the current legal regulation of microinsurance in Zimbabwe in light of the need to protect consumers.

CHAPTER 4

This Chapter gives a comparative analysis on microinsurance regulation by comparing Zimbabwe's legal framework with that of Ghana. The comparative analysis assists in drawing up specific and general recommendations on legal regulation of microinsurance in light of microinsurance in light of consumer protection in Zimbabwe.

CHAPTER 5

This Chapter gives a summary of research findings. It further proffers specific and general recommendations on legal regulation of microinsurance in light of consumer protection in Zimbabwe. Finally, the Chapter concludes the study.

CHAPTER TWO

2.1. INTRODUCTION

The concept of microinsurance dates back centuries. The Greeks and Romans are the origins of health and life insurance from around 600BC when they created benevolent societies which cared for the families of deceased members.²⁸ Microinsurance is insurance designed specifically for the low-income earners in terms of cost, insurance coverage and delivery mechanisms. It is thus a way for the low-income demographic of the population to be protected from risk. Further, consumer protection is an integral aspect to microinsurance. These are measures put in place to protect consumers of goods or services. Effective consumer protection is crucial in ensuring insurance remains a sustainable risk protection mechanism. Thus consumer protection is linked to microinsurance as it protects the purpose of microinsurance by providing additional protection to consumers of microinsurance. This Chapter focuses on the significance of both microinsurance and consumer protection. The chapter conceptualises insurance as well as microinsurance. It also gives the historical development of microinsurance, its importance as well as the need for legal regulation of microinsurance. The link between consumer protection and microinsurance is outlined.

2.2 CONCEPTUALISATION OF INSURANCE

Insurance in Zimbabwe is governed in terms of the Insurance Act [Chapter 24:07]. According to K. Abbott *et al*,²⁹ insurance a contract whereby, the insurer, in return for a sum of money called premium, agrees with the insured to pay a specified sum of money on happening of a future uncertain event called risk e.g. fire, burglary, death, sickness etc, or to indemnify the insured

²⁸ Origins available at www.microinsurancenet.org (Accessed 1 April 2018).

²⁹ 299 (n 1 above).

against any loss caused by the risk insured against. The essential elements of an insurance contract include the fact that the contract should be between competent parties, the insurer must assume risk on behalf of the insured, the insured must have an insurable interest and the insured must suffer a loss. Insurance contracts are classified as contracts of utmost good faith and as such the insured has various duties that determine the validity of an insurance contract.

The insured in mainstream insurance has a duty of disclosure. The insured has a duty to disclose previous refusal even if it relates to a different type of insurance. In *Locke & Wolfe Ltd v Western Austrian Insurance*³⁰ the court held the insurer is entitled to refuse a claim since the previous refusal of the motor vehicle policy was a moral hazard which showed that the insured persons were not persons whose proposals could be accepted in the ordinary course business. The insured also has the duty to disclose previous convictions. In the case of *Roslodge v Castle*³¹ failure to disclose the sales manager's previous conviction 5 years prior for smuggling diamonds was material. The court held that the non-disclosure was material and the insurer could avoid liability on that ground. The rationale being the conviction was related to the insured thing. In essence there is a burden upon the insured in insurance contracts that is tilted in favor of the insurer. This imbalanced bargaining position is the basis upon which it was necessary to create insurance products for the low-income section of society that is discriminated by mainstream insurance.

³⁰ *Locke & Wolfe Ltd v Western Austrian Insurance* 1936 (3) KGB 48.

³¹ *Roslodge v Castle* 1966 (2) LR 319.

2.3. CONCEPTUALISATION OF MICROINSURANCE

Microinsurance is insurance which is appropriate for the low-income earners in respect of cost, terms and conditions, coverage and delivery mechanisms.³² The rationale for microinsurance is to facilitate the inclusion of low-income earners. Microinsurance products are primarily targeting low-income earners and are designed in line with traditionally accepted insurance principles. The word ‘micro’ represents the relatively small transaction size or lower premiums.³³ This is a concept similar to microfinance with small ticket loans. Microinsurance thus is a form of insurance that targets those that are typically ignored and deemed ‘unfit’ by mainstream insurance. It is a financial service, besides savings, credit and cashless payments which the poor use to manage their risks.³⁴ Microinsurance differs from traditional insurance in terms of premiums, coverage limits, product features and target customers. Microinsurance is characterised by various traits such as simplicity, flexibility and affordability. Microinsurance is therefore distinctive in its focus on the low income market which translates into distinct product design and distribution methods.

2.4 .HISTORICAL TRAJECTORY OF MICROINSURANCE

Microinsurance is generally regarded as a new concept. The origins of microinsurance are linked to the history and development of insurance. The concept of microinsurance dates back to 3 000BC China.³⁵ The Greeks and Romans are part of the origins of health and life insurance as they created benevolent societies which cared for the families of deceased members. ³⁶England’s

³² ‘What you need to know about microinsurance’ The Herald 15 February, 2018.

³³ A. Kalra ‘Microinsurance-Risk protection for 4 billion people’ (2010) Sigma No.6/2010.

³⁴ C.Thorburn ‘What is microinsurance?’(2015) I.A.I.S Issues Paper.

³⁵ Ibid 28.

³⁶ Ibid 28.

first fire insurance company was launched following the Great Fire of London 1666. Microinsurance was first published and defined in 2003 as

“The protection of low-income people against specific perils in return for regular premium payments proportionate to the likelihood and cost of the risk involved.”³⁷

Since then microinsurance has seen immense growth across the world. In Zimbabwe the first foray into microinsurance was through the Ecolife³⁸ scheme by Econet. Ecolife was a Zimbabwean loyalty based microinsurance product provided to Econet subscribers through First Mutual Life³⁹. Both Econet and First Mutual Life sought the approval of the Insurance and Pensions Commission prior to the launch of the product. Ecolife⁴⁰ had considerable success. The Ecolife⁴¹ scheme was launched in August 2010. Shortly after this the service was suspended after an investor left the scheme. Without them, Econet⁴² was not able to manage the product. The fall-out resulted in the cessation of Ecolife and over 1.6 million Econet subscribers lost their Ecolife cover. Thus microinsurance has been introduced in Zimbabwe before; it is not a new phenomenon.

2.5. IMPORTANCE OF MICROINSURANCE

The results of the 2014 Finscope Survey⁴³ that were published in February 2015, indicated that 70 percent of adults do not have any form of insurance. The 30 percent of the population that have insurance, 77 percent of the insurance they have is in the form of

³⁷ Preliminary Donor Guidelines (2003).

³⁸ Ibid 7 above.

³⁹ Ibid at 8 above.

⁴⁰ Ibid at 7 above.

⁴¹ Ibid 7 above.

⁴² Ibid at 8 above.

⁴³ Finscope Survey 2014.

funeral cover.⁴⁴This shows that there is a large number of the population that is left vulnerable to risk. Low-income households and small and medium enterprises are particularly vulnerable to risks, be they related to health, agriculture, property or death. These risks often carry heavy financial implications as individuals, businesses and households attempt to deal with them.⁴⁵ Not only does exposure to these risks result in substantial financial losses, but vulnerable households also suffer from the ongoing uncertainty about whether and when a loss might occur.⁴⁶ Microinsurance therefore is important as it is a tool to extend social protection by providing security to low-income households or businesses. It also contributes to poverty alleviation.

Furthermore the world is currently attempting to address the impact of climate change and trying to find ways to do so. It is worth noting that, once again, the poor and the vulnerable are the most at risk of facing the dire consequences of climate change especially poverty. Insurance can play a vital role in mitigating such risks and providing risk management tools to the at-risk and vulnerable, providing both direct and indirect benefits.⁴⁷ Another benefit of microinsurance is that insurance coverage makes households and individuals with microinsurance policies more resilient and less vulnerable to risk. The indirect benefit of microinsurance is that wide coverage fosters socio-economic growth on a national level. This in turn, provides more economic opportunities and safety across the world.

⁴⁴ Ibid 43.

⁴⁵ Why we do it. Available at [http:// www.microinsurancenet.org/why-we-do-it](http://www.microinsurancenet.org/why-we-do-it) (Accessed 6 March 2018).

⁴⁶ C. Churchill (n 1 above) 12.

⁴⁷ (n 25 above).

2.6. CONSUMER PROTECTION

In order to understand consumer protection one has to know who a consumer is. A consumer is someone who can make the decision whether or not to purchase an item at the store and someone who can be influenced by marketing and advertisements.⁴⁸ Consumer protection is defined as laws and practices designed to protect consumers against unfair trade and credit practices.⁴⁹ It is the law applying to the protection of users of goods and services. It also seeks to provide for a speedy redress for their grievances. Under microinsurance, consumer protection is defined as the effective use of microinsurance products by low income consumers to protect themselves against risk.⁵⁰ This definition highlights the need for a coordinated approach in which regulators, supervisors, industry players and consumers all share responsibility. The concept of consumer protection is broad and encompasses a wide array of issues all which are balanced to ensure that the ultimate goal of consumer protection. Considerations of education and information, product and process design, regulation and financial design and capacity and responsibility of stakeholders are important in microinsurance. Thus consumer protection is an integral component of any jurisdiction as it affords protection to the general population.

