

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW

Regulation of Insurance Brokerage in Ethiopia: The Law and the Practice

BY: YINEBEB DERSEH

ADVISOR: TILAHUN TESHOME (Professor)

A Thesis Submitted to Addis Ababa University, the School of Graduate Studies, College of Law and Governance Studies in Partial Fulfilment of the Requirements for the Degree of Masters of Laws (LL.M) in Business Law

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June 2018

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(Approval Sheet)

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YINEBEB DERSEH

Approved by;

_____	_____
Advisor's Name	Signature
_____	_____
Examiner's /Reader's Name	Signature
_____	_____
Examiner's /Reader's Name	Signature

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Declaration

I the undersigned, declare that this thesis is my original work and has not been presented for a degree in any form and in any other university, and that to the best of my knowledge and belief all source of material used for the thesis have been duly acknowledged.

Declared by:

Name: _____

Signature: _____

Date: _____

Confirmed by Advisor:

Name: _____

Signature: _____

Date _____

Place and Date of Submission

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Abstract

One of the major actors in the insurance business transaction are insurance intermediaries. There are different types of insurance intermediaries among which insurance brokers are the main ones. The business of insurance and the insurance policies are complex to the public in general. As a result, the assistance of these middle men in the insurance industry is very crucial for the efficiency of the insurance sector in general.

Insurance brokers are persons that assist and work in handling of insurance contracts and insurance transactions mainly on behalf of the public at large. That is to say insurance brokers mainly act on behalf and as agents of prospective insured persons. Though insurance brokers act on behalf of the insured they may also render important services at times even may act on behalf and as agents of insurance companies. This especial characteristics of the insurance broking sector gives insurance brokerage and its regulation to have its own distinct features.

The business of insurance in general requires careful and adequate regulation. In tandem with this and as insurance brokers are major players in insurance sector one of the major areas of regulation in this regard is the regulation of insurance brokerage. The regulation of commercial brokers in general is governed under Book I Title II of the Commercial Code of Ethiopia. In addition to this the insurance business proclamation of Ethiopia holds few provisions specifically on the regulation of insurance brokers. In addition to these, there are specific directives which are issued by the National Bank of Ethiopia and are applicable on insurance brokers.

The main purpose of this work is to assess the adequacy of the laws regarding the regulation of insurance brokerage in Ethiopia. Especially emphasis to the regulation of payment of insurance brokers' remuneration in Ethiopia will be done in the research. To that end, international literatures and practice as well as the pertinent legislations on insurance brokers in Ethiopia will be analysed thoroughly. Moreover, in order to see the practice of insurance brokerage in light of the applicable laws, the prevailing practice in the sector will be assessed. In addition to analysing of the legislations, this research paper will also use interviewees and analysing of court decisions rendered in relation to insurance brokerage.

List of Annex

- Annex-1 NBE Directive No. SIB/31/210

- Annex-2 NBE Directive No. SIB/9/1995

- Annex-3 AEI, Minutes on the Commission Rate of Insurance Agents and Brokers

- Annex-4 Letter of NBE, Endorsing the Commission Rate of Insurance Brokers

- Annex-5 Habitamu and Anteneh Insurance Brokers Vs EIC

- Annex-6 General Insurance Brokers Vs Nile Insurance,(Civil File No.86785 ,Fed. High Court. Tahisas 17, 2010 Eth. Cal)

- Annex-7 Addis Insurance Brokers Vs EIC, (Civil AFile No. 138486, Fed. High. Court.,Miazia 15, 2007 Eth. Cal)

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- Annex-11 EIC Vs Hailemariam Berhe Insurance Brokers (File No. 131763, Federal Supreme Court, Tir 15, 2009 Eth. Cal.)

Chapter One

1. Introduction

1.1 Background of the study

There are various players in an insurance service sector among which insurance brokers take one of the key positions. Insurance brokers serve as intermediaries between insurance companies and their insured clients. In this capacity, they play variety of roles and undertake several activities which could positively or negatively impact the insurance sector in particular and/or the public at large.

Insurance broking business is undertaken by professionals commonly known as insurance brokers. These brokers render their professional service in exchange for commission payments usually to be defrayed by insurance companies. These payments are usually known as insurance brokerage or brokers' commission.

Insurance is normally one of the most regulated businesses in many jurisdictions. This tendency emanates from the nature of the sector and its social and economic significance for the public good in general. As a sector that has a significant role and impact on insurance, insurance broking has to be also adequately regulated for the healthy and efficient operation of the sector. One of the matters that come under the auspices of regulation of insurance broking is the regulation of insurance brokerage or commission.

In order to realize the aspired goals of the insurance broking business in the industry, there needs to be adequate legal frame work and organizational plat form. To this end, Ethiopia has promulgated laws which govern the conduct of insurance brokers and their remuneration.

The demand and magnitude of insurance service is gradually growing in our country. As a result, the engagement and role of insurance brokers' is increasing. By the same token, the amount of financial transaction that the sector is involving has also shown paramount development. This in turn has increased the disputes that arise out of the relationship of insurance brokers, insurance companies and their clients. Among the disputes that arise between insurance companies and

insurance brokers, majority of them if not all steam in relation to payment of brokerage fee or brokers commission. With a view to give solution for the cause of these disputes this thesis basically analyses the legal framework governing insurance brokers and their commissions, loopholes that exist in the laws and the application of these laws by our courts. Finally, the paper will give concluding remarks and recommendation with regards to what needs to be done in the future.

1.2 Statement of the Problem and Research Questions

Recognizing the role and impact of insurance brokers in insurance service, Ethiopia has developed legal framework which regulates the manner and conduct of insurance brokers. Despite this fact, the development of insurance broking business is revealing that there are a lot of issues that are not well addressed in the laws. This in turn is leading to controversies which are scaled up to judicial actions. Decisions that are being given by courts to controversies between insurance companies and brokers further showed the gaps within the legal framework. These problems trigger to see in to the laws and seek whether the laws lack to give the proper solution or not.

Insurance Brokers are expected to give high level of professional and technical support to their customers. They are also expected to render valuable contribution for the development of the insurance sector. Unlike the case in other forms of commercial intermediaries, the stringent requirements for licensing of insurance brokers are clear evidence of what is expected of insurance broking business. In order to realize the fruits of this high level of professional service, the insurance broking sector has to operate in a safe and sound business practice. To that end one of the major tools for the realization of this efficient business practice is the enactment of up-to-date and adequate legal rules.

The fact on the ground in our country reveals that most insurance broking service practice confines itself to ordinary commercial broking where soliciting their clients to purchase their insurance covers or needs from a specific company or collection of quotations for mere comparison of premium only. The prevalent business practice shows that irrespective of whether brokers have given the required professional service or not they will be entitled for their commissions from the insurance companies. The existing laws available for the regulation of

insurance brokers serve to allow such a mal practice. The laws don't really clearly stipulate the time and manner when brokers will be entitled to claim commission payments. This hindered the entire service from fostering the required contribution to the development of the services.

Though insurance brokers are deemed to be agents of the insured, they derive their commission payment from insurance companies. Even where the insured is the one that choose the insurance company without the help of the broker, the broker will be entitled for his/her commission from insurance companies. These coupled with the fact that the law doesn't impose any obligation on the insured made them reluctant to demand the proper service from brokers. This in effect is adversely affecting the entire profession and the insurance sector in general.

The prevailing mal-practice in the insurance broking sector made brokers to gain less earning. The appointment and placement is not based on the level of service received from brokers, rather from the amount of commission they share with the insured or their relatives and employees.

Therefore insurance brokers have to give the required service and insurance brokers should earn the commission they ought to get from the services. The law has to give the panacea for this problem. The regulatory body which is sought to enact and enforce laws regarding regulation of insurance brokers must act accordingly. NBE has to audit the service of brokers and the real gain they drive from their services so as to ensure that brokers are rendering their services in accordance with the law. From this point of view this paper tries to answer the following key research questions.

1. Are there binding rules regarding the regulation of Insurance broking in Ethiopia?
2. Are the laws governing insurance brokers in Ethiopia adequate and clear enough to address issues of remuneration?
3. When should insurance brokers be entitled for commission payments?
4. What should be the amount and mode of determining commission payments?
5. How should insurance brokers' commission be determined?
6. How should courts interpret the role of brokers in determining commission payments?

1.3 Literature Review

Commercial intermediaries play vital role in facilitation of business transactions¹. We have reached in an age where it is unthinkable to do business in the absence of commercial intermediaries or trade auxiliaries. Like any other business, the insurance business utilizes the service of insurance intermediaries.

Most insurance products are sold or bought through insurance intermediaries; i.e. insurance agents or brokers. Legislations governing insurance in general embrace the regulation of these insurance intermediaries. The auspices of this regulation usually incorporate about licensing, operation and code of conduct of insurance agents and brokers.

Though readings of different literatures show that the purpose and role of insurance intermediaries is similar, there exists considerable diversity between countries regarding the meaning, scope of service, remuneration scheme and liability for breach of duties of insurance brokers.²As the role of insurance intermediaries in insurance business is high the way they function in the sector can have a wide range of impact in the industry. As a result of this in different jurisdictions, the Conduct of Insurance Intermediaries and their relationship with insurers and their customers are often regulated in several pieces of legislations, contractual agreements and code of conduct.³

The provisions of modern insurance service have lived for more than a century now in Ethiopia.⁴ However, many insurance professionals agree that the development of the sector is in its infancy stage compared to the developed world. One of the reasons for the sluggish development of the sector can be attributed to the inefficiency of the insurance intermediaries. Be that as it may, the amount of gross written premium that the industry is generating and the impact it is playing in the economy is increasing from time to time.

In tandem with the international practice, the insurance market cycle in Ethiopia is also dominated by the involvement of insurance intermediaries. Majority of insurance products that

¹<https://WWW.investopedia.com/terms/f/financislintermediary.asp>, accessed on January 15, 2018

² Mira Tordovic Symionides, Duties and Liabilities of Insurance Brokers- Focus on the Information Exchange and Duty to Advise, 2012 Ins. L. Rev. 60 (2012), p. 60.

³ ibid

⁴ Hailu Zeleke, INSURANCE IN ETHIOPIA, Historical Development, Present Status and Future Challenges, 2007, p. 41

are being sold in the market are made through the intervention of either insurance agents or brokers. The operation and conduct of these intermediaries is one of the subjects of the special laws on insurance. In addition to Book I Title II of the commercial code of Ethiopia⁵ which is applicable on trade auxiliaries and agents in general, the insurance business proclamation no. 746/2014 and other directives of the NBE lay especial rules regarding insurance agents and brokers in particular.⁶

In the Ethiopian context the writer of this paper could not get any research material or literature written on this specific subject matter; i.e. on the regulation of insurance intermediaries in general or the regulation of insurance brokerage in particular. This factor has limited the writer to refer to foreign source literatures. It goes without saying that this phenomenon has been the major limitation of this research paper.

1.4.Objectives

1.4.1 General Objective of the Study

The general objective of this research paper is to assess the regulation of insurance brokerage in Ethiopia. To that end, it analyses the legal regime governing commercial intermediaries in general in Ethiopia. It specifically enquires the role of brokers in the insurance industry with a view to evaluate whether insurance brokers in Ethiopia are playing their respective roles or not. It assesses the payment of commission and related challenges to insurance brokers in Ethiopia. It evaluates the adequacy of the laws in regulating the conduct of insurance brokers and their remuneration.

1.4.2 Specific objectives of the Study

-) To explain about commercial intermediaries and their regulation in general.
-) To analyze about insurance intermediaries and their role in the insurance industry.
-) To explain the concept of Insurance brokers as compared to commercial brokers in general.

⁵ Commercial Code of the Empire of Ethiopia, 1960, Negarit Gazeta, Proc. No. 166/1960, Year 19, No. 3, articles 44-62

⁶Insurance Business Proclamation No. 746/2012 of Ethiopia, Federal Negarit Gazeta 18th Year No. 57, NBE Directive No 9/1995 and NBE Directive No 31/2010.

-) To examine the legal frame work governing insurance brokers in Ethiopia.
-) To assess the conduct of insurance brokers business in Ethiopia.
-) To examine about payment of insurance brokers commission or brokerage fee.
-) Evaluate the gaps within the laws governing insurance brokerage fee in Ethiopia.
-) Look how courts are settling disputes regarding payment of commission between insurance Companies and insurance brokers.

1.5 Significance of the study

Unlike other forms of commercial broking, insurance business broking has its own special features. Majority of insurance businesses are undertaken through insurance intermediaries; more significantly through insurance brokers. This study will thoroughly analyze and explain the existing legal framework governing insurance brokerage in Ethiopia. It evaluates the adequacy of these laws and shows the gaps within the legal frame work.

