



# Government Control and Supervision of Motor Vehicle Insurance Companies in Cameroon: An Appraisal of the Cima Code

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## Abstract

The increasing number of victims of automobile accidents has created in every country an urgent social problem. The government's interest is aroused here since insurance touches the economy much. That is the more reason why government regulates the activities of insurers in order to guarantee a sound economic environment and to protect the interest of policyholders. This control is exhibited by way of preventive, concurrent and final controls extended to the place of business and subsidiaries. The objective of this paper is therefore to examine the extent of government control and supervision of motor vehicle insurance company in Cameroon, its compliance with the CIMA Code and challenges faced. To achieve this objective, the paper adopts a methodology which is doctrinal consisting of primary and secondary data. The findings reveal that though measures have been put in place in compliance with the provisions of the CIMA Code to regulate the activities of motor vehicle insurance companies, the intentions of the legislator have not been reached as it is fraught with challenges. Considering that insurance contracts are contracts of adhesion par excellence, it is recommended that the government should step up measures to better protect the parties involved in the contract as well as ensure that parties perform their obligations.

**Keywords:** Motor Vehicle Insurance; CIMA Code; Insurance Company; Government Control; Contract; Cameroon

## Introduction

The law regarding motor vehicle liability insurance is ever-evolving, fast-developing and offering more intellectual challenges as the disputes vary every day [1]. As everybody knows, more cars traveling, more accidents are likely to happen [2]. Many countries have taken measures to imposing on every vehicle owner the obligation to take out compulsory third party motor vehicle insurance. Immediately after independence, the Cameroon government took the fate and destiny of its economy into his hands. Following this, the 1962 Ordinance and Decree on the operation and

organization of insurance and regulations relating to the investment of insurance companies respectively were passed. In 1965 Law No 65 LF-9 of 22 May 1965 and Decree of application No 65-DF-565 of 29th December 1965 made motor vehicle insurance compulsory [3]. Due to the bleak insurance regulations in some Sub-Saharan African states, member states began working on an insurance regulation which could better rescue the insufficiencies they were going through in their various states. As a result of the initiative of the International Insurance Supervisory Conference (CICA), these sub-Saharan countries signed a treaty on the 10th July 1992 creating the CIMA Code [4]. Cameroon ratified this

treaty on April 14th 1994 and it entered in force on February 15th 1995. Since then, CIMA Code is the legislation governing insurance business in Cameroon and in article 200 of the CIMA Code, motor vehicle insurance is compulsory.

The government is the chief controller of motor vehicle insurance company. This paper holds that the purpose of intervening in the insurance sector is to protect the interest of policy holders. Thus, the state steps in to balance the unequal bargaining power in motor vehicle insurance contracts. In fact, many writers on the subject might even be suggesting that the state intervention today is much a matter of political and economic reality as the idea of *laissez-faire* was during the last century [5].

Government control of insurance companies has been variously described as official supervision of insurance companies, government intervention or interference in insurance companies [6]. No matter how insurers may receive it, there is need for some form of governmental intervention and if necessary, one should not grade it as an over statement to say it is a necessity given the reasons that counts for insurance companies control. This write-up analysis the necessity of government control of insurance companies as well as the competent organs charged with its control and supervision. It also evaluates the adherence of the insurance companies to the CIMA Code and the nature of insurance regulation.

### Raison d'être of Government Control of Insurance Companies

The growth of insurance business in the 20th century in Africa and the pivotal role it plays in the economic and financial lives of states was tremendously felt. This prompted the need for government control of these companies. Insurance contracts are contracts of adhesion and this is likely to create a situation of imbalance between parties more to the disadvantage of the insured. Some points have been advanced as reasons behind government control of the insurer.

#### Inequality of parties in Insurance Contracts

Parties to the insurance contract especially motor vehicle insurance do not experience the privileges that exist under ordinary contracts such as freedom of contract and of choice of terms. Insurance contracts are contracts of adhesion par excellence [7]. This contract of adhesion means a situation whereby one party prepares the contract entirely or to a substantial degree and leaves the other person no possibility of changing anything in the contract and he has to "*take it or leave it*". In order that people who have contractual capacity and have entered to a contract to behave towards each other

with respect, there is need for regulation. Thus, it demands that the expectations of parties should receive protection of the law especially in the case of motor vehicle insurance where the buyer pays premium in return for a promise. Therefore, state intervention is very necessary to ensure that parties perform their obligations.