2.7. IMPORTANCE OF CONSUMER PROTECTION

Consumer protection is integral for various reasons. Consumer protection laws are a form of government regulation, which aim to protect the rights of consumers.⁵¹ In terms of microinsurance, consumer protection is important in that the rationale behind microinsurance is

⁴⁸ What is a Consumer? Available at www.investorwards.com (Accessed 26 April 2018).

⁴⁹ Definition of consumer protection. Available at www.collinsdictionary.com (Accessed 29 April 2018).

⁵⁰ E. Zimmerman, B. Magnoni, A. Carmago, "Pure" Intentions and Practice : Challenges and Good Practices in Consumer Protection in Microinsurance (2013) Microinsurance Network Organisation Journal 1.

⁵¹ Why Consumer Protection Law/Regulations are important. Available at www.minico.gov.rw (Accessed 29 April 2018).

to offer protection to at risk households. Thus effective consumer protection can have the effect of ensuring that consumers experience the risk protection benefits of microinsurance. The necessity of adoption consumer protection measures arises due to the helpless position of consumers. Consumers of any product or service have the right to be protected from loss or injury caused by defective goods or services.

Additionally, it is important as ethics play a prominent role in business⁵² as businesses and service providers have inherent social responsibility. Businesses have a duty to safeguard the interests of consumers of their products or services. An increase of awareness among consumers also forms part of the argument for consumer protection.⁵³ It is in service providers' best interests to take adequate steps to safeguard the interests of consumers. All of the above concepts point to the fact that consumer protection is an integral aspect of running a business and is also a mechanism to ensure that consumers do not fall prey to abuse by service providers. Consumer protection laws serve a purpose of placing consumers at par with the service providers.

2.8. NEED FOR LEGAL REGULATION OF MICROINSURANCE

Legal regulation of microinsurance is an integral aspect of providing checks and balances to the insurance sector. A well designed regulatory framework is a major factor for the effective and efficient provision of microinsurance services.⁵⁴ Too many microinsurance providers are operating outside the confines of the law. There is therefore a need to legally regulate the field of microinsurance to protect consumers from misleading sellers by regulating delivery channels and

⁵² What is the need and importance of consumer protection? Available at www.article-junction.blogspot.com (Accessed 28 April 2018).

⁵³ Ibid 52 above

⁵⁴ Regulation and supervision of microinsurance. Available at www.yearofmicrocredit.org (Accessed 29 April 2018).

unfair claims practices such as requiring disclosure. It is important to note that the consumers of microinsurance are the vulnerable part of society.

Low income households already face greater risk than usual and as such legal regulation is necessary so as to balance the interests of the insured and insurer in this instance. Legal regulation further protects the financial viability of insurers. This is a result of requiring standards for qualification, solvency, risk limitations and restrictions on investments. Regulation will also define duties and responsibility duties and responsibilities of the parties to microinsurance. Therefore the legal regulation of microinsurance provides for consumer protection by supervising insurers to safeguard their solvency and thus acts as a shield for consumers.

2.8. THE RELATIONSHIP BETWEEN MICROINSURANCE AND CONSUMER PROTECTION

In recent years there has been immense growth in microinsurance markets. Insurance providers and investors are increasingly recognising the market potential of microinsurance.⁵⁵ Even policy makers at global level encourage awareness of the potential that microinsurance has in terms of reducing the vulnerability of low income households. Effective consumer protection is necessary for insurance to be a sustainable risk protection mechanism. Thus consumer protection is related to microinsurance as it protects the purpose of microinsurance by providing additional protection to consumers of microinsurance. Low income households face various risks ranging from ill health to agricultural risks as well as loss of assets. As a result effective consumer protection is an issue in microinsurance.

⁵⁵ 5 (n 11 above).

Under microinsurance, effective consumer protection is ensured by regulation of microinsurance. Regulation of microinsurance can be self regulation or regulation by the government. Effective consumer protection is required to help them understand and develop confidence in insurance⁵⁶Government regulation, as with the Zimbabwe Framework, plays the role of creating suitable regulatory environment that promotes formal sector entry into low income markets. Therefore it can be argued that as a result of the above, the relationship between microinsurance and consumer protection is important.

CONCLUSION

Microinsurance is an integral aspect in any society. It provides the basis for which low-income persons are protected from risk. As stated above, microinsurance is important as low-income households' exposure to these risks result in substantial financial losses. Also vulnerable households suffer from uncertainty about whether and when a loss might occur. Microinsurance thus provides a mechanism through which such loss can be covered through insurance. As seen above consumer protection is an integral component of microinsurance. It is the basis upon which microinsurance is built upon. Consumers of microinsurance are vulnerable thus effective consumer protection mechanisms are important in microinsurance. Thus the Chapter is articulating the concepts of microinsurance and consumer protection and their relation to each other.

⁵⁶ Mass and Microinsurance : Consumer Protection in inclusive insurance markets. Available at www.microinsurancenet.org (Accessed 29 April 2018).

CHAPTER THREE

3.1. INTRODUCTION

Microinsurance is regulated through various statutes and frameworks in Zimbabwe. Microinsurance in itself is not a new phenomenon in Zimbabwe and the growth of services like EcoSure⁵⁷ has precipitated the need for effective regulation of the sector. As discussed in Chapter 2, there is an explicable link between microinsurance and consumer protection. Chapter 2 offered a conceptualisation of both microinsurance and consumer protection. There is a need to legally regulate the field of microinsurance to protect consumers from misleading sellers by regulating delivery channels and unfair claims practices such as requiring disclosure.

The effectiveness of microinsurance regulation in Zimbabwe is debateable. The Insurance Regulations have been amended to include microinsurance but these are insufficient in light of consumer protection in Zimbabwe. The Microinsurance Regulatory Framework is significant in terms of bringing to light issues relating to microinsurance however certain loopholes still exist. However, the regulation of microinsurance in Zimbabwe is effective also to a lesser extent in light of consumer protection in Zimbabwe. There have been commendable amendments of the Insurance Regulations that will go a long way in regulating microinsurance.

The Chapter analyses the Insurance Act, Insurance Regulations, Consumer Contracts Act, The microinsurance Framework and the Consumer Protection Bill and indicates, the extent if any, whether there is sufficient legal regulation of microinsurance in Zimbabwe in light of consumer protection.

⁵⁷ It is a life insurance product similar to EcoLife offered by Econet Zimbabwe, on the same terms and conditions.

3.2. LEGISLATIVE FRAMEWORK

Microinsurance in Zimbabwe is primarily regulated by the Insurance Act [Chapter 24:07] and the Insurance (Amendment) Regulations, 2017(No.19). In June 2017, the insurance regulator launched the Microinsurance Regulatory Framework in terms of Section 6(c)⁵⁸ of the Insurance Act. The Framework seeks to provide a structured and comprehensive framework for regulating microinsurance activities in Zimbabwe. It is intended to be applicable to both microinsurance products offered as well as the institutions that offer them. Also as shown in Chapter 2 there is an inherent link between consumer protection and microinsurance and consumer protection in Zimbabwe is governed by the Consumer Contracts Act [Chapter 8:03]. The inadequacies of the Consumer Contracts Act have led to the development of the Consumer Protection Bill as discussed below.

3.2.1. INSURANCE ACT.

The Insurance Act (“The Act”) is the governing Act for microinsurance in Zimbabwe. It should be noted that microinsurance is governed by the same principles governing traditional insurance. The Act affords protection to microinsurance consumers the same way it does to mainstream insurance consumers. Given that microinsurance is a class of insurance that can be offered by insurers in Zimbabwe, the Act equally applies to its regulation.

In terms of Section 7⁵⁹ of the Act, any person who carries on any class of insurance business in Zimbabwe without being registered as an insurer in that class of insurance business shall be guilty of an offence.⁶⁰ This provision grants protection to microinsurance consumers in that it emphasises on the aspect that any insurance business has to be registered. The registration of a

⁵⁸ Section 6(c) (n 7 above).

⁵⁹ Section 7 (n 7 above).

⁶⁰ Ibid 7.

microinsurance operator offers protection to the consumers in that registration makes it easier for operators to be monitored. Microinsurance operators often operate in legal loopholes but when registered the Commissioner can monitor their activities. Therefore the Act effectively regulates microinsurance in this regard.

Furthermore, Section 8 (3)⁶¹ read together with Section 17⁶², states that the Commissioner will not register an insurance provider unless at least half of the trustees or directors are either citizens of Zimbabwe or ordinarily reside in Zimbabwe or are permanent residents of Zimbabwe. This is important for accountability issues. In terms of microinsurance when half of the trustees and/or directors meet the above criteria it prevents instances where foreigners acting as insurance providers can just close down business and prejudice thousands of consumers by losing their cover. Also Section 74⁶³ provides that an insurer must maintain a principal office in Zimbabwe. This can be read together with Section 39⁶⁴ which states that periodical investigations will be carried out by the Commissioner. Therefore maintaining a principal office in Zimbabwe allows consumers to easily access the insurer in case of any queries as well to assist in monitoring the activities of the insurer by the regulator.