Insurance brokers do their business in consideration for commission payment made to them mainly from insurers. The proper regulation of this commission payment would play a significant role in ensuring the achievement of the objectives of insurance broking and enhancing the role of insurance brokers in the industry. It will also help insurance brokers to get the proper remuneration for their professional services. In this regard, the explanations and analysis made in as well as the fruits of this paper will help understand and interpret the existing laws in line with their purpose. This will reduce the misunderstanding on the laws between the concerned players or professionals in the field. The paper will also show the gaps in the existing legislations tipping the concerned authorities to consider further proper action.

Different court decisions that are being made in relation to disputes for payment of insurance brokers' commission envisage significant variance with regards to interpretation of the existing laws. This could be among other things due to the lack of proper understanding of the laws that govern the relationship between brokers, insurers and their clients. Therefore this paper can serve as an optional reference for understanding the meaning and purpose of the binding laws which are applicable today.

Though insurance broking business has counted decades of services in Ethiopia, there has not been a comprehensive research made with regards to the role that it has played within the insurance industry. Thus this paper will serve as one. Furthermore, the writer hopes that this research will instigate further detailed study on insurance brokerage. It will pave the road for consideration of amendment of the laws on the regulation of insurance brokers. It can also serve as a reading reference for insurance professionals, insurance intermediaries and others who are interested in the subject matter.

1.6. Scope of the Study

Insurance broking is one form of insurance intermediaries. This research paper will analyze about the concept and role of insurance brokers in the insurance industry. The center piece or focus would however be on the regulation of insurance brokerage. It specifically examines the regulation of insurance brokers' remuneration under the commercial code of Ethiopia, Insurance Business Proclamation, NBE directives and related documents. For the purpose of addressing its research objective, the research will also look into the practice or application of these laws in determining disputes regarding payment of insurance brokers' commission by Federal Courts of Ethiopia.

1.7. Methodology of the Study

In order to achieve the research objective and to address the research questions, the writer will employ qualitative research methodology.⁷

To address the research questions the researcher will use both primary sources of information and secondary sources of information. Legal provisions of the commercial code, Insurance Business Proclamation, directives of the NBE on brokerage and other pertinent rules will be analyzed. Different literatures will also be used to delve deep in to the subject.

The other task that will be done in the course of this research will be analyzing of court decisions rendered in relation to disputes between insurance companies and brokers regarding the payment

⁷ The writer preferred to employ this methodology because it would be the best way to address the research questions.

of brokers' commission. Interview of Insurance professionals including insurance brokers will also be conducted to substantiate the research.

1.8. Organization of the Paper

This research paper is organized in four chapters. The first chapter holds the proposal part which embraces the general background of the research paper. The general background part begins by giving an introductory remark about the subject matter of the paper. It also specifies down the statement of problem and research questions which are the bases or reasons for the researcher to embark up on the study. A brief literature review has been also made in this part. Furthermore, the significance, scope and methodology of the study are also made to be in this chapter to enable and facilitate easy reading and understanding for readers.

The second chapter is devoted for analysis or general overview of commercial intermediaries. It analyses the regulation of commercial agencies and brokers under the commercial code of Ethiopia. As Insurance brokerage falls within the broader category of commercial intermediaries, consideration of this matter would be a proper endeavor in giving the construction of the paper adequate substantial and structural form. The third chapter of the paper deals with insurance and insurance market cycle in Ethiopia. It lays down in brief the general concept of insurance contract and insurance practice where insurance intermediaries play a role. It also analyses about the especial features of insurance intermediaries by giving of course much emphasis on insurance broking.

The fourth and final chapter of the paper broadly analyses the regulation of insurance brokerage practice in Ethiopia. It evaluates the adequacy of the legal framework in the regulation and supervision of insurance brokers. It covers the legal issues in relation to brokers' remuneration and practical problems. The chapter is enriched with interviews and court decisions. At the end of the chapter the writer draws a logical conclusion inferred from the findings of the research and gives his recommendation on the findings.

CHAPTER TWO

2. General Overview of Commercial Intermediaries

The term Commercial intermediary is designated in different nomenclatures in different literatures and legislations. In some instances it is referred as market intermediaries and in others as trade auxiliaries. Under Book I, Title II of the Ethiopian Commercial Code, Commercial intermediaries are designated as trade auxiliaries and agents.⁸ In the strictest sense of the term, commercial intermediaries are persons or business organizations who independently facilitate or assist in the sale of goods or services in a business transaction.

Before proceeding discussion specifically on insurance intermediaries, it would be appropriate to deal with commercial intermediaries in general. This is so because the notion of any type of commercial intermediary falls within the domain of this broader subject matter. More over as rules of legal interpretation dictate, it would be inevitable to consider the laws regarding trade auxiliaries in general in dealing with the laws and issues of regarding any specific type of commercial agents or brokers.

Commercial intermediaries play variety of roles in commerce. In cognizance of this fact, they are often made to be the subject of regulation under commercial laws. Book I Title II of the Commercial Code of Ethiopia deals about trade auxiliaries and agents. There are six types of trade auxiliaries and agents that are recognized under this title.

2.1. Definition of Commercial Intermediaries

In order to understand the meaning of commercial intermediaries, it is important to see the two distinct terms which constitute it i.e. Commercial and intermediary. The term Commercial originated from the Latin term ‘Commercium’⁹ which signifies the term commerce. To take the literal meaning given under the renowned Black’s Law Dictionary, Commerce is defined as

⁸ Supra Note 5

⁹Jolowicz, Historical Introduction to the Study of Roman Law, (2nd ed.), Cambridge University Press, p.57, also available on Wikipedia, the free encyclopedia. The term is defined as commercial intercourse, trade, traffic, commerce.

“The exchange of goods and services, esp. on a large scale involving transportation between cities, states and nations” and Intermediary is defined as “A mediator or go-between: a third-party negotiator”.¹⁰

From the cumulative reading of the foregoing definitions it can be inferred that commercial intermediaries are persons who act as mediators or negotiators in the exchange of goods and services between traders and consumers. However, the service and function of commercial intermediaries at times go beyond mere mediation or negotiation. They act as agents who would be able to represent and bind their principals in business transactions.

There are different types of trade auxiliaries or commercial intermediaries. The distinction between these intermediaries may depend on their status, the type and scope of service they render, the type of relationship that they have with the trader or consumers etc. when we say that the type of trade auxiliaries depend on their status, it is to mean that some of them are treated as traders and others not.

2.2. The Role of Commercial Intermediaries

Traders conduct their business through themselves and with the help of trade auxiliaries and agents; i.e. commercial intermediaries. Basically the roles of these intermediaries depend on the type and scope of their services. The service of the intermediaries is in turn determined by law, agreement of the parties and custom.

Generally the primary role of commercial intermediaries is assisting or facilitating business transactions for the sale of goods and services. They serve as distribution channels by representing traders for the sale of their products. They play significant role as a marketing or promotion tool in order to broaden market base. At this age of globalization where the provision of goods and services is increasingly becoming borderless, businesses avail their products mainly through commercial intermediaries.

2.3. Types of Commercial Intermediaries

There are different types of commercial intermediaries. Under the commercial code of Ethiopia, there are four types of trade auxiliaries and agents who are recognized to act as intermediaries in

¹⁰ Henry C Black, et al, Black’s Law Dictionary, (8th ed. 2004,)

business transactions. These are commercial agents, commercial brokers, commission agents and stock brokers.¹¹ Though all of them are trade auxiliaries, they have different statuses. Despite their differences though, all of them assist and facilitate business transactions in different capacities. For the purpose of identifying the basic distinctions between the trade auxiliaries and agents which are recognized under the Ethiopian Commercial Code, this paper will discuss below in the order of precedence they are put under the Code.

2.3.1. Commercial Agents

A commercial agent is defined under the commercial Code of Ethiopia as;

“A commercial agent is a person or business organization, not bound to a trader by a contract of employment and carrying out independent activities, who is entrusted by a trader with representing him permanently in a specified area and dealing or making agreements in the name and on behalf of the trader.”¹²

From the definition provided above it can be understood that a commercial agency can be undertaken by an individual person or a business organization. This person or organization is a person who is entrusted in making legally binding agreements in the name and on behalf of a trader in a specified area. In its capacity as an agent a commercial agent acts independently; i.e. he is not an employee of the trader who acts under the direct control and supervision of the trader. The commercial code also states that commercial agents are traders by status. As a result, they are subjects for the rights and obligations enshrined for traders.

2.3.1.1. The Rights and Duties of Commercial Agents

From the forgoing definition we have seen that a commercial agency is established by a contractual agreement. As a result, the rights and duties of a commercial agent can be inferred from the specific agreement of the parties. In addition to this, the basic rights and duties of a commercial agent are prescribed under the commercial code.

In principle the granting of agency power depends on the personal trust and confidence that a principal holds in the agent. This is so because by the power vested up on him an agent usually

¹¹ Supra note. 5, Art. 56, 57, 58, 59

¹² Ibid, Art. 44

has the authority to subject the principal to a legally enforceable obligation. As a result an agent is often obliged to carry out his duties in person. Similarly unless there is a contrary agreement, a commercial agent is duty bound to undertake the activities of the agency in person.¹³

Another important duty of a commercial agent is safeguarding the interests of the principal. In the course of dealings with third parties the commission agent has to always put the interests of the principal first. Moreover he should refrain from engaging in acts.¹⁴ The law even prohibits commercial agents from carrying on their own private trade which is similar with the one they are doing as a commission agent so as to avoid any potential conflict of interest between their own business and that of their principal's.¹⁵

A commission agent has the right to demand the necessary support and assistance in order to carry out the agency. A principal is especially duty bound to give sufficient information and samples to the agent so as to enable him to perform his duties successfully.

Commercial agents perform their duties for a specified remuneration usually called commission. Thus a commission agent has the right to receive the remuneration stated in the agency agreement.¹⁶ If the amount of commission is not stated under the contract the agent will be entitled for a commission amount that is customarily paid for a similar dealing. Moreover, Article 53 of the commercial code states that a commission agent is entitled for compensation from the principal if the principal terminates the contract of agency without good cause before the term of agency or if the agency was concluded for indefinite period of time.¹⁷ In principle expenses of the agency will be borne by the commission agent unless the expense is one that is specifically ordered by the principal.¹⁸

2.3.1.2. Commercial Agents Remuneration

The commercial code states that a commercial agent shall be remunerated by the principal or the agent of the principal for all negotiations or dealings made by him. The amount and manner of remuneration of a commercial agent is usually incorporated in the agency agreement. The

¹³ Ibid, Art. 51

¹⁴ Ibid, Art. 46

¹⁵ Ibid, Art. 47

¹⁶ Ibid, Art. 50(1)

¹⁷ Ibid, Art. 53

¹⁸ Ibid, Art. 49

customary practice shows that a commercial agent might be remunerated in three ways. The first one is by agreeing on a fixed fee to be paid for the agent. Commission basis remuneration might be agreed between the principal and agent. A certain mark up above the price fixed for the sale of the goods or services or a combination of any of the above types of remuneration might be agreed. Apart from recognizing that commercial agents should be entitled for remuneration there are no binding rules regarding remuneration in the commercial code of Ethiopia or other legislations.

2.3.2. Commercial Brokers

The other type of trade auxiliary recognized under the Ethiopian commercial code is commercial broker. A commercial broker is defined under the commercial Code of Ethiopia as;

“A commercial broker is a person or business organization who, independently, professionally and for gain, brings parties together for the purpose of their entering into an agreement such as a contract of sale, lease, insurance or carriage”¹⁹

From the forgoing definition it can be understood that like a commercial agent the business of a commercial brokerage can be undertaken by an individual person or by a business organization. The function of a commercial broker is to bring two or more parties together for the purpose of entering them in to a contractual agreement. In this capacity a commercial broker acts independently of the parties, i.e. he is not an agent of any of the parties. A commercial broker simply acts as an intermediary or middleman between the contracting parties. Unlike the case in agency the contract becomes effective when the parties confirm to it.

The Brokerage institution is critical for market performance in that it enables traders to circumvent the commitment problem of long distance traders with unknown traders.²⁰

2.3.2.1. The Rights and Duties of Commercial Brokers

As we have seen earlier the responsibility of a commercial broker is to bring two interested parties into a deal. He/she may also perform the acts of informing the terms of the proposed

¹⁹ Ibid, Art. 56

²⁰ Dr. Eleni Z. Gebremedhin, Of Market and Middle Men: The Role of Brokers in Ethiopia, November 2009, p. 18

contract to both of the parties. In this capacity a commercial broker is liable for any damage caused to either of the parties.²¹

2.3.2.2 Brokers Remuneration

From the definition given under art 56 above, a commercial broker brings contracting parties together for a gain. The remuneration paid for the service of a commercial broker is usually known as commission. This commission is paid by the party who asked the service of the broker. It is also stated under the code that the amount and payer of the commission is determined by custom unless it is pre agreed or specified by the broker and the person who sought the service. The broker is entitled for the commission when the parties reach in to agreement.²²

The law gives the authority to a court to reduce the amount of commission if it is deemed that it is excessive compared to the service rendered by the broker.²³

2.3.3. Commission Agents

The other form of commercial intermediary or trade auxiliary recognized is commission agent.