#### Complexity of Insurance Contracts

Insurance contracts are interwoven with a lot of technicalities e.g. the policies issued always too long, the print too fine, the scant regard paid to the shade of printing papers issued, many exclusionary terms and its specialized jargon. All these deserve and require state intervention to protect buyers of insurance. One of the American authority and prolific writer in insurance Spencer Kimball does not think that complexity is a justifiable reason supporting government control of the insurer [8]. However, the many exclusionary terms in insurance contracts, its specialized jargon all points to the absolute need of government control of insurance companies. The premium paid by the insured for a given risk whose occurrence is probable needs to be regulated so that the insurer may not be found wanting in the face of a claim. Given the long term nature of some insurance contracts, insurers may not have sufficient incentives to provide consumers with information they need or may not be in readily understandable form [9].

In Cameroon, illiteracy of citizens in both official [10] equally renders governmental intervention a necessity so that the inefficiencies of the insured when carrying out motor insurance will be remedied since insurance policies are drawn up in these languages and the insured might be illiterates in both or at least one. Generally, there is lack of education on basic insurance matters in Cameroon, hence the need for government to protect buyers of insurance [11].

#### The Need to Maintain the Solvency of Insurance Companies

When an insured pays premiums, he transfers the risk to the insurer. When the insurer takes this risk, he ought to be in a position that will guarantee the coverage or settlement of claims arising from the risk transferred to him. The solvency of the insurer is a call for concern. This is the reason why the government intervened in this domain, so as to protect beneficiaries [12], buyers of insurance and the community as a whole against insurance insolvency [13]. Thus, the quest for the maintenance of solvency of the insurer is a dire necessity in favor of government control of insurance companies [14,15]. Compulsory motor vehicle insurance has rendered state control imperative in order to maintain the solvency of insurers. This deserves more attention because many vehicle claims can arise due to many injuries sustained,

loss or damage as a result of car circulation [16]. Therefore, policyholders and beneficiaries must be protected against the insolvency of insurers [17].

### The Economy

Apart from solvency, complexity and balance in the bargaining power in insurance contracts, a state has his own interest in the control of insurance companies. It is common knowledge that insurers collect large sums of money as premium. The question that arises is, where do they keep that money or what do they do with it? Insurance companies are not banks that undertake lending and borrowing as their activities. The interval between the maturity of a claim and receipt of premiums is so long. So, insurers tend to divert the current expenditures into capital expenditures [18]. They do lend money to the government by the purchase of government securities and do business by the purchase of debentures. According to Denning LH, et al. [19] insurers are by far the simple largest financial intermediaries next to joint stock banks. Since they provide long term financial support to the industry, the manner in which they operate is of some importance e.g., through their investment, their assets in which they invest in the economy are a call for concern. The state should therefore step in, to control these companies.

### Organs in Charge of Control and Supervision of Insurance Companies under the CIMA Code

The CIMA Code has organs both at the national and the regional levels charged with the responsibility of ensuring compliance by insurance companies to the legal requirements.

#### Regional Supervisory Organ

By virtue of article 309 of the CIMA Code, the supervisory organ of the CIMA is the Regional Commission for Insurance Supervision (CRCA) known as the Commission. The commission is the regulatory body for all member states of the CIMA. The commission is responsible for the supervision of insurance companies. It ensures general surveillance and assists in the organization of national insurance markets. It's also the residual duty of the commission to organize the supervision of insurance and reinsurance companies operating in the territory of member states based on the documents submitted to it and onsite inspection [20]. It has a control organ in the general secretariat of the conference. Findings useful to the supervision carried out by national insurance board of directors within the scope of their tasks are communicated to it. The commission may request the communications of auditors reports from companies and in general of all accounting documents of which it may, as need

may be, request certification. Companies must place all the documents at its disposal, as well as the qualified personnel to provide it with information which it deems necessary.

In fact as it is necessary for the exercise of its supervisory assignment, onsite supervision may be extended to parent companies, subsidiaries of the companies supervised and to intermediaries or experts intervening in the insurance sector [21]. In the situation of onsite inspection, article 313 of the CIMA Code provides that report will be prepared after a full argument on both sides. The commission after studying the observations formulated by the inspector and replies given by the company forwards the results of the onsite supervision to the minister in charge of insurance sector and the board of directors of the companies supervised. If it is uncovered that a company under supervision has not concurred with insurance regulations and has demonstrated a behavior jeopardizing the execution of liabilities contracted toward the insured, the commission will enjoin the company concerned to take all necessary measures to rectify the situation [22].