Additionally, Section 35⁶⁵ states that insurance brokers must be registered. Section 2⁶⁶ defines a broker as a person who, on behalf of any other person, negotiates insurance business with insurers⁶⁷, and includes a person who negotiates reinsurance business on behalf of any other

⁶¹ Section 8 (n 6 above).

⁶² Section 17 (n 6 above).

⁶³ Section 74 (n 6 above).

⁶⁴ Section 39 (n 6 above).

⁶⁵ Section 35 (n 6 above).

⁶⁶ Section 2 (n 6 above).

⁶⁷ Ibid 66.

person, but does not include an employee of a registered insurer who receives a salary.⁶⁸ Microinsurance providers usually work through a broker. Put simply a broker is a middle man or an intermediary. In the Ecolife scheme, Econet was working in conjunction with First Mutual Life an insurance provider. Econet was responsible for marketing the microinsurance product to the public and as such can be argued to be the broker in this instance. After the collapse of the scheme it is important to note that Econet faced no legal consequence for its involvement. Registration is important in that it also improves accountability where the broker has been negligent in effecting his duties. Thus in this regard the Act effectively regulates microinsurance.

Also worth noting is the fact that the Act states that the assets of the insurer must exceed liability at every material time. Section 24⁶⁹ states that long term solvency are required. The Act recognises the power that insurers have over the interests of the insured and as such solvency preserves those interests. In microinsurance the consumers of the product are already vulnerable to risk such that microinsurance is their salvation. The insurer therefore has a duty to protect those interests and the Commissioner ensures this by requiring that at every point in time the insured is solvent. Under Section 28⁷⁰ the Act provides for consistent monitoring of insurers thus insurers must publish their accounts showing subscribed and paid up capital. This further promotes accountability. An insolvent insured would not be able to pay out any claims. Thus in this regard the Insurance Act effectively regulates microinsurance.

However, despite the above the Insurance Act does not offer adequate regulation of microinsurance in light of consumer protection in Zimbabwe. The main flaw is that the Insurance

⁶⁸ Ibid 66.

⁶⁹ Section 24 (n 6 above).

⁷⁰ Section 28 (n 6 above).

Act does not give any reference to microinsurance despite the fact that it is a growing field of insurance. The failure to address microinsurance specifically leaves gaps in regulation of microinsurance as providers of microinsurance are of the belief that the Act and its provisions are not binding upon their activities. This creates loopholes that can be manipulated by the providers of microinsurance. This leaves the consumers of microinsurance vulnerable. The Act does not deal with the unique challenges that accompany microinsurance products such as the fact that premiums are often sporadic. Thus despite covering the basics, the Insurance Act does not sufficiently regulate microinsurance in light of consumer protection in Zimbabwe.

3.2.2. INSURANCE (AMENDMENT) REGULATIONS

The Insurance Amendment Regulations also known as S.I. 95/2017 are part of the legal regime governing microinsurance in Zimbabwe. The regulations offer further protection measures to the insured in terms of monitoring the insurer. Section 3⁷¹ provides the minimum capital requirements for insurers. It breaks down the minimum capital requirements for insurers. Microinsurance policies could be included in the insurers specified as some microinsurance policies are for life cover which is stipulated in the Regulations. Also the Regulations prescribe the attributes every insurer's capital must possess at any time. This helps with liquidity and solvency issues with the insurer and ensures that the insurer is capable of paying out claims when he has to. It also states grounds upon which repudiation of claims cannot be effected. Section 5B (c)⁷² of the Regulations state that where after lapse of a policy, the insurer fails to communicate such lapse in writing to the policy holder and continues to collect premiums he cannot therefore repudiate a claim made by a policy holder. This means that lapse of a policy must be

⁷¹ Insurance (Amendment) Regulations, 2017 (No. 19).

⁷² Section 5B (n 71 above).

communicated to the policy holder in writing for the insurer to repudiate a claim. This is important as it protects the consumers especially in microinsurance by ensuring that insurers do not arbitrarily refuse to pay out claims alleging lapse of a policy. Thus legal regulation of microinsurance is effective in light of consumer protection in Zimbabwe

The Insurance Regulations were further amended on the 23rd of March 2018, by S.I 39/2018.⁷³

The statutory instrument deals with loopholes created by the Insurance (Amendment) Act with regard to consumer protection. Section 3(1)⁷⁴ of the Insurance Regulations was amended to include a provision which stipulates the minimum capital requirements required of a microinsurance firm. Such a provision ensures liquidity and solvency in microinsurance firms and ensures that claims are capable of being paid out when made. Further the Amendment also stipulates the fee for registration of microinsurance providers.⁷⁵ This is important as it advocates for the registration of microinsurance companies. Registration makes it easier for the Commissioner to regulate and monitor the activities of providers. Also Part III⁷⁶ was amended to include the licensing fee for microinsurance agents. The significance of this is in the fact that by stipulating that agents/brokers be licensed, the consumer is protected as licensing means there is less risk of brokers acting outside the confines of the law. It is thus easier to regulate microinsurance and ensure consumer protection.

However, it can be argued the Regulations focus on the insurer and less on the insured and do not directly offer protection to the consumers of microinsurance. There should be stricter

⁷³ Insurance Amendment Regulations, 2018 (No.21).

⁷⁴ Section 3 (1) (f) (n 71 above).

⁷⁵ Section 2 (b) (n 71 above).

⁷⁶ Part III (n 73 above).

provisions of the amount charged on premiums, provisions regulating the payment of premiums on a sporadic basis as well to insist on consumer education. Further, despite recognizing the growth of microinsurance in Zimbabwe it does not fully deal with microinsurance and its unique challenges. The regulations are passive in their regulation of microinsurance and offer a very relaxed approach to regulation. Conclusively, the Regulations do not adequately regulate microinsurance in light of consumer protection in Zimbabwe.

3.2.3. CONSUMER CONTRACTS ACT

In Zimbabwe, consumer protection is regulated primarily through the Consumer Contracts Act [Chapter 8:03]. In Section 2,⁷⁷ the Act defines a consumer contract as a contract for the sale or supply of goods or services or both⁷⁸, in which the seller or supplier is dealing in the course of business and the purchaser or user is not.⁷⁹ It excludes employment contracts and contracts for sale, lease or hire.⁸⁰ The significance of this provision in relation to microinsurance is that consumers of Act microinsurance are protected under the Act.

The Act provides for consumers to pursue legal remedies where a contract is unfair or any actual or reasonably anticipated exercise or non-exercise of a power, right or discretion under a consumer contract is or would be unfair⁸¹. This means that the insured under this Act has recourse to the legal remedies where he feels his rights are infringed under the policy. This is done by approaching the court for remedies. The court may cancel the whole or part of the consumer contract, vary the contract, cancel the exercise of any power, right or discretion under

⁷⁷ Consumer Contracts Act [Chapter 8 :03].

⁷⁸ Ibid 77.

⁷⁹ Ibid 77.

⁸⁰ Ibid 77.

⁸¹ Section 4 (n 77 above).

a consumer contract as well as order restitution or compensation for loss suffered.⁸² This is important for microinsurance regulation in that it promotes accountability for insurers.

The Act further articulates what an unfair contract is in Section 5.⁸³ By clearly defining an unfair contract there is clarity in terms of helping the insured discern whether the microinsurance contract is fair or not. Section 8⁸⁴ further states that there shall be no waiver of protection of the Act. Consumers of microinsurance can therefore approach the courts to attain legal remedies in instances where the policy is unfair to the insured. The Consumer Contracts Act thus grants commendable protection to consumers. In light of the above it can therefore be said that there is effective legal regulation of microinsurance in Zimbabwe in light of consumer protection.

It is further submitted that the Consumer Contracts Act is shallow and insufficient. The Act does not deal with the various problems that may arise from microinsurance contracts such as lack of adequate information being provide, arbitrary cancellation of policies and refusal to pay out claims by insurers. The Act only protects consumers from unfair contracts whereas consumers face a myriad of risks such as lack of adequate information being provided by insurers before entering into contracts. The Act also fails to cater for the unique distribution and premium payment options available in microinsurance and offers no protection to consumers in that regard.. Microinsurance contracts are a new phenomenon and as such the legal regime in Zimbabwe does not cater for them. It can be concluded that legal regulation of microinsurance in Zimbabwe is inadequate in light of consumer protection in Zimbabwe.

⁸² Section 3 (1) (c) (n 77 above).

⁸³ Section 5 (n 77 above).

⁸⁴ Section 8 (n 77 above).