A commission agent is defined under the Commercial Code as;

“A commission agent is a person or business organization who, independently, professionally and for gain, undertakes to buy or to sell in his name, but on behalf of the principal, goods, movables or any other thing of a similar nature or enter in his name but on behalf of the principal into a contract of carriage of goods.”²⁴

Under the Commercial code of Ethiopia Stock Brokers are also treated as commission agents.²⁵The Code gives cross reference to the Civil Code of Ethiopia and states it applies to contracts of commission.²⁶

²¹ Supra note 5, Art. 58

²² Ibid, Art. 59

²³ Ibid, Art. 59 (3)

²⁴ Ibid, Art. 60

²⁵ Ibid, Art. 61

²⁶ Ibid, Art. 62

2.4. Termination of Intermediary Relationships

As we have seen earlier the relationship of commercial agents and commission agents is established by a contractual agreement between the principal and agents. Accordingly, the term or period of agency might be incorporated in the agreement. If so the agency agreement would cease upon the expiry of the specified period. Furthermore the commercial code provides that the agency agreement would come to an end if the agent dies is declared bankrupt or the organization that undertakes the agency wound up.²⁷

By the nature of the service, the relationship of a commercial broker ceases at the time when the parties reach into an agreement. As a result, the relationship of a broker ends as soon as the parties get into agreement and after receiving his commissions. This is not true in case of insurance brokers in which case the duties and responsibilities are much wider than ordinary commercial brokers. The duties and responsibilities of insurance brokers will be dealt in detail in the following chapters.

²⁷ Ibid, Art. 52

CHAPTER THREE

3. Insurance and the Insurance Market Cycle in Ethiopia

3.1. The Concept of Insurance and Insurance Practice

Before embarking on a detailed discussion on one of the major actors in the insurance industry, i.e. insurance intermediaries, it would be appropriate to explain about the concept of insurance and insurance contracts in brief. It is also important to see the major operations in the insurance industry

3.1.1. The Concept of Insurance

Defining the concept of Insurance as an independent and distinct concept from that of the contract of insurance appears to be an important task for anyone who wishes to explain and write in further detail about how an insurance contract operates. However, many of the texts and literatures written on insurance seem to have undermined this important distinction that lies between the very conception of insurance and insurance contract, which is inherently a derivation of the concept.

The earliest conception of insurance dates back centuries when man began to recognize the need to mitigate risks that have the potential for ruin and loss on his possessions. As a result, this ancient society realized that a means should have been formed where by individual members could diversify their potential risks of loss among the members of the group. This original idea resulted in the conception of an arrangement where risks at individual level could be shared among members by grouping individuals exposed to losses through common risks forming among themselves groups to aggregate those individual risks with a collective promise to each other to share the economic burden in any one of the group should these risks materialize on any one of the member.

This concept of insurance has developed through time in to taking the shape of modern insurance practice we have today. This conceptual arrangement of spreading risks is said to have its origin

from Italian merchants from the fourteenth century who used to share, among themselves the risk of losing a ship or its cargo at sea voyage.²⁸ This practice eventually spread to similar English merchants, who are said to have developed the practice into a very similar modern insurance arrangement. Previously, where it has been practiced by the Italian merchants, there hasn't been an independent or separate party who would collect the risks and insure it. That is, the merchants would come together and agree to share all the risks among themselves. Eventually, after having practicing this arrangement for a long time up until the late seventeenth century, a more formalized insurance arrangement we are familiar with modern time is said to have begun at coffeehouse owned by Edward Lloyd near London.²⁹ This developed and more formalized practice has been conceived where wealthy merchants occasionally gathered at this coffeehouse to discuss about their shipments.

Concern and worry about risks on their shipment if it was lost during the journey where they began to seek for any individual or as group who would like to insure the risks on the ships or the cargos against an agreed amount of payment.³⁰ As a result wealthier individuals who are interested in the bargain began to appear willing to insure. Such people collected the details of the ship, the cargo and the Journey and provide a written agreement about taking the risks with a promise to make compensation if the risks materialize.³¹ Such process was referred as <underwriting> and the person insuring, as an <underwriter> as we refer it in the modern Insurance practice today.³²

3.1.2. Insurance Contract

As has been briefed with regard to the original conception, insurance has originally been conceived as a social device for spreading risks and the chance of economic loss among a number of people or groups among themselves. This arrangement has gone centuries of practice making gradual development to become the modern insurance business today. These centuries of practice and gradual development has given birth to the modern practice where independent parties who aggregate the risks of others, price the risk and promise to guarantee the same

²⁸ Birds J, Modern Insurance Law, (5th ed., 1997,) p. 1

²⁹ Ibid, p. 3

³⁰ Ibid.

³¹ Ibid

³² Ibid

against an agreed payment bond by formally prepared agreement. Therefore, it is such an agreement made between the individual with the potential risks and the party who wishes to insure, that we commonly refer as an insurance contract.

Even though, there hasn't been a fully defining and universally accepted definition, there are fairly describing definitions provided by renowned writers of the subject matter. One of such writers is Hardy E.R Ivamy, who has defined an insurance contract as:-

“a contract of insurance in the widest sense of the term may be defined as a contract where by one person called the “insurer” undertakes, in return for the agreed consideration, called the “Premium” to pay another person, called the “insured”, a sum of money, or its equivalent, on the happening of a specific event.”³³

In a more close and similar manner, the other well-recognized author another on insurance law, John Birds has defined insurance as:-

“... a contract whereby one party assumes the risk of uncertain events, which is not within his control, happening a future time , in which event the other party has an interest, and under which contract the first party is bound to pay money or provided its equivalent if the uncertain event occurs”³⁴

From the above refereed definitions of an insurance contract it can clearly be understood the very basic meaning of an insurance contract together with the inherent elements which make up such a contract.

3.1.3. Insurance Operation

The insurance market cycle normally involves three major players. That is the insurer, the insured and insurance intermediaries. The government as a regulatory body will play the responsibility of supervising the relationship of these parties for the healthy and efficient function of the insurance industry.

³³Ivamy E.R, **General Principles of Insurance Law**, (3rd ed., 1975) p. 13

³⁴ Supra Note 27, p. 13

3.1.3.1 The Underwriting Process

Basically an insurance contract is no exception to the general process of making an offer, acceptance, agreement, consideration and an intention to create a binding legal contract. However in insurance practice, once the insured made an offer with regard to his demand for coverage, there are very technical and somewhat complicated tasks to be undergone between the insurer and the insured. This process is referred as <underwriting > process in the insurance operation.

Underwriting in the insurance practice is considered as the fundamental insurance function where the insurer identifies and evaluates the subject matter of the insurance which has been requested by the client. The process also focuses on identifying the type of the risks that are to be covered, assessing the frequency and severity and examining the circumstance of risk exposures.³⁵ Thus it can be understood that for the premiums that is to be paid by the proposer (the insured) to match and reflect the risks, all aspects of the scope and nature of the events, the financial extent of coverage and all relevant characteristics the insured has in relation to the coverage. So generally the process of risk assessment and premium pricing are not arbitrary practices left to the ultimate discretion of the insurer.

3.1.3.2 The Policy

An insurance policy is the legally recognized document which attests the existence of an insurance contract between the insurer and the insured. To simply put it the policy is the agreement between the insurer and the insured. As has been said earlier with regard to the underwriting process, the policy in insurance practice, is the final result of the contract making process or the underwriting.

Basically the policy provides the rights of the parties together with the terms governing their reciprocal duties and responsibilities. Most importantly the policy sets out the details of the events and the risks which are insured against along with the lists of the exceptions or as commonly referred as exclusions which specify the circumstances in which the insurer will not

³⁵ Underwriting Practice, The Chartered Institute of Insurance, Study Text, 2313, p, 3/4

be liable even when the loss has been caused by a risk covered by such policy.³⁶It also provides some clauses or wordings as commonly referred as <conditions>, which amount as a prerequisite on the fulfillment of which the validity of the policy or the liability of the insurer depends on.

The form and the contents of an insurance policy will vary according to the nature of the subject matter insured; (property, liability or a human person) and depending on the nature and scope of risks that are covered. However, standard forms designed for a particular group of risks are normally used, unless of course a new type of coverage is sought.

3.1.3.3. The Claim Process

Claim is the process that follows the materialization of the risk insured which has been uncertain during the policy making. The claim process simply means, as the name tells for itself, the insured's claim for compensation should a loss take place which has been warranted under the policy.

However this process involves quite crucial matters which are by far very sensitive and very technical for a lay person to handle, this is mainly because the insured will only be entitled for compensation if the policy he/she has taken out is valid and subsisting one.³⁷

The validity element refers to the issue whether the loss has occurred during the policy period or not. Yet once this validity test has been passed, the process passes through the most daring examinations and investigations checking whether the event causing the loss has been an insured one or not since no claim can be entertained unless the loss has resulted from a peril which has been insured against.³⁸ Along with this examination comes the determination of if the occurred event doesn't fall within the list of exceptions in the policy.

These examinations are not the only ones that are dealt with the claim process. Even where it is proved that event has been a covered one, which isn't an excepted peril, insurers might further investigate if there has been a non-disclosure or misrepresentation of material facts to the subject matter insured and the perils on the part of the insured. The assessment of loss and the determination of extent of damage are the other breath taking aspect of the claim process.

³⁶Ivamy E.R, General Principles of Insurance Law, (3rd ed., 1975), p. 92

³⁷Ibid. p. 351

³⁸ Ibid

3.2. Insurance Market Cycle in Ethiopia

Like any other business, the insurance industry, in its own domain, provides insurance services, continually innovates and create new insurance products (policies), widening in the scope of the service. In tandem with this, the industry plays a significant role in fuelling economic activities and promoting economic growth. The industry directly employs thousands of people if one considers those working in the industry directly. The industry is also known for paying high amount of taxes paid to the government. Generally, by its very existence, the insurance industry is beneficial in many respects in a country where it operates.

Though the societal value of insurance sector is getting widespread, the insurance the insurance market place is poorly understood. That is, though the insurance business process as a distinct market has not been adequately understood, people still think of the insurance business as money sucking corporate greed.

The insurance business is not a sole conduct of a particular insurance company. Rather it is known as a distinct market place involving various actors and stakeholders. The insurance market place having the insurer and the insured as central players involves the following main actors whose role and influence significantly affects the overall business process.

- i) Regulatory Authorities: - these are usually government owned organs, like the National Bank in the Ethiopian case, which provides the main legal framework and directives as to how the main aspects of the insurance process are conducted.
- ii) Brokers: these are intermediaries who play a significant role in the core aspect of the insurance process. Insurance brokers are the main subject of this thesis since the broking practice will be dealt in further details in the following chapter of this paper
- iii) Other Auxiliaries and Intermediaries: - the market place also involves agents acting on behalf of the insurer. There are also variety of professionals who directly participate in the insurance process; to mention some: - loss assessors, loss adjusters, actuaries who play a significant professional role in their respective role.
- iv) Re-Insurers: - these are giant companies which only insure an insurance company's portion of liability from the latter's original insurance contract through an arrangement whereby an insurance company passes or lays off part of its liability.

The Ethiopian insurance industry is showing a gradual progress. Currently there are seventeen private and one government owned insurance companies operating in the insurance business. The following table shows the last five years' gross written premium growth of the insurance industry in Ethiopia by class of business.

Table 1

Financial Information of Insurance Companies

In '000 Birr

Year	2013	2014	2015	2016	2017
Gross premium					
1. Non-Life					
Aviation	231,630	245,484	220,740	270,325	458,788
Engineering	733,469	431,989	430,400	421,490	507,691
Fire	229,701	280,738	308,990	384,289	487,361
Liability	117,025	163,821	189,801	167,654	221,856
Marine	531,721	536,721	490,450	502,670	532,261
Motor	2,101,661	2,421,725	2,830,635	3,489,111	3,982,203
Accident & Health	147,137	169,551	192,002	184,656	260,469
Pecuniary	329,351	352,796	416,304	466,792	429,814
Workmen's Comp.	53,175	58,256	69,454	141,449	160,567
Others	22,796	26,576	93,309	65,241	92,468
Non-life Total	4,497,666	4,687,657	5,242,085	6,093,677	7,133,478
Growth in %	20.75	4.22	11.83	16.24	17.06
2. Life Insurance	299,514	273,871	315,044	333,008	360,093
Growth in %	10	(8.56)	15.03	5.7	8.13
Total	4,797,180	4,961,528	5,557,129	6,426,685	7,493,571

Source: National Bank of Ethiopia

As can be seen from the above table the insurance industry premium production is growing fast yearly. This trend of growth is believed to continue in the coming years as the entire economy is prospected to grow in a double digit. More over the awareness of our society about the advantages of purchasing insurance cover is developing. This factor will also contribute further for the development of the sector. As the insurance market is growing the demand for professional insurance brokers and other insurance auxiliaries is also growing.