The commission is independent of member state i.e. it does not seek advice neither does it receive instructions from them [23]. By virtue of article 316 of the CIMA Code, decisions of the commission are rendered enforceable which must be obeyed by insurers operating in member state. The question here is that, how can state sovereignty be reconciled with the autonomous powers of the commission?. A close reading of Article 43 of the treaty leading to the creation of CIMA Code reveals that state sovereignty in that domain have been ceded to the commission. This article reads *"the bringing into effect of an act made compulsory by the treaty or in accordance with procedure instituted by it shall occasion transfer of the relevant power to the council"*. Thus, member states refrain from intervening and ensure the enforcement of sanctions issued by the commission or the control organs of the CIMA Code. Therefore a state will not be an obstacle in the enforcement of the treaty [24]. It can therefore be observed that this stand of the CIMA Code and devotedness of sovereign member states has made the CIMA and its organs not to be toothless bulldogs.

#### National Organs

Under the national control of insurers, the government and professional organizations cooperate actively. The Ministry of Finance embodies the competent Government department in charge of regulation. This department has two constitutive bodies charged with the supervision of insurers. They are:

- **The Studies and Approval Services (Service des Etude et des Agreements)**

This service studies applications of prospective insurers in Cameroon. It equally examines the document which the

insurer must submit in order to have authorization to do business. Their recommendations are then forwarded to the Minister. The minister can either grant or reject the authorization depending on the strength of the recommendations. The “service des etude et des agreements” is also responsible for the examination of policy forms, premium rates and other documents issued by the insurer operating in the territory of Cameroon.

- **The Insurance Companies Control Service (le service du contrôle de l'entreprise d'assurance)**

This body is made up of inspectors of insurance companies. This body is responsible for implementing insurance legislations [25].

Association Des Sociétés d'Assurance du Cameroun (ASAC) is the lone professional association in Cameroon. It equally acts as an intermediary between the supervisory authority and the insurance companies. Its English acronym is the Insurance Supervisory Association in Cameroon (ASAC) [26,27].

### Nature of Insurance Regulation

The essence of monitoring and supervision of the insurance sector have been designed to ensure effective order and compliance with licensing and prudential requirements. This is a way of evaluating the financial conditions of insurance providers and to take action where the requirements are breached or an insurer's soundness is at risk. Effective monitoring and supervision framework is important because of the need to:

- Promote policy holders confidence in the soundness of the insurer,
- Encourage soundly governed insurers,
- Ensure timely and orderly resolution of distressed insurers.

These prudential measures and objectives are aimed at giving protection to policy holders [28]. The sound institution of insurance business cannot be afforded until and unless the insurer possesses these optimal requirements before his entry into business and during business.

For real governmental regulation to be laudable, it's but logical that there must be a particular pattern. The attitude of the CIMA Code to foster the protection of buyers of insurance is afforded through some guarantees offered to them [29,30]. Right from the incorporative stage of the company to the withdrawal or termination, the CIMA Code and its control laws and organs has clearly put forward three major ways of control. To wit: preventive controls, concurrent controls and final controls [31]. This classification is employed in this paper.

The preventive control is designed for the acquisition of the license. The CIMA Code in its Article 336 provides that companies subject to supervision may only begin the transaction after having obtained a license [32]. The license generally gives the holder the written authority to transact not all classes of insurance business, but only those specified in the license. In order to obtain a license to commence business, insurance companies are obliged to comply with certain conditions such as its legal constitution, its share capital etc. the primary objectives of these conditions are to guarantee a sound starting of business by the insurer.

Concurrent controls come into play even when the insurer is already in business. This control is geared towards the fact that the insurance companies works throughout in accordance to the legislation. Just like a clock ticks 24 hours a day, concurrent control assures compliance throughout the existence of the company.

Lastly, the final control empowers the state and the regulatory bodies to withdraw the authorization license of a company and equally when circumstances may demand, order compulsory liquidation of the company. The protection of consumers will be incomplete if this excellent prerogative was not granted to the state authorities to suspend the insurer's license if they believe that the insurer has or is acting in contravention of the CIMA Code and it is in financial stress.