3.2.4 CONSUMER PROTECTION BILL

The inadequacies of the Consumer Contracts Act have led to the enactment of the Consumer Protection Bill of 2014. The Bill is progressive in terms of protecting consumers in every sphere. The Bill in Section 5⁸⁵ establishes the Consumer Protection Commission. This is a regulatory body to ensure the rights of consumers are protected. The presence of the Commission is imperative in that it guarantees monitoring of service providers such as insurance & microinsurance firms. This in turn promotes transparency and accountability as insurers are under scrutiny by the Commission. In this regard, the consumers of microinsurance are protected.

Section 6⁸⁶ outlines the role of the Consumer Protection Commission. This is progressive in that its objectives cover the various ways of protecting consumers. In relation to microinsurance the role of the commission is in terms of improving consumer awareness and information and encouraging responsible and informed consumer behaviour. Microinsurance is a new and emerging field and as such it is important for consumers to receive adequate education on policies including how claims are handled, what triggers a claim and complaints handling. Section 6 (d)⁸⁷ also notes the Commission has a duty to regulate the formation of specific consumer protection bodies for specific sectors. The establishment of such a board will have the effect of directly assuring consumers of microinsurance legal regulation and monitoring of microinsurers. Thus the Consumer Protection Bill will assist legal regulation of microinsurance in light of consumer protection in Zimbabwe.

⁸⁵ Consumer Protection Bill 2014.

⁸⁶ Section 6 (n 85 above).

⁸⁷ Section 6 (d) (n 85 above).

Furthermore, Part III⁸⁸ of the Bill lists the fundamental rights of consumers. This differs from the Consumer Contracts Act that barely dealt with defining a consumer. It offers a comprehensive list of the rights of consumers. Section 9⁸⁹ deals with the right to be informed. This is important especially in microinsurance where the consumers of the services provided are already vulnerable and lack of sufficient information may lead to loss. Further, Section 14⁹⁰ reiterates the right to plain and understandable language. Characteristics of microinsurance include simplicity in product design and distribution means. The same applies to information given to consumers on microinsurance policies. Microinsurance is meant to be simple and as such insurers have to simplify every aspect of the policy. Also Section 19⁹¹ read together with Section 23⁹² deal with the rights of consumers to approach the courts for redress. This clearly shows that consumers have the right to approach the courts where insurers infringe on any of their rights.

The Consumer Protection Bill will go a long way in protection of consumers of both insurance and microinsurance products. The Bill will offer effective regulation of microinsurance as it outlines the rights of consumers and methods of acquiring redress in case of any loss. It thus contributes to effective legal regulation of microinsurance in light of consumer protection in Zimbabwe. Despite containing a plethora of progressive provisions, it is worth noting that this is a Bill and until it is passed as law it is not legally enforceable. This means consumers of microinsurance products are still vulnerable as there is lack of substantial regulation to ensure their interests are protected.

⁸⁸ Part III (n 85 above).

⁸⁹ Section 9 (n 85 above).

⁹⁰ Section 14 (n 85 above).

⁹¹ Section 19 (n 85 above).

⁹² Section 23 (n 85 above).

3.2.5. MICROINSURANCE REGULATORY FRAMEWORK

The primary objective of the Microinsurance Regulatory Framework is to establish a basis for the regulation and supervision of microinsurance activities.⁹³ The Insurance and Pensions Commission's rationale for the Framework came as a result of realization that there is need for regulation of microinsurance initiatives as the policy holders are individuals vulnerable to risk and loss. The Framework is mostly progressive as it is Zimbabwe's first foray into regulation of microinsurance. The need to develop the framework has been motivated by the inadequacy of the current regulatory framework which does not provide any guidelines for the licensing and regulation of microinsurance products and entities⁹⁴. The regulatory gap which currently exists has presented a challenge to the Insurance and Pensions Commission on how to deal with the existence of unregistered microinsurance product providers.⁹⁵ The Regulatory Framework thus is effective in its regulation of microinsurance in light of consumer protection in Zimbabwe; however the framework fails to offer adequate protection to microinsurance regulation.

Firstly, the Framework clearly defines microinsurance and thus defines the consumers of microinsurance. In Section 4,⁹⁶ microinsurance is defined as insurance that is accessed by low-income populations, provided by a variety of different entities⁹⁷, but run in accordance with generally accepted insurance practices.⁹⁸ Put simply, microinsurance is that insurance, which is appropriate for the low-income market in respect to cost, terms and conditions, coverage and

⁹³ Ibid 2.

⁹⁴ 3 (n 2 above).

⁹⁵ 3 (n 2 above).

⁹⁶ Section 4 (n 2 above).

⁹⁷ Ibid 96.

⁹⁸ Ibid 96.

delivery mechanisms.⁹⁹ By clearly defining microinsurance the framework outlines the scope and application of microinsurance. This is progressive in terms of regulation as the framework offers the clarity in the definition and scope of microinsurance. Furthermore, the objectives stated in Section 3¹⁰⁰ of the framework further clarify the scope and application of microinsurance. The objectives stated include ensuring the protection of the insuring public¹⁰¹, establishment of licensing framework of microinsurance and formalization of microinsurance. Thus the Microinsurance Regulatory Framework is significant in terms of regulation of microinsurance.

Also the Regulatory Framework lays out the requirements for approval of microinsurance products. In terms of Section 5¹⁰² states that an insurance company shall apply to the Commission for the approval of its microinsurance product.¹⁰³ An insurer will only proceed with the launch of a new microinsurance product upon receiving written approval from the Commission.¹⁰⁴ The requirement to apply to the Commission also assists in the vetting process so that consumers of the microinsurance product are not prejudiced by unscrupulous insurers. The prospective insurer has to submit a sample of the policy document to the Commission.¹⁰⁵ The Commission will only approve the product if it meets the approval criteria set by the Framework¹⁰⁶. This provides extensive regulating of microinsurance in that it seeks to prevent unregistered microinsurers from operating outside the confines of the law and protects

⁹⁹ Ibid 2.

¹⁰⁰ Section 3 (n 2 above).

¹⁰¹ 5 (n 2 above).

¹⁰² Section 5 (2 above).

¹⁰³ Ibid 102.

¹⁰⁴ 7 (n 2 above).

¹⁰⁵ 7 (n 2 above).

¹⁰⁶ 8 (n 2 above).

consumers of microinsurance. This therefore points to effective regulation of microinsurance in light of consumer protection in Zimbabwe.

Additionally, the Framework provides for conventional insurance companies to offer microinsurance products in Section 7.¹⁰⁷ They are allowed to offer microinsurance products without having to apply for a license provided their products meet the criteria outlined in the Framework.¹⁰⁸ The microinsurance products must not be bundled together with conventional insurance products. This is an important as it reinforces the fact that microinsurance is distinctive from conventional insurance. By reiterating that microinsurance products must be distinct from conventional insurance products the Framework ensures that products must be designed to meet the needs of a distinct group. This prevents any loss that may occur to microinsurance consumers as a result of bundling together products. Therefore regulation of microinsurance in this regard is effective in light of consumer protection in Zimbabwe.

The Framework also sets the minimum capital requirements for dedicated microinsurers. The minimum capital required is \$300 000.00.¹⁰⁹ The significance of such a provision in the framework is that it reaffirms the need for insurers to be solvent. An insolvent insurer is unable to pay out claims when the insured claims. This in turn leads to loss on the part of the insured and defeats the purpose of taking out a microinsurance policy. Also a dedicated microinsurer shall maintain with the Commission a statutory deposit of 5% of the minimum capital requirement.¹¹⁰ This deposit will be available to the insurer in the event of failing to meet

¹⁰⁷ Section 7 (n 2 above).

¹⁰⁸ Section 9 (n 2 above).

¹⁰⁹ Section 8 (n 2 above).

¹¹⁰ Ibid 109.

insurance liabilities and need to be replenished within 60 days after being accessed.¹¹¹ The deposit will be the last resort where the insurer is in financial trouble. This acts as a contingency plan for when the insurer is insolvent and ensures the insured receives payout of their claim and suffers no prejudice. Thus the Zimbabwe regulatory framework is effective in light of consumer protection in Zimbabwe.

Moreover, the Framework in Section 10¹¹² reiterates the fact that intermediaries must be licensed. Intermediaries can be Non-Governmental Organizations, banks, retailers, cooperatives and social and religious organizations. This is important because intermediaries are capable of reaching underserved customers using specialised distribution channels. The objective of microinsurance is to offer insurance to low-income households and by licensing these social and religious organizations improves access to cover. The framework also prescribes training process for agents of microinsurance that are not corporate bodies. This is an approved microinsurance training program to be offered by the Insurance Institute of Zimbabwe approved by the Commission. The fact that the framework requires agents to be educated in microinsurance assists in ensuring that consumers are not misled by agents or brokers with no knowledge of the basics of microinsurance. Thus it can be said the Microinsurance framework is effective in its regulation of microinsurance in light of consumer protection in Zimbabwe

Despite the fact that it is progressive in its regulatory role, the Microinsurance Framework does not offer much in terms of consumer protection or regulation. It is important to note the provisions of the Framework are not law but rather they are policy. Further the Framework

¹¹¹ Ibid 110.