3.2.1. Insurance Intermediaries

Insurance intermediaries are individuals or entities that in various capacities represent and act on behalf of parties to insurance transactions. “An insurance intermediary is a natural or legal person who performs insurance intermediation as a profession”³⁹In many countries, the vast majority of insurance transactions are conducted through insurance intermediaries of one kind or another.⁴⁰ As the insurance industry impacts nearly every individual and entity in society, the law affects insurance with a public interest. Consequently, the insurance industry, insurance intermediaries included, is subject to extensive government regulation. The regulation of market intermediaries includes governing aspects of the insurance intermediary’s business which of course includes; the granting, suspension and revocation of licenses, contractual relationship with the client, sales activities, in some countries it may extend up to selling insurance policies, compensation, record-keeping, prohibitions and penalties.

Under the International Association of Insurance Supervisors insurance core principle, individuals or firms which simply refer (or “introduce”) potential customers to an insurer or insurance intermediary, without carrying out intermediation, as well as persons, such as tax advisers or accountants, who in conducting another professional activity provide advice on insurance cover on an incidental basis in the course of that other activity, or information of a general nature on insurance products (without advising on the choice of insurance product provider) are excluded provided that the purpose of that activity is not to intermediate an insurance or reinsurance contract.⁴¹

According to this ICP,⁴² Insurance intermediation involves the interface between insurers and actual or potential policyholders. So, effective assessment of the quality of insurance intermediation to a large extent requires supervisory consideration of policies, processes and procedures that relate to individual customer relationships and individual transactions. Where insurance intermediation is carried out by intermediaries which are part of a group, supervisors are expected to apply these standards to all the entities within the group that conduct insurance

³⁹ Supra note 2, p. 61

⁴⁰ Ibid

⁴¹ International Association of Insurance Supervisors; Insurance Core Principles, Standards, Guidelines and assessment Methodology, ICP 18:0:2, October 2012, P. 258

⁴² Ibid

intermediation business. Where intermediaries participate in a group or financial conglomerate, the application of appropriate policies and procedures on insurance intermediation across the group should result in the fair treatment of customers on a group-wide basis, even if legal provisions in some jurisdictions set requirements that are potentially lower than those used by the group. Therefore, the supervisor should consider the application of these standards and guidance material taking into account that there are various business models ranging from sole traders to large enterprises, including specialist wholesale or reinsurance intermediaries.⁴³

In Ethiopia also the insurance industry is assisted and influenced by the operation of insurance intermediaries. The operation of these insurance intermediaries is regulated by different legislative acts. The insurance business proclamation for instance deals with insurance intermediaries within the auspices of the term ‘insurance auxiliaries’. Under the proclamation, the term insurance auxiliary encompass insurance agents, insurance brokers, loss assessors or insurance surveyors.⁴⁴ The law generally prescribes that it is unlawful for any person to act as an insurance auxiliary without securing license from the National Bank of Ethiopia.⁴⁵ The detailed qualification and requirements as well as the rights and duties of insurance auxiliaries are left for NBE to be determined by directives. As the main focus of this paper is on insurance intermediaries; especially that of insurance brokerage, detailed analysis will be made below.

3.2.1.1. Insurance Agents

As has been explained above, insurance agents are one type of insurance intermediaries. To begin with definitions, an Insurance agent is defined as;

“Insurance agent means a person who on behalf of an insurer and for commission:

a) deals directly with the public in soliciting insurance;

⁴³ Ibid

⁴⁴ Supra note 6, Art. 2(18)

⁴⁵ Ibid, Art. 39(1)

b) and acts or assists in any manner in connection with the negotiation, continuance or renewal of insurance.”⁴⁶

The definition given under the licensing of an insurance agent directive for the term insurance agent is slightly different from the one we find under the proclamation. The directive defines an insurance agent or agent as;

“a person licensed by the Bank as an insurance agent who, acting on behalf of one or more insurers, engages in: (a) soliciting or procuring insurance business; (b) work preparatory to the conclusion of, or in concluding of insurance; and (c) activities relating to the continuance, renewal or revival of contracts of insurance or in assisting in the administration and performance of such contracts.”⁴⁷

The basic distinction between the two definitions lays on the fact that the definition under the directive indicates an agent may serve for more than one insurer at a time. However, this is not allowed under the proclamation. Thus as the proclamation is in a higher degree of authority, the definitions given under the proclamation will be the authoritative one. As a result, it should be construed that an insurance agent cannot work for more than one insurer at a time. This is also clearly designated under article 41 of proclamation no. 746/2012.⁴⁸

As the definition indicates an insurance agent is a person who acts on behalf of an insurance company. Therefore, the general provisions on agency apply for the relationship of the agent and the insurance company. The other important component of the above definition is that the purpose of the agency is to solicit the public or lobby to sell insurance policy. This includes the introduction and explanation about a certain insurance product and negotiation of premiums. The agent will also give after sales service by assisting the public in case of materialization of the perils covered as well as with regards to the renewal of policy. According to the definition an insurance agent works in return for a commission. The commission is going to be paid by the insurance company as the agent is working for and on behalf of the insurance company.

⁴⁶ Ibid, Art 2(17)

⁴⁷ National Bank of Ethiopia, Directive No SIB/30/2007, Issued pursuant to the authority vested in it by Art. 41 of the Monitoring and Banking Proclamation No. 83/1994 and Art. 25 and Art. 42(J) of the Licensing and Supervision of Insurance Business Proclamation No 86/1994

⁴⁸ Supra note 40, Art. 41

3.2.1.1.1. The Role and Responsibility of Insurance Agents

An Insurance agent acts as an intermediary between an insurance company and the public. In this capacity their basic role is to represent their insurance company and solicit the sale of insurance products. In doing so they normally introduce about the services of the insurance company they represent and the insurance products it offers. That is they act as sales forces for the insurance company they work for. Insurance companies might use their own branches, online services and sales agents in order to sale their products. Opening of branches require significant amount of investment for office arrangement, logistics and allocation of human resources. The recruitment of agents will enable insurance companies to broaden their accessibility in the market without incurring costs for a full-fledged branch. Thus insurance agents serve as distribution channel for insurance companies.

The other role of insurance agents is during the underwriting process. Insurance agents assist subscribers of insurance policy in filling up the application form (proposal) for the purchase of insurance policy. They also play similar role during renewal of insurance policy.

During the occurrence of an insured peril, an insurance agent is supposed to help the insured starting from notifying the accident to the insurer throughout the settlement of the claim.

We have seen that an insurance agency is established based on the agreement between an insurance company and insurance agent. This agreement naturally embraces the detailed rights and obligation of the parties. As a result, the agent would be responsible to adhere to those terms of the agreement.

3.2.1.1.2. The Requirements for Insurance Agents License

It is prohibited to undertake an insurance auxiliary Insurance business proclamation no 746/2012, article 39 states that it is not possible to undertake as an insurance agent without securing a license from the National Bank of Ethiopia.⁴⁹ The detailed requirements for acquiring an insurance agency license is prescribed under NBE directive no. SIB/30/2007.⁵⁰ According to this directive, the prerequisite for qualification might be obtained through a formal training that

⁴⁹ Supra note 40, Art. 39

⁵⁰ Supra note 43

is going to be given by the National Bank of Ethiopia or it may be acquired by rendering service in a duly licensed insurance company.⁵¹ The detailed requirements for an insurance agent will be discussed below.

For an insurance agent to be licensed by the Bank, he/she has to be recruited by an insurance company for the same purpose first. This requirement stems from the general notion that an agent is normally chosen by the principal. Once a prospective agent is nominated for training or license by an insurance company, then the following substantive and procedural requirements must be fulfilled.

With regards to the substantive requirements a person has to at least complete a secondary school and has to be willing to take 30 hours of training to be given by the NBE.⁵² The training must be taken for each main class of business for which the agent is to embark upon; i.e. either in general insurance or long term insurance business.⁵³ A person who has served in an insurance company for more than five years in operations sector; i.e. either on underwriting or claims department will be entitled for license without the need for taking any additional training.⁵⁴ Moreover, a prospective insurance agent should not have to be one who has been convicted of crimes related to dishonesty anywhere in the world.⁵⁵

The other requirements in relation to insurance agency are that a duly written application containing relevant information about the agent and copy of CV of the applicant must be submitted.⁵⁶ Furthermore, an application fee of 250.00 Birr and 300.00 for license must be paid.⁵⁷ Last but not least, a professional indemnity policy for birr 20,000.00 or deposit of cash for the same amount must be made by the applicant.⁵⁸

⁵¹ Ibid, Art. 3, 5

⁵² Ibid

⁵³ Ibid, Art. 5

⁵⁴ Ibid, Art. 3

⁵⁵ Ibid, Art. 3(d)

⁵⁶ Ibid

⁵⁷ Ibid, Art. 6

⁵⁸ Ibid, Art. 3

An insurance agency can be undertaken in the form of a business organization.⁵⁹ In case of this, the organization must be established by Ethiopian nationals in accordance with the requirements of the commercial code of Ethiopia and its head office must be in Ethiopia.⁶⁰ Moreover, the chief executive officer or manager of the organization must fulfil at least the substantive and procedural requirements which are listed above for acquiring license.⁶¹

3.2.1.2. Insurance Brokers

As has been seen earlier, the other and most important type of insurance market intermediary or auxiliary is an ‘Insurance Broker’. There is no one universally agreed definition for an insurance broker or broking business. Different legislations in different jurisdictions and literatures give different meaning for the term. Perhaps one also can draw similarities from the different definitions that are given on literatures or legislations. In any case it would be appropriate to see some definitions in order to shade light on the meaning before considering the definition given for the term under Ethiopian law.

The renowned Black’s Law Dictionary defines insurance broker as;

“A person who, for compensation, brings about or negotiates contracts of insurance as an agent for someone else, but not as an officer, salaried employees or licensed agent of an insurance company. The broker acts as an intermediary between the insured and the insurer.”⁶²

From the forgoing definition it can be understood that an insurance broker is a person who independently and for gain work on behalf of the insured.

An insurance broker is defined under the Insurance Business Proclamation as;

“Insurance broker means a person who on behalf of the insuring public and in exchange for commission:

⁵⁹ Ibid.

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

- a) *deals directly in arranging insurance;*
- b) *acts or assists in any manner in connection with the negotiation, continuance or renewal of insurance cover; and*
- c) *Provides consulting services with respect to insurance or insurance claims.*⁶³

An insurance broker is also defined under the licensing of insurance brokers directive as follows;

*Insurance Broker or Broker shall mean a person licensed as an insurance broker by the bank who, acting for and on behalf of policyholders or proposers for insurance: a) places insurance business with insurers; b) carries out work preparatory to the conclusion of contracts of insurance and reinsurance; and c) where appropriate, assists in the administration and performance of such contracts.*⁶⁴

From the reading of the two definitions one can draw the similarities and distinctions between them. Both definitions give the meaning that an insurance broker is a person who works on behalf of the insuring public or policy holders regarding pre contractual dealings of insurance contracts and assisting at the time of occurrence of insured risks. On the other hand, unlike the definition on the proclamation the definition given on the directive tells us that an insurance broker is a person licensed by the Bank for the same purpose and who can also deal reinsurance contracts. After the coming into effect of the current insurance business proclamation in 2012, NBE has stopped giving or renewing license for brokers as reinsurance brokers.⁶⁵ The first and only Ethiopian reinsurance company has started operation back in 2008 Eth. Cal.⁶⁶ All of the interviewees in this paper agree on the idea that the law as well as NBE has to allow insurance brokers in Ethiopia to be licensed for dealing with reinsurance contracts.

The other distinction which can be drawn from the definitions is that the proclamation specifically states that insurance brokers work for compensation while the directive doesn't state so. Perhaps

⁶³ Supra note 10, p. 206

⁶⁴ Supra note 6, Art 2(19)

⁶⁵ Interview with Ato Belay Tulu, Director at NBE, Insurance Supervision Directorate, on May 05, 2018

⁶⁶ Ethio-Re Share Company is established by government owned and private insurance companies as well as few individuals who are insurance professionals with a subscribed capital of One Billion Birr out of which half of it is fully paid up on subscription by the shareholders.

as the proclamation overrides over the directive it would be proper to take the definition of the proclamation as the authoritative one.