### Preventive Control

Both physical and legal entities live under a state of laws. Insurers cannot on their own accord start business without an explicit command which takes the form of Administrative Act. The license granted by the minister of finance usually takes the form of a ministerial order which is published in the official gazettes both in French and English. It should be recalled that the Regional Supervisory Commission also called the commission, is responsible to approve the granting of the authorization by the minister in charge of the insurance sector, requested by the insurance company [33]. The commission has a maximum of two months to communicate its decision [34]. If within two month, no answer is given, it is tacit approval. This is evident from article 328-3 of the CIMA Code which spells out the criteria for the granting or refusal of license. The commission in case of partial or total refusal notifies the insurance companies the grounds on which license are denied. Within a date limit of two months, the insurance company may table an appeal before the board of ministers [35]. The license is evidence of the state approval that the insurer has complied with the legal, financial, technical and economic requirements prescribed by the law and, see if necessary for the protection

of the interest of the policy holders and general interest of the state's economy. The applicant company has to clearly specify when drafting the application, the exact nature of its transactions so that the insurer will decide either to engage or not. Therefore, the license granted does not permit the insurer to transact all kinds of insurance.

Article 328 of the CIMA Code is to the effect that there is separate approval for separate insurance businesses listed in the same article [36]. Considering that the interest of the policyholders is always sacrosanct, Article 326 of the CIMA code forbids insurers of life insurance to engage in other types' collective insurance business. This is because their involvement can endanger holders of long term policies in life insurance. These articles reinforce the necessity for specialization through the categorization of companies into life and non-life insurance companies. This desire for specialization is made more manifest and serious with the transitional period of three years given for companies to conform to the principle of specialization [37].

Also article 329-1 of the CIMA Code does not prohibit insurance companies from carrying out any other business which is not linked nor has any connection with insurance. It can be seen that, with this, the diversion of premiums to other business ventures is limited. Thus, the protection of policyholders is the policy reason behind this provision of the CIMA Code.

For license to be granted to insurers the following four conditions i.e. the legal, financial, technical and economics must be made. We shall examine them separately.

**The Legal Requirements:** Under this head, the form of the insurance company, documents intended for public use and the management of insurance companies is treated. However, these documents simply determine the contractual relationship between insurers and policyholders.

**Form of the Insurance Companies:** The CIMA Code in order to assure coherency and proper coordination has specified the form which insurance companies must take. The supervisory authority has designed the legal form that insurance companies must take, which is incorporated associations [38]. An incorporated company can take either of the following two forms namely Limited Liability Companies or Mutual Insurance Companies. Only two insurance companies in Cameroon are Mutual Insurance Companies [39]. The rest are Limited Liability Companies. These two mutual companies are Garantie Mutuelle des Cadres (GMC) and Fonds de Retraite Allucam.

Foreign companies are permitted to carry out any of the business transactions enumerated in article 300 of the CIMA Code only when they must have fulfilled the provisions of the national legislations in any member state where it long to do

business [40]. Most of the insurance businesses or companies in Cameroon are domestic concerns. Incorporation of foreign companies is restricted to the favor of active participation of domestic private and public sector concerns [41,12]. For each and every institution or organization to stand its grounds, proper management expertise is imperative.

**The management of Insurance Companies:** The CIMA Code [35] is to the effect that the commission before the grant of authorization will always take into consideration the integrity of those who are to run the companies. To know this, they must produce documents attesting their competence, their honourable character, training and experience in the management of insurance companies [42]. This is to assure their credibility such that [30], they must not have been object of disciplinary measures e.g. imprisonment and their activities from past records have not jeopardized any enterprise [43]. Administrators and managers of insurance companies are forbidden except in rare circumstances authorized by the supervisory commission and minister in charge of the insurance sector of member state from acquiring more than 20% of shares or majority voting rights [44]. This requirement is perhaps to ensure that managers of insurance companies deal honestly with all that concerns the company.

**Documents intended for public use:** The CIMA Code [45] warrants insurance companies to submit to the minister in charge of the insurance sector five copies of all the documents which are designed for public use for due approval before their usage. These documents amongst others are policies, proposal forms, insurance applications, prospectus, premium rates etc. The minister can then recommend the necessary corrections or rectifications as he thinks fit [46]. The reason of inspection is to ensure that the contractual relationship between the insurer and the insured are maintained. This examination is to endeavor their alignment with the law and it is equally consumer protective oriented.

## Financial Requirements

Capital plays a primordial role in the operational phase of an insurance company. After the form of the company has been chosen, what the law seeks is to assure the financial aptness of the company. The commission is so interested to see into it that the company is in a solvable state [47]. This is achieved by the provision of the initial paid up capital which is a requisite for the formation of insurance companies. By virtue of article 329-3 of the CIMA Code, an initial capital of 500 million FCFA is required from limited liability companies excluding their contribution in kind and each shareholder is expected to pay half of the shares subscribed by them in cash, before the incorporation of a company [48]. Also, insurance companies engage in life assurance business and capital accumulation transaction are required to have guarantee

reserves [49,47].