¹¹² Section 10 (n 2 above).

appreciates the role of the consumer but offers no direct protection to the consumer. It seems to focus on the role of the insurer instead of dealing with the consumer's needs. For example the framework says nothing about the concept of climate change and its effect on microinsurance in Zimbabwe despite the fact that Zimbabwe's economy is agro-based. The majority of people employed in the informal sector are small to medium farmers. They constitute a significant number of microinsurance consumers. Climate change and its effects will interfere with farming activities and as such the framework should have mentioned how such risk will be dealt with.

3.3. CONCLUSION

To a large extent, it can be submitted that the legal framework regulating microinsurance is insufficient in light of consumer protection in Zimbabwe. This is due to the fact that without specific microinsurance legislation, it is difficult to effectively regulate the microinsurance sector. The Insurance Act is the principal legislation regulating microinsurance. However, the Act does not give any reference to microinsurance despite it being a growing field of insurance. The Insurance Regulations are also lacking provisions that deal with problems experienced by the insured such as payment of claims. On its part the Consumer Contracts Act is shallow and further leaves the consumer unprotected as it fails to mention any rights of consumers.

On the other hand, it can be said that legal framework regulating microinsurance in Zimbabwe is effective especially in terms of the Insurance Act requiring insurers to be registered and this improves accountability as the Commissioner can monitor the insurer's activities. The enactment of the Consumer Protection Bill will further protect consumer through formation of organizations for specific fields. An independent commission regulating microinsurance will effectively

regulate activities of insurers. The Microinsurance Regulatory framework is also important as it clearly defines the scope and application of microinsurance.

CHAPTER 4

4.1. INTRODUCTION

Chapter 3 gave an analysis of the legal regulation of microinsurance in Zimbabwe in light of consumer protection. The Insurance Act, Insurance Regulations, Consumer Contracts Act, Consumer Protection Bill and the Microinsurance Framework were analysed. It was noted that there is lack of sufficient and effective regulation of microinsurance in Zimbabwe. Without a specific microinsurance regulatory framework, consumers for microinsurance are vulnerable as compared to other insurance products consumers.

In Ghana, the development of the microinsurance industry is spearheaded by the National Insurance Commission. Its goal is to expand the insurance market and facilitate improved access to and the use of insurance services by low-income households. In 2010, the National Insurance Commission began the process to bring the country's microinsurance legal and regulatory framework at par with international best practices. At the present moment, microinsurance in Ghana is legally regulated through the Insurance Act, 724 (2006), the Market (Microinsurance) Conduct Rules (2013) and the Microinsurance Explanatory Note. In this Chapter, the Zimbabwean position is compared to Ghana.

4.2. LEGAL FRAMEWORK

Microinsurance in Ghana is regulated through the Insurance Act, 724 (2006), Market (Microinsurance) Conduct Rules (2013) and the Microinsurance Explanatory Note. These form the basis of legal regulation of microinsurance in Ghana. Ghana took a new and groundbreaking approach in defining microinsurance. Instead of defining microinsurance using quantitative or qualitative means, it proposes that the insurers designate an insurance product as microinsurance.

The position in Ghana in defining microinsurance is that microinsurance is an insurance product designated as microinsurance by the insurer. Therefore there will not be a stand-alone microinsurance Act but rather the inclusion of microinsurance in the Insurance Act. Ghana is in the process of enacting a new Insurance Act that possesses specific microinsurance provisions. The new Act is meant to provide thorough legal regulation of microinsurance as it puts into consideration into the special challenges faced in microinsurance. The National Insurance Commission has issued the Market (Microinsurance) Conduct rules to regulate microinsurance.

4.2.1. INSURANCE ACT, 724 (2006)

The Insurance Act No.724 is the principal legislation governing microinsurance currently in Ghana. The Act in Section 1¹¹³ establishes the National Insurance Commission. According to the Act the object of the Commission is to ensure effective administration, supervision, regulation and control of the business of insurance.¹¹⁴ The objective is to protect insurance policy holders. Section 2 (2)¹¹⁵ the functions of the Commission are articulated. It has the duty of licensing of insurers and intermediaries. This is important as it prevents insurers from operating outside the watchful eye of the Commission. In Zimbabwe, this is the mandate of the Insurance Commissioner in terms of Section 5¹¹⁶of the Insurance Act. However, the Ghana National Insurance Commission takes on a stricter approach to regulation of insurance activities than Zimbabwe. The activities of microinsurance providers are effectively regulated as a result. In microinsurance, there is risk of unregistered microinsurance providers operating outside the

¹¹³ Insurance Act 724 (2006).

¹¹⁴ Section 2 (1) (n 113 above).

¹¹⁵ Section 2 (2) (n 113 above).

¹¹⁶ Section 5 (n 7 above).

confines of the law thus this ensures that only licensed operators can provide microinsurance products.

The National Insurance Commission has the role of consulting with relevant bodies to approve and set standards for the Insurance business and insurance intermediaries.¹¹⁷ The fact that the Commission has to consult other bodies to set standards for insurance in Ghana is important as it protects against arbitrary use of power by the Commission in terms of regulating insurance. The Commission has the mandate to approve the rate of insurance premiums and commission in respect of any class of insurance. This is quite similar in operation to the Insurance Commissioner in Zimbabwe. This protects consumers of microinsurance as premiums for microinsurance must be tailored to suit the needs of low-income households and such there is the need to regulate and monitor premiums.

The Act also establishes the appointment of an actuary in Section 56¹¹⁸. An actuary is a person who compiles and analyses statistics and uses them to calculate insurance risks and premiums.¹¹⁹ The fact that the Ghana framework mandates the appointment of an actuary to analyze statistics and monitor insurers is a way to protect consumers of microinsurance. Also Section 59 (1)¹²⁰ states that the actuary of a long-term insurer shall report immediately to the Commission where the contravention is of such a nature that it may adversely affect the interests of the policy holders of the insurer.¹²¹ This is important because the role a actuary in this case is to monitor an insurer to ensure compliance with standards stipulated by the Commission. The Zimbabwean

¹¹⁷ Section 2(2)(b) (n 113 above).

¹¹⁸ Section 56 (n 113 above).

¹¹⁹ What is an actuary? <https://www.beanactuary.org> (Accessed 19 April 2018).

¹²⁰ Section 59 (1) (n 113 above).

¹²¹ Ibid 120.

Insurance Act [Chapter 24:07]¹²² also mentions an actuary but this role is juxtaposed with that of an auditor. There is no specific provision that mandate appointment of an actuary whose role is that of a watchdog. Ghana distinguishes the role of the auditor from that of the actuary. This is different from the Zimbabwean position where the role of the auditor and actuary are juxtaposed and the actuary does not serve any specific purpose. The Ghana position is more preferable as the actuary acts as a regulatory force on his own. This therefore ensures consumers of microinsurance products are protected as the actuary has a duty to report any activity that may prejudice the interests of the insured.

Section 69¹²³ further stipulates the minimum capital requirements to be maintained by the insurer. This can be read together with Section 71¹²⁴ that sets a solvency margin to be observed by the insurer. It should not be less than is prescribe by the commission for that class of insurance. This is quite similar to Section 24¹²⁵ of the Zimbabwean Insurance Act that sets solvency margins for insurers. The importance of such a provision is that solvency is essential to payment of claims. The objective of insurance contracts is to ensure that the insured is indemnified from risk. A solvent insurer is capable of paying out claims where they have been made, insolvency defeats the purpose of insurance cover as it hinders the payment of claims. Thus this provision is progressive in light of consumer protection.

¹²² Ibid 7.

¹²³ Section 69 (n 113 above).

¹²⁴ Section 71 (n 113 above).

¹²⁵ Section 24 (n 113 above).

Section 114¹²⁶ provides for licensing of intermediaries. Intermediaries include brokers and agents. It is important to note that microinsurance is characterized by simple delivery mechanisms usually implemented through intermediaries. Ghana recognizes the role that intermediaries play in insurance and microinsurance contracts and as such recognizes the need to regulate them by issuing licenses to operate. In the same way, insurers are also to be licensed in terms of Section 21¹²⁷ where an insurer has to make an application to the Commission by satisfying the requirements stipulated in the Act.¹²⁸ Licensing of insurers is important in that those granted the license will have permission to operate under any class of insurance. The Zimbabwean Act also mandates the same position. This protects consumers of microinsurance in that it ensures providers of microinsurance products have been vetted by the Commission and given a license to operate. Licensing is another way of monitoring the activities as the license can be revoked if the insurer fails to abide by the standards set by the Commission. Also according to Section 28¹²⁹ licenses should be publicized in the Gazette and any newspaper of mass circulation that the Commission may determine.¹³⁰ This notifies the general public of the licensing of an insured and thus promotes transparency. Thus in this regard legal regulation of microinsurance in Ghana is effective in light of consumer protection.

In essence, the Ghana Insurance Act applies to both microinsurance and mainstream insurance. The Act offers progressive provisions that are missing from Zimbabwe's Act such as appointment of an actuary by the Commission to monitor the insurers. In terms of microinsurance this is a progressive provision in terms of encouraging transparency and protection of the

¹²⁶ Section 114 (n 113 above).