As can be seen from the definition given under the insurance business proclamation, the scope of service of an insurance broker is wider compared to the services that are expected of an insurance agent. Unlike the case in insurance agent, an insurance broker is a person who works for and on behalf of the insuring public.⁶⁷

One of the characteristics of an Insurance brokerage is that, brokers are not restricted to work with any specific insurance. Rather they are supposed to compare among insurers in every aspect and to consult their clients professionally with regards the selection of a certain insurance company. They will also negotiate on behalf of their clients with regards the kind and extent of coverage of risks as well as on amount of premium. As they are well trained and experienced professionals in the field of insurance, they are expected to assist insurance companies by creating the required awareness about the services. Insurance brokers are also expected to render professional services at times of claims incurred.

Insurance broking is similar with insurance agency with regards to the soliciting and negotiation aspect of insurance products as well as with the fact that they work in exchange for commission to be paid by insurance companies. Actually the amount of commission for insurance brokers and insurance agents differs. Usually insurance brokers are paid higher commissions than agents.

The other type of broking which needs to be seen is reinsurance broking. There is a distinction between insurance broking and reinsurance broking as in the latter case the broker serves not between individuals and insurance companies, rather they render broking service between insurance companies and reinsurance companies. According to article 2(34) of the insurance business proclamation no. 746/2012, “a reinsurance broker means a person that provides protection through the sale of reinsurance contract.”⁶⁸ Though reinsurance broking is defined and recognized under the proclamation, the manner and requirement of licensing reinsurance brokers

⁶⁷ Supra note 6, Art. 2(19)

⁶⁸ Supra note 40, Art. 2(34)

is not yet prescribed by any directive of the NBE. However, the requirements for insurance brokers' license are provided under directive no SIB/31/2010.⁶⁹

3.2.1.2.1. The Role and Responsibilities of Insurance Brokers

Insurance is normally an intermediated market. In some countries it can even be only accessed through brokers.⁷⁰The role and responsibility of insurance brokers can be classified and explained from the perspective of insurance companies or insured clients. Depending on different jurisdictions the role and responsibility of insurance brokers vary. Perhaps as insurance brokers are primarily agents of the assured, it would be appropriate to see their role from the perspective of the insured first.

3.2.1.2.2. The Role of Insurance Brokers for the Insured

Generally, the role of insurance brokers for their insured clients can be summarized and categorized in three. That is during preparation and mediation of insurance contracts, during the insurance contract period and during the occurrence of an insured event.⁷¹

From the inception, insurance brokers have the duty to provide information about themselves, insurers, their relations and on insurance products and the risks covered.⁷² By ascertaining the insurance needs of their clients, brokers are expected to give advice on the options and available insurance products. They are also expected to advise their clients on the insurance companies that best suit the interests of the insured. Moreover insurance brokers have the responsibility to negotiate on the terms of insurance policies with insurers to get the most appropriate deal and cover to their clients especially on complex insurance investment products.⁷³ Insurance contracts are usually entered through the offer made by standard proposal forms prepared by insurers and to be filled by subscribers or brokers on behalf of their clients. These proposal forms contain detailed questions about the object to be insured. Unlike other types of contracts, subscribers of insurance contracts or their agents and brokers are obliged to provide all the necessary

⁶⁹ National Bank of Ethiopia, Directive No. SIB/31/2010 pursuant to the authority vested in it by Art. 27 of the National Bank of Ethiopia (as amended) Proclamation No. 591/2008 and Art. and Art. 42(j) of the Licensing and Supervision of Insurance Business Proclamation No 86/1994

⁷⁰ CII, Insurance Broking Fundamentals, Study Material

⁷¹ Supra note 2, p. 62

⁷² Ibid

⁷³ Ibid

information to the best of their knowledge about the object, liability or life to be covered so as to enable the insurance company to exactly know and appreciate the risk that it is going to accept. This duty is related with one of the basic principles of insurance, i.e. 'utmost good faith'. Breach of this duty by an insured or his/her agent can have the effect of nullifying the contract of insurance later on. As a result, brokers have the responsibility to clearly notify this important obligation to their clients and assist them in filling up the proposal form.

In addition to advising their clients for the best insurance product available and negotiating with insurers, brokers are expected to make bid to get the least premium price. Based on the authority vested on them from the principal brokers can collect quotation from different insurers and make bid analysis. Based on their analysis they have to recommend where to place the insurance needs of their clients. Once they get the green light on where to place the business from the principal, they will proceed to the preparatory works for the underwriting process. At times brokers might be entrusted to pay insurance premiums. In such instances brokers will be responsible for the payment of the insurance premium on time and report same to their clients supported with the proof of payment.

The other important responsibility of insurance brokers is to keep records and expiry of insurance policies of their clients. They are supposed to remind their clients about renewal of insurance policies ahead of expiry date. As has been seen above brokers have the responsibility to inform new facts about the object of insurance if any at time of renewal and give the necessary advice.

The other important instance that the professional support and intervention of insurance brokers is sought is during the occurrence of the insured event. Starting from notifying the occurrence of an accident to an insurer until the settlement of claims insurance brokers have to give the necessary advice and support to their clients with regards to the entire claim handling process.

In all dealings that a broker makes regarding negotiation, placement and handling of insurance transactions and claims he is required to put the interests of the assured first. Most importantly he/she is required to refrain from acts which might involve conflict of interest. More over a broker is required to make all his dealings and earnings transparent to the assured.

3.2.1.2.3. The Role of Insurance Brokers for Insurers

Though in principle insurance brokers are agents of the assured, they perform several activities on behalf and for the benefit of insurers. In this capacity, they play important roles for insurers too. As a result of this there are literatures that argue that insurance brokers are ‘common agents’ of the insured and the insurer.⁷⁴

Insurance terms and contracts are usually complex. For ease of understanding of these contracts one need to have the technical know-how, skill and experience in insurance. Thus for any insurer negotiation and dealing of insurance products would be easier to make with insurance brokers than with ordinary customers directly.

At times insurers may not be able or willing to accept larger risks due to limited risk taking capacity, regulatory restrictions or risk appetite. In such instances brokers might be required to assemble the cover from different insurers.⁷⁵ In other words insurance brokers will be responsible to place a single risk from multiple insurance companies if such risk cannot be absorbed by a single insurance company. By doing so, brokers relieve the duty of insurance companies to search for the appropriate ‘co insurer’⁷⁶ for a certain risk.

Brokers assist in mitigating the information imbalance faced by insurers.⁷⁷ Moreover Insurance Brokers serve as market outlets or distribution channels for insurance companies. An insurance company which has a strong relationship with insurance brokers generates more premium income. This will enhance the capacity of an insurer as more premium production means more funds in the pool to shoulder and settle claims. Insurance brokers are strategic partners for insurance companies in a way that they will help reduce costs from opening branches at different places to reach to customers. Those companies which have strong relationship with insurance brokers need not invest monies to open several branches.

⁷⁴ Robert Merkin, The Legal Position of Insurance Brokers, University of Cardiff, 11 S. Afr. Mercantile L.J 78 (1999) p, 78

⁷⁵ Supra note. 66

⁷⁶ A co insurer is an insurance company but not a re-insurance company that shares portion of the risk and the premium underwritten by another insurance company. Normally insurers look for co insurers if the risk they are assuming exceeds their risk acquiring capacity.

⁷⁷ Ibid

In addition to negotiating policy terms, the role of insurance brokers may further extend to drafting of policy or proposal wordings.⁷⁸ This is especially true in the ‘Lloyds insurance market’ where most policy wordings are drafted by brokers.⁷⁹

Insurance brokers may be entrusted to underwrite policies by and on behalf of insurers. If brokers are vested with such kind of power, they will be able to issue insurance cover notes or policies to insured clients on behalf of insurance companies. In this capacity acting as underwriters, they will also be responsible to carefully see and insure that all the underwriting processes that are essential for granting of covers i.e. pre risk survey, gathering of information and filling up of proposal forms, computing premium rates and handling of premium accounts are made in a professional and safe manner.

3.2.1.2.4 Types of Insurance Brokers

Insurance brokers can be generally classified based on the scope or specialty of service they offer, jurisdiction they operate in or their accessibility. With regards to their scope of service insurance brokers can be classified as insurance brokers or reinsurance brokers. While insurance brokers can deal with insurance covers only, reinsurance brokers may intermediate reinsurance businesses where in the latter case the intermediation is between an insurance company and a reinsurer or reinsurance company.

Insurance brokers can further be dichotomized based on the specialty of service they offer. That is to say based on the class of insurance business service they operate in. There are specific brokers that operate in general insurance business, long term (Life) insurance business only or both. There are brokers who sale personal life insurance products which are sold to individual clients such as household buildings and contents, private motor insurance, travel and private medical. There are also brokers that further specialize in specific class of insurance business such as motor insurance, marine, aviation, construction etc.⁸⁰ Insurance service for the commercial market is more suited to be made through insurance brokers. The reason for this is usually the

⁷⁸ Supra note 71

⁷⁹ The Lloyds Insurance market is the largest insurance and reinsurance market in the world which is based in London

⁸⁰ CII, Insurance Broking Fundamentals, 1/13

complexity and magnitude of commercial risks especially for bigger commercial risks.⁸¹ In some jurisdictions for instance in the UK market, direct insurance services are not even available for bigger commercial risks.⁸²

The other type of insurance classification is based on the jurisdiction they can operate. There are global insurance firms that operate in more than one country. These types of brokers usually embrace within themselves small brokerage firms in different countries and employ thousands of employees. There are also the so called whole sale brokers that don't have any direct contact with policy holders rather they deal with retail brokers.⁸³

In the UK which is the largest insurance market in the world there are the so called Lloyd's brokers. These brokers are licensed by the Lloyds insurance market and they usually operate in placing mega risks in the Lloyds reinsurance market.⁸⁴

If we take the Ethiopian market and laws regarding classification or type of insurance brokers, we don't find such kind of distinctions at all. If a person gets a broker license in Ethiopia, he/she can operate both in the general and long term insurance business. Furthermore, there is no such kind of practical classification in the insurance broking industry. Here it is important to note that the current applicable law on insurance business i.e. insurance business proclamation no 746/2012 doesn't even allow insurance brokers in Ethiopia to operate in a reinsurance broking business. The repealed insurance business proclamation no 86/1994 of Ethiopia had a provision which allows reinsurance broking in Ethiopia. One of my interviewees for this research argues that the stance taken by the applicable insurance business proclamation on reinsurance broking is a complete mistake⁸⁵ On the other hand there are also persons that argued that given the capacity of the insurance brokers we have in the insurance market, as well as the absence of Reinsurance Company in Ethiopia during the enactment of the proclamation it is of a right decision to exclude brokers from getting license in the reinsurance broking business.⁸⁶ The writer of this paper

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Interview with Ato Wubetu Abate, a licensed Insurance Broker and President of Association of Insurance Brokers on April 15,2018

⁸⁶ Interview with Ato Eyessus WorkZafu, The first CEO of EIC, and an advisor and former CEO of The United Insurance Company S.C, on April 20, 2018

agrees with the argument that Ethiopia should enact a law that allows competent insurance brokers to operate in the reinsurance broking market.

3.2.1.2.5. Fiduciary Responsibility of Insurance Brokers

This is an important aspect of the responsibilities of an insurance broker. An insurance broker owes the duty of good faith, trust, confidence and candor to the principal or assured. In all dealings and acting an insurance broker is supposed to safeguard the interests of the assured. All his acts should be transparent to the principal. He has the duty of disclosure of all the dealings between the broker and the insurance company. In case of conflicts of interest arise between the broker and the insurer he should always put the interest of the assured first before any other consideration.

3.2.1.2.6. The Requirements for Insurance Brokers License

The requirements for insurance brokerage are said to be very much stringent in Ethiopia. The qualifications and experience required for insurance broking license is higher than the requirements to be an insurance company's CEO/General Manager.⁸⁷ As pointed out earlier, the details for this are prescribed under licensing of insurance broker directive no. SIB/31/2010.⁸⁸ This directive designates that an insurance brokerage can be formed as a sole proprietorship or in the form of a business organization.⁸⁹

Where an individual person applies for insurance brokerage license he/she is supposed to prove and provide the following. To start with the substantive requirements, an applicant must be an Ethiopian national.⁹⁰ He/she shouldn't be convicted of crimes related to dishonesty in any country.⁹¹ This requirement seems to be attributable to the level of integrity and the application of the principle of utmost good faith that is sought from insurance transactions.