To reinforce these safeguards, the Code requires insurance companies to deposit cash, properties or securities up to a specified amount in the bank [47]. This deposit is called the guarantee reserve. Another protective measure taken by the Code is that all companies subject to supervision under article 300 must prove a margin of solvency in all its activities. When the assets of an insurance company are required to exceed its liabilities, a certain amount or percentage of its premium income, this amount is said to constitute solvency margin required by law.

### Technical Requirements

To detect the viability of an insurance company, the legislator or the central authorities always want to know how the company repartitions its capital, organizes its market, the qualification of persons in charge of running the affairs of the company, the commission always demands reinsurance and premium rates schedules before granting an authorization [35].

### Reinsurance Arrangements by Companies

The CIMA Code demands of every aspiring insurer to submit to the competent authorities the guiding principles he is to follow in the area of the insurance [47]. The possibility that a company may engage in risk and substantial amounts likely to discredit the credit worthiness of a company is possible if control is not done. This is the objective of the above provision i.e. to avoid those activities that can bring financial strain to the company. Before the CIMA Code, reinsurance arrangement was regulated by the 1968 decree [50] which was to the effect that all insurance companies in Cameroon should reinsure 10% of their premium every year to the National Reinsurance Fund. Equally, according to Article 36(2) of Ordinance No-85-3 of 31st August 1985 relating to Insurance Business, all reinsurance agreements or contracts engaged with foreign companies which 50 percent of their premium is paid to Cameroon, must be approved by the finance minister before they are put into effect. This same provision though with varying percentage is provided for in the CIMA Code [51]. The glorious thing is that reinsurance is approved by the control authorities and it serves as a tool for the spread of cover and avoids concentration of risk in countries of member states of CIMA.

### Premium Rate

A further obligation on insurance companies is their duty of submitting to the regulatory authorities proposed premium rates pertaining to all transactions they want to undertake. This must be accompanied by explanation of the methods used in calculation of the various categories of premium [52]. The good thing in it is the prerogative

vested in the hands of the supervisory commission i.e. he can determine the maximum and minimum ranges of premium [53] and when proposed premiums are submitted to him for approval he can order the rectification or modification as he thinks fit [45]. This trend of affairs is probably done to ensure that insurers should not give out extortious premium rates to policyholder.

### Economic Requirements

The treaty leading to the birth of the CIMA Code or for the institution of an integrated organization of insurance industry in African states aims to jointly seek the rationalization of their national insurance markets in order that insurance companies may be in a position to offer cover with guarantee better adapted to the realities in Africa [32]. The CIMA Code suggests the granting of a license in consideration of the economic trends of the market at the time of application. According to article 328-3 of the CIMA Code, insurance companies must submit document stating the situation and the structure of the market. The minister of Finance with the consent of the commission may suspend or restrict grants of license for all or categories or sub-categories of insurance transactions where the circumstances of the market so required [54]. The supervisory authority possesses wide powers in admitting new industries into the market. It would seem that this requirement is aimed at keeping the market organization of the insurance industry well within the comprehension of the regulator and subject to his effective control [6].

The above preventive control strategies devised to regulate the insurance industry go a long way in balancing the relationship between the insured and the insurer.

### Concurrent Control

The end of the pre-registration formalities demanded from insurance companies does not end the surveillance government has over insurance concerns. After the grant of the license to insurance companies, the government still steps in to ensure that insurance companies continue to abide to the existing legislation. This is known as post-registration control of companies. To be more specific and precise, the concurrent control revolves around.

- The examination of returns and other documents which were required to be submitted by the insurance companies.
- Inspection at the place of work is to verify that the information given in the return and other documents tally with the actual state of insurance company's business affairs [20].

This requirement that the CIMA Code do exercise is of interest to us.

### **The Examination of Returns and Other Documents**

This can take the form of a legal, financial and technical controls examined in the following sub heads.

**Legal Control:** Legal control of insurance companies is done in three basic ways, to wit; articles of association, documents intended for public use and management of the insurance companies.