¹²⁷ Section 21 (n 113 above).

¹²⁸ Ibid 127.

¹²⁹ Section 28 (n 113 above).

¹³⁰ Ibid 129.

consumers of microinsurance products. The actuary will effectively monitor the insurer and where they put the policy holder's interests at risk, immediately report to the Commission. This points to the fact that despite the Ghana insurance Act being somewhat similar to the Zimbabwean Act it provides strict regulation of insurance and thus holds the insurance industry to higher standards.

4.2.2. MARKET (MICROINSURANCE) CONDUCT RULES, 2013

The Market (Microinsurance) Conduct Rules were enacted in 2013 in terms of Section 204¹³¹ of the Insurance Act, 724 (2006).¹³² The Rules are meant to provide guidelines for the operation of microinsurance business in Ghana. It is important to note that the Rules provide the basis for the discretion of insurance providers to designate insurance products as microinsurance products. Instead of applying the qualitative or quantitative approach to define insurance Ghana gave initiative to define microinsurance products to the insurer. They have the mandate to designate a product as microinsurance. Zimbabwe has no instrument to regulate the conduct of microinsurance business. The enactment of microinsurance conduct rules in Zimbabwe would go the extra mile in regulating microinsurance and ensuring consumer protection. Failure to create rules for microinsurance providers creates loopholes through which they can operate by. Thus Zimbabwe can borrow from Ghana in this regard.

Rule 1¹³³ prescribes prohibitions in relation to sale of insurance contracts as microinsurance. A licensed insurer shall not market an insurance contract as a microinsurance contract or enter into or renew a microinsurance contract unless the Commission has approved the contract as a

¹³¹ Section 204 (n 82 above).

¹³² Ibid 114.

¹³³ Market (Microinsurance) Conduct Rules, 2013.

microinsurance contract¹³⁴. In Zimbabwe the Commissioner is the only entity charged with power to designate microinsurance contracts. The fact that the approval of the Commission in Ghana is required before designating a product as microinsurance provides much-needed checks and balances to the insurer's designation powers. This in turn protects the consumers of microinsurance products in that no product can be sold as microinsurance to the detriment of consumers as it has been vetted and approved by the Commission. Thus in Ghana an insurer cannot arbitrarily declare a product as microinsurance and prejudice the consumers of the products. Thus vetting by the Commission is a safeguard meant to protect consumers while at the same time being inclusive of insurers in terms of the designation process.

Also worth noting, is Rule 2¹³⁵ which deals with designation of insurance contracts as microinsurance contracts. It also sets out the criteria to be met when designating an insurance contract as a microinsurance contract. The insurance contract must be designed and developed with the intention of meeting the needs of, being marketed and sold to low income persons generally.¹³⁶ This could also target specific types of low-income persons or those in a specific geographical area.¹³⁷ Also worth noting is the fact that Rule 2¹³⁸ mandates the premiums charged under microinsurance contracts be affordable to the targeted consumers. The above concepts are important in that they require insurers to design products that meet the needs of low-income persons. This is the main function of microinsurance, to provide protection to those normally excluded under mainstream insurance. Also the Rules require insurers to compile a written

¹³⁴ Rule 3 (n 133 above).

¹³⁵ Rule 2 (n 133 above).

¹³⁶ Rule 2 (2)(a) (n 133 above).

¹³⁷ Rule 2 (2) (a) (n 133 above).

¹³⁸ Rule 2 (2)(b) (n 133 above).

record of assessment where they have deemed an insurance contract as microinsurance.¹³⁹ The written record of assessment must be taken against the criteria set out in the Rules.¹⁴⁰ It should detail the basis upon which the designation was made and how the contract meets the criteria in the Rules. Zimbabwe lacks such requirements for providers of microinsurance and this has left consumers vulnerable. Microinsurance providers in Zimbabwe are not accountable in this regard to the Insurance Commissioner. This improves accountability of insurers in Ghana as they are accountable to the Commission. They should justify their designation of a contract as microinsurance, and this is commendable in light of consumer protection in Ghana.

In terms of Rule 3¹⁴¹ approval of microinsurance contracts is by the Commission. An application must be accompanied by copies of insurance contract for which approval is sought¹⁴². This offers the Commission a closer look at the microinsurance contract being offered by the insurer. Also a copy of the Policy summary and the written record of assessment must be attached. The Commission may approve or refuse an application. Rule 4¹⁴³ also points to the fact that such approval can be revoked by the Commission. This occurs when the contract never or no longer satisfies the criterion specified in the rules. This points to the fact that Ghana employs a strict approach to regulation of microinsurance providers. They are held at a higher standard than currently offered in Zimbabwe. This is important as it offers considerable protection to consumers of microinsurance contracts as approval is revocable when it no longer meets the requirements stipulated. This encourages insurers to abide by the requirements of the Commission. In Zimbabwe, microinsurance providers often operate

¹³⁹ Rule 2 (4) (n 133 above).

¹⁴⁰ Ibid 139.

¹⁴¹ Rule 3 (n 133 above).

¹⁴² Rule 3 (2) (a) (n 133).

¹⁴³ Rule 4 (n 133 above).

outside the Commissioner's regulation. This has created a situation whereby consumers of microinsurance in Zimbabwe are vulnerable to loss and risk. Thus the Ghana regulatory framework is affective in light of consumer protection in Ghana.

Rule 5,¹⁴⁴ Rule 6¹⁴⁵ and Rule 7¹⁴⁶ regulate the development and requirements of microinsurance contracts. It is stipulated that an insurer in designing a microinsurance contract has to regard whether it is likely to provide value for its consumers. They should also follow guidance provided by the Commission. Rule 6¹⁴⁷ further mandates that the policy document be written in clear and straightforward language. There should be no or minimal use of legal or technical language. The objective is to ensure that the contract is easily understood by the low-income persons to whom it is marketed. The contract shall clearly state that it is a microinsurance contract. It is important to note that simplicity is an integral characteristic of microinsurance. In its preamble¹⁴⁸ the Zimbabwean Microinsurance Regulatory Framework also notes that microinsurance products must be simple. However the Zimbabwean position is lacking in the fact that it acknowledges the simplistic nature of microinsurance polices but does not proceed to require simplicity in terms of product design specifically. It has a relaxed approach to regulating microinsurance than the Ghana position. Thus the Ghana legal regulatory framework is more effective in light of consumer protection.

Rule 8,¹⁴⁹ Rule 9¹⁵⁰ and Rule 10¹⁵¹ prescribe the rules for marketing and sale of microinsurance contracts. It is mandated that a license insurer should prepare a policy summary in relation to

¹⁴⁴ Rule 5 (n 133 above).

¹⁴⁵ Rule 6 (n 133 above).

¹⁴⁶ Rule 7 (n 133 above).

¹⁴⁷ Ibid 146.

¹⁴⁸ 6 (n 2 above).

¹⁴⁹ Rule 8 (n 133 above).

every microinsurance contract sold.¹⁵² It stipulates the summary provide in plain and easy language information regarding the microinsurance contract.¹⁵³ This includes the type of microinsurance contract, description of risks covered and any significant unusual limitation or exclusion.¹⁵⁴ Further, there should be information on the duration of the contract, principle benefits, claim notification as well as the right to complain.¹⁵⁵ It also mandates intermediaries to provide consumers with sufficient time to make an informed decision and sufficient information on the contract. This is an important aspect of the rules as often consumers do not have sufficient information on policies before entering into contracts. This leaves consumers vulnerable to unscrupulous insurers who avoid paying out claims because consumers do not have sufficient information. The Zimbabwean position on this aspect is not explicit but rather it vaguely deals with mandating insurers to provide such information. This leaves loopholes by which microinsurance may operate by. Thus there is much to be learnt from the Ghana microinsurance legal framework in light of microinsurance in Zimbabwe.

Rule 11¹⁵⁶ deals with handling of claims. It stipulates that a claim under microinsurance contract shall be acceptance or rejected by a licensed insurer within 7 days of receipt of the claim. Where the claim is accepted such a claim will be settled within 7 days of receipt. Rejection of a claim must be accompanied by written notice of the rejection of the claim within 10 days. The insurer must always provide guidance to a policyholder on making a claim and information on its project. There is a duty not to unreasonably deny a claim by terminating or avoiding a

¹⁵⁰ Rule 9 (n 133 above).

¹⁵¹ Rule 10 (n 133 above).

¹⁵² Rule 8 (1)(133 above).

¹⁵³ Rule 8 (2)(a) (n 133 above).

¹⁵⁴ Rule 8 (3)(n 133 above).

¹⁵⁵ Rule 8 (3) (n 133 above).

¹⁵⁶ Rule 11 (n 133 above).

microinsurance contract. The legal framework in Zimbabwe, only vaguely deals with payment of claims. It should be noted that this is a way through which insurers will operate outside the confines of the law and thus leaves consumers vulnerable. Therefore in the Ghana legal framework regulating microinsurance is effective in light of consumer protection.