The stringiest requirement for insurance broker is the level of experience required. According to the directive, an applicant for an insurance broker license must prove "a minimum of eight years

⁸⁷ Ibid

⁸⁸ Supra note. 66

⁸⁹ Ibid, Art. 3

⁹⁰ Ibid, Art. 4(1)

⁹¹ Ibid, Art 4(2)

of reputable managerial experience acquired through working at the head office of an insurance company with responsibility to oversee operational areas of underwriting and claims.”⁹² The qualification stipulated here is self-explanatory except the term ‘reputable’ which seems to be a subjective standard to be determined by the National Bank of Ethiopia. There is also restriction that a broker, his/her spouse and/or a person related to him/her by consanguinity to the first degree; i.e. any of his/her parents or children cannot hold shares in any insurance company.⁹³

The minimum educational qualification required for an insurance brokerage is diploma in Insurance or anyone of business related fields from an institute, college or university that is acceptable by the National Bank.⁹⁴

Professional indemnity insurance for an amount which is worth one million Birr must be bought by the broker.⁹⁵ This insurance must cover for loses or claims incurred by an insured in relation to the failure or negligence of a broker. In addition to this a duly filled application form by the applicant containing relevant information, CV and an investigation fee of Birr 550.00 and Birr 1000.00 for the license must be paid by the applicant.⁹⁶

In case where an insurance broking is established in the form of a business organization, all the members must be Ethiopian Nationals, and the CEO or Manager of the business organization must have the qualifications and character stipulated for an individual broker.⁹⁷NBE prohibits the establishment of insurance broking business in the form of a PLC.⁹⁸ There is no clear statutory requirement for this. Perhaps an official in the regulatory body argue that as an insurance business cannot be undertaken in the form of PLC by analogy the Bank prohibits broking firm to be established in the form of a PLC.⁹⁹In the opinion of the writer of this paper, this stance of the Bank has no justified legal ground. A business which can be undertaken by a sole proprietorship shouldn’t in any way be prohibited to be undertaken in a PLC form.

⁹² Ibid, Art. 4(3)

⁹³ Ibid, Art. 8

⁹⁴ Ibid, Art. 4(1)(a)

⁹⁵ Ibid, Art. 9(2)

⁹⁶ Ibid, Art. 10

⁹⁷ Supra note 65, Art. 4(1)(4)

⁹⁸ There is no broking office that is established in the form of PLC.

⁹⁹ Interview with W/ro Serkadis, an officer at NBE in the Insurance Supervision Directorate, on May 23, 2018

3.2.1.3. Ethical Considerations for Insurance Agents and Brokers

Insurance agents and brokers are required to adhere to certain ethical standards. Naturally general rules of agency require agents to work to the best interest of their principals. The main ethical standard that commercial intermediaries are required to keep in the conduct of their business is integrity.

One of the fundamental principles of insurance is ‘utmost good faith’.¹⁰⁰ In the dealing between insurance companies and insured’s both parties are required to act with utmost good faith. As insurance intermediaries are persons that work in the middle and as an agent of either of the two parties they are required to act in utmost good faith. This requirement is mainly related with the true disclosure of relevant and material facts.

Diligence and transparency is the other essential standard that should be kept by insurance intermediaries. In the discharge of their duties insurance intermediaries should be diligent. Their deeds should be transparent to their principals. They have to disclose all dealings made between the insurers.

Insurance intermediaries are also required to be confidential. Both insurance brokers and agents might be exposed to confidential business secrets or data of insures and insured. Thus they are required to keep the secrecy of these documents and should not in any way disclose it to the detriment of the parties.

Insurance brokers code of conduct directive no SIB/9/1995¹⁰¹ prescribes the code of conduct that insurance brokers in Ethiopia should respect in the conduct of their business. In addition to this, directive no SIB/31/2010 of the NBE¹⁰² incorporates the responsibilities and ethical consideration that insurance broker should see. The details of these ethical considerations will be dealt in the next chapter.

¹⁰⁰ The principle of ‘utmost good faith’ in insurance is an obligation related with the declaration of all material facts within the knowledge of the insurer or insurance broker about the subject matter of insurance to the insurer in order to help it know exactly the risk it is going to assume. Insurers are also expected to act in utmost good faith in their dealings with their clients.

¹⁰¹ National Bank of Ethiopia, Directive No. SIB/9/1995 pursuant to the authority vested in it by Art. 41 of the Monetary and Banking Proclamation No. 83/1994 and Art. and Art. 42(j) of the Licensing and Supervision of Insurance Business Proclamation No 86/1994

¹⁰² Supra note. 65

3.2.1.4. Insurance Intermediaries Remuneration

Both insurance brokers and insurance agents work for remuneration. In both cases the remuneration is usually paid as a commission by insurance companies. Insurance agents relationship with insurers is established by a contractual agreement and an agent may not work for more than one insurance company at a time. Thus the commission amount for insurance agents and the way it is paid is usually determined by insurers and it is incorporated in their contracts. As a result, the amount of commission to be paid for insurance agents often varies from company to company.

The amount, type and manner of payment of remuneration for insurance brokers however vary a lot. The amount of commission to be paid for insurance brokers is usually higher than the amount that is paid for insurance agents. This can be a justified custom as the requirements for licensing of insurance brokers as well as the scope of their responsibility is much higher than that of insurance agents. There are different types of remuneration for insurance brokers. We will explore about the remuneration of insurance brokers in Ethiopia and its regulation in detail on the next chapter.

International practice shows that insurance brokers may be paid commission or brokerage by the insurer or fees directly by the client.¹⁰³

Commissions

Insurance brokers' commission is also termed as brokerage. This commission is paid by insurers based on a pre-agreed commission rate to be calculated on the premium. Actually the ways or custom of determining commission rates differs in different countries. In many countries that apply the free market economy policy insurance brokers' commission is determined by agreement between insurers and brokers. Insurance brokers and insurance companies sign terms of business agreement (TOBA) in which the rights and duties of the parties get determined. In other countries that have strong insurance brokers association brokerage is determined by their associations. There are countries that determine commission rates by association of insurers.

¹⁰³ CII, Insurance Broking Fundamentals, Section 6(4)

The commission rates to be paid for different class of insurance businesses usually differ. There are also some classes of insurance businesses for which insurance companies do not pay any Commission. The classes of insurance business that do not entitle any commission are the ones that are purchased by statutory requirements of government.¹⁰⁴

In different countries, the amount of commission to be paid to insurance brokers by insurance companies differs based on the scope of service that insurance brokers render to insurance companies. Insurance brokers' commission is normally paid up on collection of the premium by insurance companies. Additional commission is also paid on renewal of the insurance policy. Perhaps, the manner of paying the commission might differ. That is, based on the agreement between insurance companies and insurance brokers the full amount of commission might be paid at once when the insurance company collects the premium from the insured. It may even be paid by instalment depending on the scope of services rendered by the insurance broker.

Fees

Fee is a type of remuneration which is paid to insurance brokers by the client.¹⁰⁵ The fee is paid by clients based on an agreement between the client and the insurance broker. Services agreements are usually signed between the client and the insurance broker. This agreement holds the detailed services to be provided by the broker to the client. There is no such custom in our country. The broker will only get appointment letters from the client. The different legislations do not require an agreement to be signed between insurance brokers and their clients. It is not also customary for insurance brokers in Ethiopia to be paid fees from the clients.¹⁰⁶ In addition to agreed commissions the payment of fee might be agreed between insurance company and insurance brokers for an additional service. For instance fees for services to insurers like data collection and information about their clients and work transfer fee for delegated services such as collection of premium and settling of claims.¹⁰⁷

¹⁰⁴ For instance owners of Motor Vehicles are required by law to purchase Motor Insurance third party liability insurance cover in order to use the vehicle as per Proclamation no. 799/2013 of Ethiopia.

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid

3.2.1.5. Liability for Breach of Duties

Generally insurance brokers and agents owe liability for breach of their duties. They will be held liable to pay compensation for the insurer, the insured or interested third parties for damages caused as a result of failure to perform one of their statutory, agreed or customary responsibilities. As this paper focuses on the regulation of insurance brokers, the detailed liability of insurance brokers will be dealt in the next chapter.

Chapter Four

4. The Regulation of Insurance Brokerage Practice in Ethiopia

4.1. Analysis of the Legal Regime for Insurance Brokerage

The entirety of the legal frame work for the regulation of insurance broking in Ethiopia can be taken from the commercial code which deals with commercial brokers in general,¹⁰⁸ the insurance business proclamation no. 746/2012¹⁰⁹ and directives no SIB/9/1995¹¹⁰ and SIB/31/2010¹¹¹ of the NBE which deals with the licensing of insurance brokers and their code of conduct. More over though not legally binding the memorandums of understanding signed between members of the Association of Ethiopian Insurers regarding commission amount of brokers can be taken as the working document and prevailing practice with regards to payment of commissions.¹¹² As the legal relationship between insurance brokers and their clients constitute that of agency, the general provisions of the Civil Code on agency may also apply as necessary.¹¹³ Therefore, our discussion in this chapter focuses on the legal frame work regulating the relationship of brokers with their clients and insurance companies as well as their duties and responsibilities under the applicable laws of Ethiopia. The legal loopholes and the contradictions that exist in the legislations will also be examined. Insurance broking practice will also be dealt in order to assess its compatibility with the governing laws. The application of the laws in the adjudication of cases by Federal courts of Ethiopia¹¹⁴ will also be analysed in order to assess the practical applicability of the rules by courts. Finally, from the discussions and analysis made the paper wraps up by giving concluding remarks and recommendations.

¹⁰⁸Supra note 5

¹⁰⁹Supra note 6

¹¹⁰Supra note 96

¹¹¹Supra note 65

¹¹²Association of Ethiopian Insurers, (AEI), Agreed Commission Rates for Individual Agents, Principal Agents and Brokers with effect from 01/04/99 (Ref. Minutes No. 68, Dated 18 March, 1999)

¹¹³Civil Code of the Empire of Ethiopia, 1960, Negarit Gazeta, Proc. No. 165/1960, Year 19, No. 2, Book IV, Title XIV

¹¹⁴ Decisions from the Federal Courts of Ethiopia are only considered because as per Proclamation no 25/1995 of Ethiopia insurance related matters fall within the jurisdiction of Federal Courts and I couldn't get any decision rendered by regional courts acting in their delegation power.

4.1.1. The Commercial Code

As has been discussed under chapter two of this paper, articles 56-59 of the commercial code of Ethiopia deals with commercial brokers in general. The definition given for the term under article 56 (1) in particular mentions ‘insurance’ in its few enumeration as a business which is beneficial from the services of brokers. From this, one can simply grasp or say that the commercial code had recognized the role and importance of brokers in the insurance market from the inception back in the 1960’s.

As has been briefly analysed in chapter two of this paper, the four articles of the commercial code on commercial brokerage address generally the definition for the term, duty of the broker to notify the terms of contract to the parties, and that a broker is liable for any damage caused by him to either of the parties. More over there is a provision which states that a broker will be entitled for remuneration from the party who sought the service as well as that the remuneration of a broker might be reduced by a court decision.

The provisions of the commercial code on commercial brokers are highly general. The code doesn’t give the detail duties and responsibilities of brokers. This part of the code has served as the only legal material regarding commercial brokers including insurance brokers until the enactment of the repealed insurance business proclamation no 86/1994 which gave a separate recognition and definition for insurance brokers.¹¹⁵ Different interviewees in this paper contend that let alone for insurance broking which is by far a more complex subject matter that requires adequate regulation, the provisions of the commercial code are not even adequate enough to address issues on commercial brokerage in general.¹¹⁶

To begin with, the definition given under the commercial code about commercial brokers is defective when it comes to the concept of insurance broking. Because as has been seen on the definition in the commercial code, a commercial broker is a person who independently brings two different parties to enter into a contract. While the concept and meaning of insurance broking is by far different from the one described under the commercial code. To simply mention

¹¹⁵ FDRE, Insurance Business Proclamation No. 86/1994, Federal Negarit Gazeta

¹¹⁶ Interview with Ato Tewodros Tesfaye and Ato Nahom Shewangizaw, Federal Courts attorney at law and Consultants, Ato Aron Kasaye, Principal Attorney at EIC. The interview was conducted in the month of April on different dates. All of the interviewees have extensive experience in Insurance litigations and have handled different court cases in between brokers and insurance companies as attorneys.

one difference, unlike a commercial broker who is not an agent of either of the contracting parties, an insurance broker is primarily a person who acts on behalf and as an agent of the insured public in dealing with insurance contracts. An insurance broker might at times also act and serve on behalf of insurers. This fact makes insurance brokers completely different in characteristics. In one single insurance policy or insurance business transaction an insurance broker can be considered as an agent for both the insured and the insurer; i.e. for some functions on the insurance policy the insurance broker may be taken as an agent of the insured and for other functions on the same policy he might be taken as the agent of the insurance company. For instance, an insurance broker is the agent of the insured in negotiating policy terms and he is the agent of the insurance company in receiving the premium to be paid by the insured for the insurance policy if he is authorized to collect premiums by the insurance company selling the cover. An insurance broker may also be delegated by an insurance company to settle claims to a certain extent if a covered peril in the policy occurs. In this instance too an insurance broker is the agent of the insurer. In recognition to this important fact, the definition given for insurance brokers under subsequent proclamations on insurance have been made to be cognizant with the conventional meaning and understanding for the subject matter. The other provisions of the commercial code on commercial brokers which we have discussed under chapter two regarding liability and remuneration are applicable on insurance brokers too as they are not repealed and do not contravene with any of the latter laws. We will consider the applicability of these provisions in connection with the other pertinent legislations on insurance and decision of courts in relation to insurance broking.