**Article of Association:** Article 305 of the CIMA Code is to the effect that insurance companies both mutual and limited liability companies have to submit to the minister in charge of the insurance sector in member states their Article of Association. The minister has three months for the making of decisions in relation to the Article of Association. According to the 1985 Ordinance also provides that these companies furnish to the Minister proposed amendments of the Articles of Association [55]. By requiring insurance companies to notify in case of any modification in Articles of Association, the legislator wants to ensure that insurers adhere to legal precept.

**Documents Intended For Public Use:** Article 304 of the CIMA Code echoes that five copies of the general conditions of policies, prospectus, proposal forms and material intended for public use must be tabled to the minister in charge of the insurance for approval. He can likewise make or cause to make the necessary modifications as he deems necessary before they are put to use. Thus any modification which affects the document must be approved by the competent or regulatory authority. The Code [56] is to the effect that any of such documents that contravene the legislation put in place may be withdrawn or caused to be modified by the minister in charge of the insurance sector (minister of finance in Cameroon) after notifying and receiving assent of the supervisory condition [12].

**Management of Insurance Companies:** The CIMA Code acknowledges the fact that in the course of the business, the administrative and governing organs of the companies may witness changes in its senior administrators. The Code obliges such changes to be notified to the minister in charge of the insurance sector in the member state and the commission for persons holding high ranking positions like the president or general manager [57]. The essence of this is to make sure that they are competent, well trained, having good reputation and equally to avoid acts of the officials that may be precarious to the sound management of the company.

### **Financial Controls**

The solvable nature of the company is the utmost and unfathomable desire of the legislator. Financial control seeks to make sure that insurers remain in state of meeting up with their financial liabilities which it has incurred and will be incurring. In this respect, the share capital, the keeping

of accounts and balance sheet, the guarantee reserves and margin of solvency, technical reserves and investment reserves are well articulated by the Code.

**Share Capital of a Company:** Though the share capital initially owned by the company does provide security to policy holders and beneficiaries, in the course of insurance activities, capital plays a major role. This is because capital at given times acts as a mechanism for meeting up with unpredictable risk or high losses. In situations where a share capital is highly needed for different classes of insurance business, there must be some amendments whenever the insurance sector gives an opinion to take on another class of business. When such a situation arises, the only solution is to alter a loss in the balance sheet and if it happens that such a loss is to decrease, the share capital of a company to an extent that it will fall below the statutory minimum level, the company must either increase the capital to the prescribed minimum level or direct them to those classes of businesses for which the capital is still adequate to run. This accords protection to buyers of motor vehicle insurance.

**The keeping of accounts and balance sheets:** The CIMA Code in its book IV treats the obligations of keeping accounts and balance sheets. How is this then done? Insurance companies must submit to the commission and the minister in charge of the insurance sector on annual bases details or reports of the transaction showing their financial positions and their underwriting results for each year [58]. The fiscal year of the company runs from the 1st January to 31st December. More to that, accounting documents are kept for a period of 10 years [59] and the obligation to submit a detailed report of their transactions is also previewed [60]. These accounts and balance sheets serves the purpose of balancing the relationship between parties in insurance contracts as it protects insured and beneficiaries from the insolvency of companies. This document bear information of transactions both home and abroad and they are always in the format prescribed by the CIMA Code [61]. Article 430 of the CIMA lists the classes of accounting framework e.g. invested capital accounts, fixed assets accounts, technical reserve accounts, personal accounts, and financial account, expenses account by type, revenue account by type, final account and special accounts. It is also permitted that insurers should put these report or records at the disposal of interested parties upon the payment of charges [62]. These accounting documents and balance sheets serve as follow up of all insurance transactions. Through them, light is thrown as to how the regulatory framework seeks to balance the relationship between parties thus, protecting the interest of policy holders and beneficiaries and the community as a whole.

**Guarantee Reserves and Margin of Solvency:** In the course of the company's business life, it can happen that a company runs in to financial stress. The CIMA Code in order to safeguard the interest of policyholders when the

company runs into financial stress has obliged insurers to have a guarantee reserves which permits them to meet up with any deficiency. Insurers are expected to maintain a sufficient margin of solvency in all their activities [63]. Depending on the form of insurance transactions e.g. life, non-life or composite insurance, different approaches in the calculation of margin of solvency have been stipulated [64]. However, it is believed that for the required protection and balanced relationship to exist between parties, the proper regulation and supervision of the activities of insurer is the only determinant factor here.