The Market (Microinsurance) Conduct rules in Ghana have provided significant legal regulation of microinsurance. The fact that there are Market Conduct rules for microinsurance is proof that Ghana is a step further than Zimbabwe in terms of regulating microinsurance. The only direct form of microinsurance regulation in Zimbabwe is the Microinsurance Regulatory Framework that clearly falls short in various ways. The Conduct rules appreciate the consumer's role in microinsurance. It deals with the unique challenges faced by consumers of microinsurance such as the need for affordable premiums and handling of claims. Microinsurance regulation in Zimbabwe has failed to take all this into consideration.

4.2.3 PROPOSED TRANSITIONAL MICROINSURANCE FRAMEWORK: EXPLANATORY NOTE

The Microinsurance Explanatory Note was published as a way to introduce the microinsurance sector in Ghana to the Transitional microinsurance framework. The Explanatory Note defines microinsurance in Ghana. Ghana takes a groundbreaking approach to define microinsurance. Instead of a qualitative or quantitative approach, the note denotes that insurers are given the power to designate an insurance product as microinsurance.¹⁵⁷ Any new microinsurance product issued under the framework is to be approved by the Commission.¹⁵⁸ After approval the contract

¹⁵⁷ Microinsurance Explanatory Note.

¹⁵⁸ 3 (n 157 above).

is considered for all purposes of the Market Conduct (Microinsurance) Rules as microinsurance.

¹⁵⁹The Zimbabwean framework uses a qualitative approach to defining microinsurance. Although this better captures the essence of microinsurance, it presents other problems as well. It is rather vague and difficult to assess a legal definition. It is difficult to assess particularly where minimum wage or average wage is used as they are prone to change. This is likely to leave consumers vulnerable as the scope of microinsurance is likely to change and be contrary to the definition provided at law. Legal certainty is difficult to achieve thus the Zimbabwe microinsurance regulatory framework should borrow from the Ghana framework definition of microinsurance.

The Explanatory Note deals with designation of microinsurance contracts by insurers. ¹⁶⁰A qualitative criterion is employed as the basis for designation while legal certainty is achieved through the approval process set out by the Commission.¹⁶¹ The Explanatory Note also sheds light on incentives in the microinsurance regime that aim to encourage microinsurance products.¹⁶² Insurers will be allowed to rate microinsurance products on a community basis instead of an individual basis.¹⁶³ The Commission designed a logo that will have to be prominently placed every microinsurance contract.¹⁶⁴ This will identify the contract as microinsurance and will therefore provide certain ‘branding’ benefits. The Commission recognises that insurers are businesses and as these branding benefits are crucial to making profits. The Explanatory Note further recognises the consumer’s need to be protected as well. It

¹⁵⁹ 3 (n 157 above).

¹⁶⁰ 3 (n 157 above).

¹⁶¹ 3 (n 157 above).

¹⁶² 3 (n 157 above).

¹⁶³ 3 (n 157 above).

¹⁶⁴ 4 (n 157 above).

further notes that microinsurance contracts be simplistic in nature and easily understood. Claims are also supposed to be dealt with expeditiously. The Zimbabwe Microinsurance Regulatory Framework lacks the depth to balance the consumer and insurer's interests when compared to the Ghana framework. This thus points to the fact that it is important to derive lessons from the Ghana framework in light of consumer protection.

4.3. CONCLUSION

In light of the discussion above, it is clear that Zimbabwe has a lot to learn from the legal regulation of microinsurance in Ghana. Firstly, there is the issue of the definition of microinsurance itself. The qualitative criterion used in Zimbabwe is fraught with problems and the position in Ghana where insurers have the authority to designate a product as microinsurance should be emulated. The qualitative definition applied in Zimbabwe is problematic as certain qualitative requirements are prone to change such as minimum wage. This leave consumers vulnerable as the changes may result in certain policies no longer qualifying as microinsurance under the qualitative definition of microinsurance.

Also the use of actuaries in Zimbabwe is not effective as in Ghana where they serve a watchdog role over insurers. Zimbabwe should follow Ghana in mandating appointment of independent actuaries for long terms insurers with a duty to report any misconduct to the Commission. It is also important to note that there is need to launch Market Conduct rules for microinsurance in Zimbabwe as done in Ghana. These are rules to govern regulation of the microinsurance industry and will effectively regulate microinsurance in Zimbabwe in light of consumer protection. Ghana has made various moves as stipulated above to protect consumers of microinsurance. The

commendable attributes of the Ghana legal framework can be applied to microinsurance regulation in Zimbabwe in light of consumer protection.

CHAPTER 5

5.1.INTRODUCTION

The previous Chapter dealt with a comparative analysis of the legal regulatory framework for microinsurance in Ghana and that of Zimbabwe. In Ghana microinsurance is regulated in terms of the Insurance Act, the Market (Microinsurance) Conduct Rules and the Microinsurance Explanatory Note. These form the basis for an effective and strict regulatory regime for microinsurance in Ghana. The Explanatory note mandated that insurers designate insurance contracts as microinsurance, thus defining microinsurance as contracts designated as such. Legal regulation of microinsurance in Ghana is effective in light of consumer protection. Thus Zimbabwe can borrow from the Ghana system in terms of regulating microinsurance.

This Chapter gives a summary of research findings. It further proffers specific and general recommendations on legal regulation of microinsurance in Zimbabwe in light of consumer protection. Finally, the Chapter concludes the study.

5.2. SUMMARY OF RESEARCH FINDINGS

The dissertation analyses legal regulation of microinsurance in light of consumer protection in Zimbabwe. Microinsurance was defined as insurance that is accessed by low-income populations, provided by a variety of different entities, but run in accordance with generally accepted insurance practices.¹⁶⁵ The relationship between consumer protection and microinsurance was also discussed. The concepts are linked in that consumer protection protects the purpose of microinsurance by providing additional protection to consumers of microinsurance. In terms of microinsurance, effective consumer protection is ensured by

¹⁶⁵ Ibid 2.

effective legal regulation of microinsurance. Furthermore in Chapter 3, the legal regulation of microinsurance was analysed in light of consumer protection in Zimbabwe. It was noted that there are gaps in legal regulation of microinsurance in Zimbabwe in light of consumer protection. The Insurance Act fails to mention microinsurance despite that the field of microinsurance is growing in Zimbabwe. The Consumer Contracts Act also falls short in terms of protecting consumers of microinsurance in Zimbabwe. However the enactment of the Microinsurance Regulatory Framework and the subsequent amendments of the Insurance Regulations offer protection of consumers but to a limited extent.

Chapter 4 embarked on a comparative analysis of the Zimbabwean position with that of Ghana. Ghana does not use the qualitative or quantitative definition of microinsurance, instead in Ghana, microinsurance is defined as insurance designated as microinsurance by the insurer. Also in Ghana there is a stricter regulation of microinsurance through the use of actuaries and the Commission's watchdog functions. Ghana also has Market Conduct Rules specifically for microinsurance which assists in regulating the microinsurance sector. It was observed that Ghana effectively regulates microinsurance in light of consumer protection and Zimbabwe can borrow from the Ghana framework.

5.2. SPECIFIC RECOMMENDATION.

5.2.1. CONSTITUTIONAL REFORM

There is need for there to be constitutional reform in Zimbabwe to include the right to be protected as a consumer of a product or service. There is no specific provision in the Constitution

protecting consumers. Section 62¹⁶⁶ establishes the right to access of information that can be applied in light of there being a need for consumers to be given adequate information on a product. This is however inadequate as it places the right in relation to government agencies or institutions only. There is therefore a need for consumer protection to be entrenched in the Constitution.

5.2.2. ENACTMENT OF MICROINSURANCE ACT

As noted in the study, there is no specific legal regulation of microinsurance in Zimbabwe in light of consumer protection. This is due to the fact that the current legislative framework is not designed for microinsurance. The enactment of a standalone Microinsurance Act will effectively ensure regulation of microinsurance. It must clearly balance the bargaining positions of the insurer and the insured. This through balancing the insurer's desire to make profit with the insured's right to be protected from risk. The Act must clearly define microinsurance, its scope and application. The distinctive nature of microinsurance and traditional insurance and the obligations they place on consumers must be discussed as well. Enacting the Microinsurance Act will ensure effective regulation of microinsurance in light of consumer protection in Zimbabwe.

5.2.3. INTRODUCING MARKET (MICROINSURANCE) CONDUCT RULES

As seen in Ghana, the enactment of Market Conduct Rules for microinsurance will ensure effective regulation of the activities of microinsurance providers. The Conduct Rules in Ghana set out the conduct of microinsurance business in Ghana. The same is recommended in Zimbabwe as they would act as a guideline on how to conduct business whilst ensuring consumer protection.

¹⁶⁶ Constitution of Zimbabwe.