4.1.2. The Main Insurance Business Proclamation

The other pertinent legislation regarding the regulation of insurance brokers is the Insurance Business Proclamation No. 746/2012.¹¹⁷ Under this proclamation, the definition of the term insurance broker is given under article 2/19. As the definitions given under the commercial code and NBE directives are different from the one given in the insurance business proclamation, we will be obliged to take the later one as the authoritative and binding definition. This is so because the insurance business proclamation is the latest in terms of promulgation. Moreover, the insurance business proclamation is a special law regarding insurance matters. The definition

¹¹⁷Supra note 6

given under the NBE directives cannot also be taken as authoritative one as they are in a lower degree of hierarchy compared to the proclamation.

The different definitions given under the different laws have been a source of misunderstanding and contention. As a result different lawyers who have had experiences in practical court litigations suggest that NBE has at least need to make its directives in line with the proclamation so as to avoid conflicts regarding the meaning of insurance brokers.¹¹⁸

The other provisions on the insurance business proclamation which can be assimilated with the regulation of insurance brokers are the ones we find under part nine of the proclamation. Under this part the proclamation tells us generally that insurance auxiliaries need to secure operating license from the NBE and it prohibits insurers from dealing with persons who are not duly licensed auxiliaries.¹¹⁹ Furthermore, it is stated that the detailed requirements for brokerage license and the rules of conduct of business will be determined by a directive.¹²⁰ This proclamation was promulgated in 2012 and it gives authority to the NBE to issue directives about insurance brokers. However, the Bank didn't come up yet with a directive in accordance with the proclamation. As a result regarding the code of conduct for insurance brokers and the detailed requirements for licensing of insurance brokers the NBE is using the directives which were issued in 1995 and 2010 as per the repealed insurance business proclamation no 86/1994.¹²¹ Therefore our detailed discussion regarding the duties and responsibilities of insurance brokers will be made below from these applicable directives in comparison with the practice in the industry.

4.1.3. NBE Directives

From the analysis in the previous chapters we have seen that the role of insurance brokers is immense in the insurance industry both nationally and internationally. Furthermore, their duties and responsibilities are complex. Given this scenario, there are lawyers who argue that the detailed duties and responsibilities as well as the interaction of insurance brokers with insurers and the public should have been made in a separate proclamation leaving other detailed code of

¹¹⁸Supra note 110

¹¹⁹Supra note 6, Art 39(5)

¹²⁰Ibid, Art. 39, 40

¹²¹Supra note 109

conduct for directives to be issued by the regulatory body. Perhaps in the Ethiopian case the truth looks different. That is the applicable commercial code and the insurance business proclamation doesn't have adequate rules on the role and responsibility of insurance brokers as well as their business conduct.

4.2. Duties and Responsibilities of Insurance Brokers

The detailed duties and responsibilities of insurance brokers in Ethiopia are enshrined under the Licensing of Insurance Brokers Directive No. SIB/31/2010.¹²² This directive lists down in a nutshell the responsibilities that ought to be undertaken by an insurance broker in the discharge of his duties. The directive also states that failure to perform the duties and responsibilities listed under the directive entails penalty by the NBE¹²³

From the reading of the directive, it can be learned that an insurance broker serves both for his client and an insurer. From the listing made on the directive an insurance broker is mainly responsible for his clients. The primary duty of an insurance broker for his client is properly understands the insurance needs of his client. Following this an insurance broker will be responsible to look from the available insurance products in the market that best suits the insurance needs of his client.

According to the directive, an insurance broker has to present or offer a request for insurance coverage of a particular risk to at least three insurance companies.¹²⁴ This is made in order to compare the best insurer in terms of price and scope of cover for the insurance need of the broker's client. Insurance brokers code of conduct directive no 9/1995 on the other hand states that;

*“Insurance brokers shall ensure the use of sufficient number of insurers to satisfy the insurance requirements of their clients. Sufficient number of insurers shall mean more than for 50% of the license insurer”.*¹²⁵

¹²²Supra note 65

¹²³Ibid, Art. 12

¹²⁴Ibid, Art. 7(1)(g)

¹²⁵Supra note 96,

There are one government owned and seventeen private licensed insurance companies operating in Ethiopia. As per the provisions of the latter directive an insurance broker must at least compare nine insurance companies for placing a single risk. Now the question will be which directive should an insurance broker follow in order to adhere to the responsibility of comparing insurance companies before advising or deciding the placement of a certain insurance business with a particular insurer? Though the purposes of the two directives differ it can be argued that as directive no SIB31/2010 is the latter law it would be sufficient for insurance brokers to at least compare or collect quotations from three insurance companies. Different insurance brokers suggest that the stance of the latter directive is more appropriate as it would be irrelevant and unpractical to compare 50% of licensed insurers especially when the number of insurers increases in time.

The other issue that need to be considered here is that what would be the liability of an insurance broker if he/she fails to discharge the responsibility of comparing sufficient number of insurers; i.e. at least three insurance companies? The directives don't give clear answer for this question. All the insurance brokers interviewed for this research said that they usually adhere to this responsibility unless their clients order them otherwise. But they said that most of the instructions made by clients in this regard are not made in writing. However, the directive specifically requires insurance brokers to secure written instruction from the prospective insured before placing the insurance business with the choice of the prospective insured.¹²⁶ Moreover, there is no controlling mechanism of whether insurance brokers perform these responsibilities or not. Perhaps as this is an important responsibility of insurance brokers the writer believes that there should be checking mechanism from the supervisory authority.

After collecting quotations from at least three insurance companies an insurance broker has to make an analysis of the proposals made from the insurance companies. That is an insurance broker would compare the scope of cover and the price quoted from each insurer. Based on this it might get appropriate to negotiate about the cover, the exclusions, conditions of the insurance policy proposed as well as the price. In this case, an insurance broker has the duty to represent a client in the course of negotiating insurance cover.¹²⁷Based on the result of the analysis an

¹²⁶Supra note 65, Art. 7(1)(h)

¹²⁷Ibid, Art. 7(1)(a)

insurance broker has to advise his client which insurers' proposal fits better for the cover sought by the client. In particular, an insurance broker is duty bound to explain in detail about the insurance products and the entire process and procedure he went through to satisfy the needs of his client. Then based on the consent of the client an insurance broker has to place the business with an insurer.¹²⁸ Here it should be noted that the broker irrespective of the result of his analysis must respect the choice of his client; i.e. though the comparison made by the insurance broker reveals otherwise the client has the full right to choose the insurance company that will give the cover.¹²⁹

In the discharge of all duties insurance brokers have to be diligent. Furthermore they should discharge their duties in good faith and with integrity.¹³⁰ This is one of the major areas where the insurance broking industry in Ethiopia is said to be in a problem. Most insurance brokers allege that they derive their business not from the quality of services they are rendering rather by sharing the commission they get from the insurance companies to the insured person or officials of the company that buy the cover.¹³¹ They also agree that this malpractice has made the competition between insurance brokers to be unprofessional. This in turn has made it impossible for the insurance broking sector to contribute for the development of the insurance sector. The intervention of the regulatory body both in enacting adequate directives and supervisory actions is sought to curb the challenge of the industry in this respect.

As has been seen in detail on chapter three, though insurance brokers are agents of the assured they perform different functions which are beneficial for insurers. One of the gaps that can be seen on the laws of Ethiopia regarding insurance brokers is that they don't stipulate and regulate the role and responsibility of insurance brokers for insurers. The insurance business proclamation as well as other applicable NBE directives lists down the role and responsibility of Insurance brokers as and only agents of the assured. However, in their capacity acting as insurance brokers they work both for their clients and for insurers.

Article 7(1)(d) of Directive no SIB31/2010 states that an insurance broker; "subject to an agreement with the insurer, may collect premiums, issue cover notes and settle claims up to a pre

¹²⁸Supra note 121

¹²⁹Ibid Art. 7(1)(h)

¹³⁰Ibid Art. 7(1)(b)

¹³¹Interview with an anonymous insurance brokers on the month of April, 2018

agreed limits”.¹³² Notwithstanding this proposition no insurance broker in Ethiopia has served in this capacity. The main reason for this is that insurance companies in Ethiopia do not have the trust and confidence that insurance brokers can serve this function. The requirements for insurance broking license were not strong before the enactment of directive no. SIB/31/2010.¹³³ And this directive didn’t repudiate the licenses issued to brokers who do not qualify as per the new directive prior to its enactment.¹³⁴ As a result most of the insurance brokers who got license during the previous directive do not have the proper qualification and experience to work as underwriters or handle claims.

Many of the insurance brokers interviewed by the writer also argue that given the current capacity of most insurance brokers it wouldn’t be proper to engage them in this task of collecting premiums, issuing cover notes and settling of claims. If insurance brokers are really to be endowed with these tasks, there should be of detailed binding rules regarding how they manage these responsibilities. However apart from stating the possibility of agreement between insurers and insurance brokers to handle these important tasks the directives on insurance brokers doesn’t say anything on what detailed requirements must be met first by brokers in order to allow them to collect premiums. Moreover the professional liability cover has to be made adequate enough to address the liability of insurance brokers.¹³⁵

4.3. Liabilities of Insurance Brokers

Article 58 of the commercial code stipulates that “a commercial broker shall be liable for any damage he causes to either party”.¹³⁶ The directive also states that there will also be civil liability of insurance brokers for damages caused on their clients due to the failure to perform any of the obligations listed under the directive.¹³⁷

An insurance broker is subject to penalty of the NBE if he fails to comply with the directives of the Bank.¹³⁸ The penalty that is to be paid is 5000.00 (Five Thousand) Eth. Birr. If a broker fails

¹³² Supra note 65, Art. 7(1)(d)

¹³³ Supra note 65

¹³⁴ Ibid, Art. 4(6)

¹³⁵ The current professional indemnity liability limit required to be purchased by insurance brokers is 1,000,000.00. This would off course be not a sufficient amount is they are actually to engage in underwriting and claims handling.

¹³⁶ Supra note 5, Art. 58

¹³⁷ Supra note 65(7)(1)(j)

¹³⁸ Ibid. Art, 12

to pay the penalty levied, the NBE may cancel his license.¹³⁹ From the readings of the two provisions it can be inferred that an insurance broker who have failed to perform its obligations might be held liable for compensation to the parties and an administrative penalty.

The directive doesn't clearly say anything whether an insurance broker might be held liable by insurance companies or third parties who suffered damage as a result of the acts of an insurance broker. As insurance brokers might serve as agents of insurers or their acts might affect third parties who will eventually be beneficiaries of insurance policies the law should have to address their responsibilities towards these parties. Different lawyers and insurance professionals suggest that insurance brokers have to be held liable for insurance companies or third parties who have a vested interest on an insurance policy.¹⁴⁰ The writer of this paper shares the view that one of the major gaps that need to be addressed with regards to the regulation of insurance brokers in Ethiopia are the liability and responsibility of an insurance broker towards insurance companies and third parties. Some contend that one can drag from the general laws of agency to establish the liability of insurance brokers for insurers and third parties.¹⁴¹ Perhaps it can also be argued otherwise because legally speaking the law doesn't recognize insurance brokers as agents of insurers or third parties who might be subsequent beneficiaries of insurance policies. The writer of this paper agrees with the argument that an insurance broker's liability should be established from the cumulative reading of the provisions discussed above. In any case there should be clear legal rules that deal with the liability of insurance brokers to address the loopholes in this regard.

4.4. Insurance Broking Practice in Ethiopia

Licensing of insurance brokers started for the first time in Ethiopia after the enactment of directive no SIB/3/1994 pursuant to the repealed insurance business proclamation no 86/1994.¹⁴² Currently there are 56 licensed insurance brokers who are operating in the Ethiopian insurance

¹³⁹Ibid

¹⁴⁰Supra note 110 and interview with Ato Hadush Hintase, Secretary at Association of Ethiopian Insurers and a Licensed broker on April 10, 2018.

¹⁴¹Supra note

¹⁴²Supra note. 109

broking industry.¹⁴³ Unlike insurance agents who can only work with one insurance company, insurance brokers can work with all insurance companies.