**Technical Reserves:** The Company's claims towards third parties policyholders are covered by technical reserves. This shows the importance that is linked to the nature of insurance regulation by technical reserves. The interval between the conclusion of an insurance contract and the maturity of claims can be too wide. During which the insurer collect premiums which technically speaking do not belong to the company but indicate the extent to which the company is committed to settle claims which may arise. Moreover, in motor vehicle insurance business for example, claims which arise in the current year may be settled or paid within 5 years or even longer. This calls for the allocation of some assets of the company to readily settle claims which have arisen and other assets must remain available until some unexpected future date in order to pay those claims which are slow to mature and which involve uncertainties as to liability and amount [31]. The reason why insurance companies face financial failure is the fact that they do not estimate the amount of the financial claims [65]. That is to say underestimation of outstanding claim. If the insurer will be in a better place to settle his claims, he must set aside the premiums collected from policy holders in the form of technical reserves. Different types of technical reserves such as mathematical reserves of annuities, reserves for unearned premiums reserve for outstanding claims, reserves for reinsurance and other policy reserves which may be set by the commission [66]. These reserves set by the legislation must always be observed. Therefore, the commission must seek every possible way as its duty demands to ensure that the insurer remains throughout solvent. This goes a long way in protecting the interest of policyholders and the regulatory organs comes into balance the disequilibrium that exist between parties. In effect, legislative and supervisory powers are exercised to ensure that the technical reserves are calculated and invested to cover the contractual commitment to policyholders and third party beneficiaries.

**The Investment of Reserves:** When an insurer realizes that there are some reserves, he must invest them immediately to secure the financial stability of a company [67]. When we talk of the control of insurance investment, we mean a clearly set list of investment undertaking, rules relating to maximum amount of assets allocated for such investment.

However, identifiable assets have to be allocated throughout the business to cover the technical reserves. The minister in charge of the insurance sector may fix the maximum amount of assets representing the regulated liabilities which may be invested in other member states of CIMA.

### Technical Controls

The purpose served by technical requirement during preregistration formalities i.e. the reinsurance arrangement and premium rates is still the very essence of technical controls.

**Reinsurance Arrangements:** Reinsurance acts as a tool for the distribution of risks and equally acts as a medium through which the effects of risk are controlled [68,69]. The avoidance of a situation where an insurer or reinsurer will run out of business due to heavy claims and liabilities explains the importance of reinsurance. Thus, reinsurance here is seen as a mechanism of distributing risk over insurers and reinsurers. The spreading of risk has been recognized the Cameroonian legislature though with much restriction placed on insurers. These restrictions are justifiable like for example in Cameroon where reinsurance under the 22nd May, 1965 law done by the National Reinsurance Fund, acting as a professional reinsurer, does carry out compulsory reinsurance of all insurers operating in Cameroon [70]. The 1968 ordinance provides that all insurance companies operating in Cameroon must reinsure every year 10% of their premium income to the fund. More, insurance companies must send to the fund every year their documents in order that verification can be done to ensure that the right sums have been paid. The fund then compiles statistics which it submits to the sub department of the insurance. The supervisory authority monitors that these arrangements remain adequate throughout the life of the insurance company [12].

**Premium Rates:** This is one of the items legislation has made it in such a way that insurers do not just formulate as they think fit. But as far as the regulation of insurance is concerned, is important. In practice, tariffs for most of the classes of the insurance business are drawn up by the sub department of insurance. The state department computes and promulgates rates which all insurers are required by law to adhere to or follow the uniform state promulgated rates. The system of rate promulgation is applied in Cameroon particularly in the case of motor vehicle insurance. Premium rates are fixed on a periodical basis by the ministerial order laying down the maximum rates that can be charged for any given category of vehicles [71]. Insurance companies then fix the rates within the limits of promulgated rates. Competition of rates exists in motor insurance, especially given the fact that some insurers grant rebates to policyholders and also through the operation of bonus-malus-clause (No bonus discount).

The regulation of premium rates is relevant because it protects consumers of insurance from excess rates. Thus, the bargaining power and balance relationship is guaranteed, it avoids discriminatory acts of insurers when it comes to payment, it prevents insurers from making excessive profits thus protecting policy holders of motor insurance contracts and finally rates are controlled to avoid insolvencies of companies. The second aspect of concurrent control is inspection at the place of business.

### Inspection at the Place of Business/Onsite Inspection

By inspection at the place of business, the first and foremost question that comes to mind is that of knowing what the place of business signifies. This question has puzzled many years back until clarification was made in the case of *Eck v. United Arab Airlines Inc* [72], to mean the place where the major part of the executive work of company is carried out. The difficulty in deciphering the place of business arose because an enterprise might have subsidiaries attached to the main branch or might have places where its activities take place. However, our problem is not that of the business place but what happens in the business place.