5.2.4. EXPLANATORY NOTE

Ghana enacted an Explanatory Note to explain the essential elements of its Transitional Microinsurance Framework. It also offers a simplified version of the Framework specifying the obligations of the insurer towards the insured. It should stipulate the essential elements of the microinsurance contract in light of consumer protection. This includes mandating that microinsurance premiums be affordable to the low-income persons to which they are marketed. Products should also be accessible to the consumers and procedure for payment or repudiation of claims is outlined. This will be an essential element of the effective regulation of microinsurance in light of consumer protection in Zimbabwe.

5.2.5. MICROINSURANCE REGULATORY COMMISSION

It is important for effective regulation of microinsurance that a Microinsurance Regulatory Commission be enacted. The National Insurance Commission regulates microinsurance as microinsurance is deemed an insurance product designated as microinsurance by the insurer. In Zimbabwe the Insurance Commissioner is mandated with regulating insurance. A standalone Microinsurance Regulatory Commission will act as an effective watchdog over microinsurance providers. Its mandate will be quite similar to that of the Insurance Commissioner except with specific interest in microinsurance. It must also act as disciplinary body where consumers submit complaints. This will go a long way in effectively regulating microinsurance in light of consumer protection in Zimbabwe.

5.3 GENERAL RECOMMENDATIONS

5.3.1. ABANDONMENT OF THE QUALITATIVE DEFINITION OF MICROINSURANCE.

As seen in the Ghana Framework, there are problems with the qualitative and quantitative definitions of microinsurance. Zimbabwe employs the qualitative definition that microinsurance is insurance that is accessible to low-income households. This presents problems in terms of legal certainty as certain qualifying requirements such as minimum wage or GDP are prone to change at times. Instead Zimbabwe should stand guided by Ghana and define microinsurance as insurance designated as microinsurance by the insurer. This creates certainty and ensures that at no particular time will certain policies sold as microinsurance fall outside the ambit of microinsurance. This therefore ensures effective regulation of microinsurance in light of consumer protection in Zimbabwe.

5.3.2. ROLE OF ACTUARIES

The Insurance Act mandates certain tasks to be performed by an actuary. The Insurance Act juxtaposes the role played by the actuary with that of the auditor. The Ghana Insurance Act mandates the appointment of an independent actuary approved by the Commission. The actuary has access to all documents in the possession of the insurer relating to the conduct of business. He also has a duty of informing the Commission where an insurer has contravened any of the rules governing the insurance sector.¹⁶⁷ Zimbabwe also needs to ensure the appointment of actuaries to serve as individual watchdogs over the Insurer. This will ensure effective regulation of microinsurance in light of consumer protection in Zimbabwe

5.3.3 CONSUMER EDUCATION

There is an inherent need for consumers of microinsurance to be educated on microinsurance and how their rights ought to be protected. There is a lack of adequate information given to

¹⁶⁷ Section 58 (1) (a) (n 80 above).

consumers of microinsurance that makes them vulnerable to unscrupulous practices by the insurers. There is need for public awareness campaigns on microinsurance, its scope of application, the rights of the consumers and channels for redress in case of infringement of those rights. This will place the consumer's bargaining position at almost an equal level with that of the insurer. Thus this can contribute to the effective regulation of microinsurance in light of consumer protection in Zimbabwe.

5.4 CONCLUSION

The problem identified in the research is that there are gaps in the legal regulation of microinsurance in light of consumer protection in Zimbabwe. In light of the identified problem, Chapter 2 conceptualised microinsurance as well as consumer protection. It has been noted that there is an irrevocable link between microinsurance and consumer protection. A well designed regulatory framework is essential to the effective provision of microinsurance services. It also assists in the protection of consumers of microinsurance products.

Chapter 3 offered an in-depth analysis of legal regulation in Zimbabwe and the extent to which it is effective in light of consumer protection in Zimbabwe. The Insurance Act, Insurance Regulations, Consumer Contracts Act, Consumer Protection Bill and the Microinsurance Regulatory Framework were looked at. It has been noted, for example, that legal regulation of microinsurance in Zimbabwe is lacking as the Insurance Act itself fails to make any reference to microinsurance in its provisions. There have been amendments to the Insurance Regulations to include microinsurance but this is insufficient to protect consumers of microinsurance. The Consumer Contracts Act is also shallow and ineffective as it barely offers protection to

consumers. The Consumer Protection Bill when passed shall offer better protection to consumers of microinsurance. The Microinsurance Regulatory Framework offers the first foray into regulation of microinsurance in Zimbabwe. It offers progressive provisions relating to regulating microinsurance but however despite appreciating the role of consumers, it does not offer any protection to them. The legal framework regulating Microinsurance in Zimbabwe was thus concluded to be insufficient in light of consumer protection in Zimbabwe.

Chapter 4 offered a comparative analysis with Ghana in terms of regulation of microinsurance. Ghana's regulatory framework comprises of the Insurance Act, The Market (Microinsurance) Conduct Rules and the Microinsurance Explanatory Note. It has been observed that Zimbabwe could indeed borrow from the Ghana framework. Specifically it is recommended that there is need for constitutional reform so consumers are constitutionally protected. It is also essential that a Microinsurance Act and Market Conduct Rules be enacted. An Explanatory Note has to be enacted to explain microinsurance regulation. A Microinsurance Regulatory Commission should also be enacted to act as a watchdog over microinsurance providers. Generally, Zimbabwe also needs to abandon the qualitative definition of microinsurance as it lacks legal certainty, the role actuaries should also be redefined and consumer education exercises be embarked on. Therefore in light of this dissertation it can be argued that legal regulation of microinsurance is insufficient in light of consumer protection. The recommendations stipulated in this Chapter if implemented will ensure an improvement in regulation of the sector in light of the need for consumer protection.

BIBLIOGRAPHY

BOOKS

- K. Abbott *et al*, Business Law 8th Edition (2007)
C. Churchill, Protecting the poor: A Microinsurance Compendium (2006)

JOURNAL ARTICLES

- J. Leach, S. Ncube *Regulating microinsurance in Zimbabwe: Managing risk while facilitating innovation* (2014) Focus Note.
Y. Asseffa 'The role of the Regulator in Microinsurance Market Development' in R. Gruijters (Ed) "Promoting Microinsurance in Ghana : Microinsurance as a means of insurance sector development" (2012)
M. Wiedmaier-Pfister 'Regulation and Supervision of microinsurance' (2004) Division 41 *Financial Systems Development* .
G. M. Llanto 'Policy and Regulatory Issues and challenges in microinsurance :Philippine case (2007) 34(1) Philippine Journal of Development
A Camargo 'Protection of Microinsurance Consumer: Confronting the impact of poverty on contractual relationships' (2012) Research Paper No. 27 International Labour Organisation
A. Kalra 'Microinsurance-Risk protection for 4 billion people' (2010) Sigma No.6/2010
C. Thorburn 'What is microinsurance?'(2015) I.A.I.S Issues Paper
E. Zimmerman, B. Magnoni, A. Carmago, "Pure" Intentions and Practice : Challenges and Good Practices in Consumer Protection in Microinsurance (2013) Microinsurance Network Organisation Journal 1

STATUTE

ZIMBABWE

- Insurance Act [Chapter 24:07]
Insurance Amendment Regulations, 2018
Consumer Contracts Act [Chapter 8:03]
Consumer Protection Bill, 2014
Microinsurance Regulatory Framework, 2017

GHANA

- Ghana Insurance Act, 724 (2006)
Market (Microinsurance) Conduct Rules, 2013
Microinsurance Explanatory Note

SOUTH AFRICA

- South African Microinsurance Regulatory Framework (2011)

INTERNATIONAL

- Preliminary Donor Guidelines (2003)
United Nations Guidelines for Consumer Protection

CASE LAW

- Radar Holdings v Eagle Insurance 1998 (1) ZLR 479

Little John v Norwich Union Fire Insurance Society 1905 T.H 374
Locke & Wolfe Ltd v Western Austrian Insurance 1936 (3) KGB 48
Roslodge v Castle 1966 (2) LR 319

NEWSPAPER ARTICLE

What you need to know about microinsurance 'The Herald 15 February, 2018

WEBSITES

Microinsurance Regulatory Framework available at www.munichre-foundation.org accessed 13 September 2017

Low Income Household. Available at <http://kwhs.wharton.upenn.edu> accessed 1 April 2018
Consumer protection in Microinsurance” <https://www.giz.de/downloads/discussion-paper>
Accessed 20 July 2017

United Nations Guidelines for Consumer Protection (UNGCP) available at www.un.org accessed 7 September 2017

Why we do it. Available at www.microinsurancenet.org accessed 6 March 2018

What is a Consumer? Available at www.investorwards.com accessed 26 April 2018

Definition of consumer protection. Available at www.collinsdictionary.com accessed 29 April 2018

Why Consumer Protection Law/Regulations are important. Available at www.minico.gov.rw accessed 29 April 2018.

Mass and Microinsurance : Consumer Protection in inclusive insurance markets. Available at www.microinsurancenet.org accessed 29 April 2018

What is an actuary? Available at www.beanactuary.org accessed 19 April 2018