The CIMA Code has empowered regulatory authorities to carry out on-the-spot supervision of insurance companies [73]. This inspection at the place of business is concerned with the technical, financial and legal requirements demanded of insurers. It is tilted at knowing the true value of information given by insurers and also examining all their transactions. The Cameroonian law provides for compulsory inspection at the place of business twice a year which may be done by inspectors at any time without prior notice of the company [74]. The criticisms leveled against this control are that, it is costly and time consuming. Whatever the case, the essence of supervision is to assure compliance and protect the interest of policyholders. The exercise is done by Inspectors who upon presentation of their identification documents, demand the company to furnish all the necessary information relating to the transactions of the company. They should be granted access to every document that bears the company's affairs e.g. registers of contracts, investments, accounts and balance sheets. Onsite inspection can be extended to parent and subsidiary companies which are obliged to place every document at their disposal [20]. According to 57(1) of the 1985 Ordinance, the minister of Finance in Cameroon is the competent organ to exercise control over insurers. It must be reiterated that there is insufficiency of skill power to go round and execute the quality of the work available due to lack of understanding of the nature of insurance business and the caution with which the business should be conducted. If in the course of inspection, it is unveiled that the company has not complied to the conditions under which it was legally entitled to carry out business, either from the licensing requirements to the regulations and also that the company is

going through financial breakdowns, the insurance regulator in conformity to article 313 of the CIMA Code prepares a report concerning observations and full arguments on both side. This report is then forwarded to the minister in charge of the insurance sector for the necessary remedial measures.

### Final Control

This is the last phase of insurance regulations. It deals with all the necessary steps and programs that the supervisory authorities takes, to put the company to order if it is imperil. Failure to comply with these measures prompts the authorities to take any measures suitable to protect the interest of policy holder e.g. stopping the company from having access to its assets [75], dissolution of the company [76]. Preferential treatment is given to policy holder in case company winds up [29].

### Conclusion and Recommendations

The regulation of the activity of the insurer from every phase of it is an extrinsic affair. This at least gives some confidence to the insured. Though complicated as it may be due to the whole lots of documents to be checked and on-site inspection, one cannot deny that the government with all exuberance is protecting the interest of policy holders in insurance. Though good as it is, enough needs to be done so that a predictable atmosphere is given to parties in motor vehicle insurance contract.

Following the limitations identified in this paper, the following recommendations can be put forward. In other than the trap of non-compliance under the present scheme should be avoided and doors closed for the uninsured not to be seen on the highway, it is suggested that compulsory motor vehicles insurance should be taken during registration of a vehicle e.g. in South Australia, the compulsory insurance is part of the registration fees. So when you pay the registration fee, you are automatically insured. Therefore if the Cameroon legislator adopts this strategy, it can go a long way in ensuring compliance to compulsory motor insurance.

Even before the advent of the CIMA Code, the insurance market was daunting and still fishy in some aspects. It is recommended that the market rules and circumstances surrounding the operation of the insurer should be articulated upon and laid down in fine details.

Also, the insurer and insured relationship should be followed up, and more efforts, impetus and power to bargain on contractual terms given to the insured who is compelled to insure vehicles with no chance of bargaining on terms favorable to them. This can further consolidate the protection of insured and acts like a motivation to the

insuring community.

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35. Article 328-3 of the CIMA Code.
36. Article 328 of the CIMA Code.
37. Article 326-3 of the CIMA Code.
38. Only incorporated associations are allowed to transact

insurance business.

39. Article 301 of the CIMA Code.
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46. Article 305 of the CIMA Code.
47. Article 328-4 of the CIMA Code.
48. Article 329-3 of the CIMA Code. Likewise, to mutual insurance companies an initial capital of 150 million FCFA is required of them. See also Article 330-2 of the CIMA Code.
49. Article 328-1, article 328-2 and article 328-4 of the CIMA Code. These guarantees acts like safeguards against deficiency in the technical and actuarial provisions which a newly incorporated company might face.
50. Article 328-3 of the CIMA Code.
51. Article 2 of Decree No -68-DF-153 of 8th April 1968 defining technical condition and functions of National Reinsurance Fund.
52. Article 308 of the CIMA Code is to the effect that every reinsurance carried out amounting to 75% of the premiums by companies in member states must be submitted to the minister for approval. Violation of this provision is punishable with a fine of 50% of the premium allocated for reinsurance.
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