As has been seen earlier there are eighteen insurance companies doing insurance business in Ethiopia. The government owned Ethiopian Insurance Corporation takes more than 37% of the market share while the remaining 63% is shared by the private insurance companies.¹⁴⁴ Up until very recently both regional and federal governments owned companies buy their insurance from the Ethiopian Insurance company.¹⁴⁵ They are not allowed to purchase insurance covers from the private insurance companies. Government agencies are not also allowed to use the services of insurance brokers and deal their insurance needs through insurance brokers. This policy of the government didn't only subjected it for critics for interfering in the market economy, but also for creating unfair trade practice and unequal opportunity in the insurance industry. Moreover, this is one of the main factors that hindered the insurance broking sector from growing as it should have been.

Not only the insurance covers bought by government owned organizations but also most contracts signed with different foreign contractors constructing the mega projects that are undertaken by the federal government are made to be bought from EIC. This is usually enforced by the federal government by incorporating a provision that obliges the contractors to purchase their CAR policies from EIC only.¹⁴⁶ As per these agreements the contractors purchase CAR covers from EIC. In this case, the contractors assign insurance brokers who will handle their insurance dealings with EIC. Accordingly, the brokers appointed by the contractors demand commission payment from EIC. EIC usually refuses to pay the brokers commission by alleging that the contractors were forced by a contractual agreement with the employers (that is the government organizations such as EEPC, Ethiopian Rail Ways Corporation etc.) to purchase insurance from EIC only. EIC contends that as a result of these agreements the brokers didn't

¹⁴³This information was gathered from NBE, Insurance Supervision Directorate. Though there are 56 licensed insurance brokers the ones actively working in the market are not more than half of this number as per the opinion of an anonymous broker.

¹⁴⁴Supra note. 140

¹⁴⁵ Recently some government owned organizations have started to purchase from private insurance companies especially from Political party affiliated private insurance companies.

¹⁴⁶This can be seen from the cases analyzed in this paper and annexed court decisions between EIC and other Brokers.

bring any new business or serve the responsibility of comparing and selecting from the different insurance companies doing insurance business in Ethiopia.

This position of EIC had led to controversies and court litigations between EIC and different Brokers at different times. For instance, Federal High Court cases file no. 161877, the case between Habtamu and Anteneh Insurance Brokers General Partnership vs. EIC. In this case the plaintiff stated that, it has insurance brokerage license from NBE, and based on that it gives insurance brokering service to different clients up on getting oral and written appointments.

Accordingly, the plaintiff alleged that it has rendered brokerage service based on the appointment it has got from 'China National Electric Energy Corporation (CNEES) for the insurance needs of construction of Raphi west energy project in Addis Ababa which is fully purchased from the defendant. The plaintiff argued that it has facilitated for the conclusion of engineering and workmen's compensation insurance cover for a sum insured of Birr 2, 440,000,000.00 (Two Billion Four Hundred Forty Million) and from this policy cover the defendant collected Birr 6,135,508 (Six Million One Hundred Thirty Five Thousand Five Hundred Eight) premium. Despite this fact, the plaintiff alleged that the defendant only paid Birr 8,333.92 (Eight Thousand Three Hundred Thirty Three and 92/100) which is the commission from the premium paid for the workmen's compensation insurance policy only. On the other hand, the defendant refused to pay commission from the premium collected for the Engineering insurance cover which is Birr 913,875 (Nine Hundred Thirteen Thousand Eight Hundred Seventy Five Birr) plus VAT. Thus the Plaintiff pleaded to the court to decide against the defendant to pay the above stated amount of commission with legal interest and all the legal costs and expenses. The plaintiff had attached all evidences to substantiate its claim.

On its statement of defence, the defendant replied that, the insurance cover from which the plaintiff claimed commission payment was contractors all risk policy (CAR) for ELPA waste electric power project. Under Art. 18 (1) of the construction contract the owner of the project and the contractor agreed to arrange insurance cover from the defendant company only. Because of this the defendant argued that the insurance cover bought by the contractor did not require the assistance and facilitation of the broker (plaintiff). The defendant also argued that the plaintiff didn't exercise any brokerage service by representing the contractor for the conclusion of the insurance contract. The defendant also argued that the plaintiff did not render any of the

responsibilities of an insurance broker as stated under Art. 2 (19) of proc. no 746/2004, Directive No. 31/2002 and as per Art. 56 of the Commercial Code of Ethiopia. The defendant also stated that it has paid commission Birr 8,333.92 only for the premium collected from workmen's compensation cover because the cover was not related with insurance cover given for ELPA project rather it was a cover given to the contractor's employees. Thus the defendant argued that the plaintiff should not be entitled any commission from the premium collected on the CAR Policy

Finally, after examining evidences of both sides and the law the court decided that the CAR policy was bought by the contractor from the defendant as a result of the formers contractual obligation but not due to the broking efforts of the plaintiff. More over the court stated that the plaintiff hasn't proved that it has given brokerage service to facilitate the conclusion of all risk insurance cover on behalf of the insured i.e. China National Electric Energy Corporation (CNEES) in accordance with the law and custom of the industry. Therefore, the court decided that the defendant is not liable to pay commission from the premium collected from the CAR Policy and rejected the claim of the plaintiff.¹⁴⁷

The above decision of the Federal High court poses important questions. The main argument of EIC not to deny the commission for the CAR policy was that the broker didn't have any service for the insurer as the reason for gaining the business or premium is the contractual obligation of the contractor to place the insurance cover from EIC only. Now the question will be as insurance broker is primarily the agent of the client, will it be necessarily obliged to give service for the insurer in order to be entitled for commission? Is placement of the insurance business the only responsibility of an insurance broker? The answer for the two questions is obviously no. As has been seen in detail in the roles and responsibilities of insurance brokers, insurance brokers are mainly serving for their clients than for the insurers. Moreover, the services of insurance brokers for their clients is not only selecting insurance companies or negotiating the cover. Rather it extends throughout the entire period of the insurance policy as well as during the occurrence of claims. Thus the analysis of the court that the insurance broker did not serve for the insurer is a

¹⁴⁷EIC Vs Habitamu and Anteneh Insurance Broker, File No.161877, Fed. High Court.

wrong assumption to deny the claim as an insurance broker need not necessarily prove service to the insurer in order to get commission.

Contrary to the above analysis a logical question can also be raised on the other side. That is, should an insurance broker be entitled for the entire commission payment from the insurer without proving the rendition of sufficient service to one of the contracting parties to the insurance contract? The answer to this question should also be no. This is so because, allowing such a custom would be detrimental for the insurance sector in general as it would open a system where insurance brokers simply get commissions by presenting appointment letters only from their clients. That is, it will create or encourage a situation where insurance brokers get commission without literally contributing or serving nothing for either of the parties to a contract of insurance.

In the Ethiopian insurance broking industry, it is a public secret that significant amount of the commission paid to insurance brokers go back to the pockets of the clients themselves as they negotiate with the brokers for the same before giving appointment letters.¹⁴⁸ No need to say that this malpractice has negatively affected both for the insurance companies, the broking industry and the clients at large. Insurance brokers are not asked for any proof of service for commission payments. This has made insurance brokers to be simply not better than any commercial broker or insurance agent in terms of the kind of service they give to their customers and insurance companies. Thus it would be plausible to argue that the commission to be paid for insurance brokers should be dichotomized in to specific services and effecting payment should be dependent upon accomplishment of such services. The appropriate intervention to curb this problem should be regulating the sector with adequate laws and effective supervision of their implementation.

Another court case at Federal High Court case file no. 86785, is the case between General Insurance Broker's and Getenesh H/mariam Vs. Nile Insurance Company (S.C). In this case the plaintiff claimed that, the 1st plaintiff engaged in insurance brokerage service, based on this the 1st plaintiff on behalf of his client facilitated conclusion of various insurance policies (such as commercial and private vehicle insurance, fire and lightning insurance, workmen's

¹⁴⁸Interview with Ato Eyesus WorkZafu, Ato Wubetu Abate, Ato Hadush Hintsay and W/ro Meseret Bezabih, all of the interviewees here are renowned insurance professionals and the interview was conducted on different dates.

compensation, fidelity guaranty and other insurances) for East Africa (Ethio) Ltd with its (22 companies incorporated within) from the defendant from September 21/ 1996 E.C to June 23/1999 E.C for three years. From this insurance cover the defendant collected Birr 7,262,987.79 premiums from the insured. Thus, from the premium collected by the defendant the plaintiff claimed payment of commission as per the customary industry practice for private vehicle policy 12.5%, for commercial vehicle insurance 10%, for fire and lightning insurance 17.5% and for other policies 15%. The plaintiff stated that the defendant only paid birr 5,085 commission from the premium collected for the insurance cover of different properties and liability of East Africa and fail to pay remaining commission Birr 1,057,908.31. The plaintiff alleged that the defendant failed to pay the above stated commission by arguing that the insured is founder and major shareholder of the defendant company and the defendant's company directive prohibit shareholders insurance cover to be sold through brokers or agents.

On its statement of defense, the defendant replied that, the plaintiff did not render any broking service as per the Insurance Business Proclamation No. 746/2004 and Art. 56 of the Commercial code. The defendant company argued that the underwriting policy or directive of the company prohibits shareholders insurance business to come through intermediaries. Thus, since the insured is founder and the major shareholder of the defendant company it doesn't need brokerage service to know and purchase insurance cover from the defendant.

After examining the litigations, evidences of both parties and the law the court decided that the plaintiff had facilitated the issuance of various insurance policies issued by the defendant in accordance with Art. 2(19) of Proc. 746/2004. The court also rejected the argument of the defendant which says that the directive of the company prohibits commission payment for underwriting of shareholders business or property through brokers. The court also asserted that the defendant didn't present the directive or board of directors' decision which prohibit commission payment for shareholders insurance business. Even though there is board decision or directive which prohibit commission payment of shareholders insurance business, the defendant's own decision has no effect on third parties. Finally, the court decided that the

defendant is liable to pay birr 1,057,908.31 commission fee to the plaintiff including interest and costs.¹⁴⁹

The merits of the above case is similar with that of the previous court case in that in both cases the defendants are arguing as the insured persons need no broking service to purchase the insurance covers as in the former case the owner of the project for which insurance was sought was the federal government and the insurer was the property of the federal government too and in the latter case the owner of the properties covered was a founder and major shareholder of the defendant. However, in a more or less similar situation in the former case the court declined the claim of the broker and in the latter case the court decided the payment of the commission. These different judgments of the federal high court steamed among other things from the inadequacy of the laws on insurance brokerage.

All the private insurance companies in Ethiopia work closely with insurance brokers. Majority of the underwriting in the private insurance companies is made through insurance intermediaries. One can look at the annual financial reports of the private insurance companies in order to see the amount of commissions paid to insurance intermediaries. However, it is not possible to know the amount of commissions paid to insurance agents and insurance brokers as the reports do not separately show the amounts. But different officials of the insurance companies interviewed for this paper replied that the amount of insurance business that come through the insurance brokers is greater than the ones that come through the insurance agents. The insurance companies approached replied that they do not have readymade data of the amount of commissions paid to insurance agents and insurance brokers separately.

The other point the writer would like to make here is that under the Commercial Code of Ethiopia, it is clearly shown that commercial brokers remuneration might be reduced by a decision of a court if it was found to be excessive compared to the services rendered by the broker. Should we apply this to insurance brokers or not is one of the controversial issues. Insurance companies in different instances or court litigations have argued that courts should reduce insurance brokers commission if it is found to be excessive compared to the services rendered by the brokers. Perhaps no decision so far has approved this argument of the insurers.

¹⁴⁹Nile Insurance Co Vs Getenesh Hailemariam Insurance Broker, Federal High Court File No 86785

The writer of this paper believes that there is no reason why courts should apply this provision as necessary. In this regard references can also be seen from additional court cases which have similarity with the above analysed court cases. That is the case between Hailemariam Berhe Insurance Broker Vs EIC and Addis Insurance Brokers Vs EIC. (The decisions of both cases are annexed with this paper)

4.10. Insurance Brokers Remuneration in Ethiopia

As we have seen from the discussions in previous chapters, and prevailing international practice, though insurance brokers are legally agents of the assured they basically derive their remuneration from the insurers or insurance companies. In tandem with this the prevailing practice in Ethiopia also shows that insurance brokers are paid commissions for their service from the insurance companies.

We have also seen earlier that the type and amount of commission that is paid to insurance brokers might vary depending on the type of insurance business transacted, scope of the services rendered by the brokers. In Ethiopia there is a difference on the amount of commission that is paid to insurance brokers based on the class of insurance business transacted.¹⁵⁰ There are also some classes of insurance businesses which commissions are not totally paid. The detail of this will be dealt in the next section.

The practice in Ethiopia shows that there is no distinction in the amount of commission that is paid to insurance brokers based on the scope of service they rendered.¹⁵¹ That is whether insurance brokers have performed their responsibilities or not as per the directives of the NBE, they will be entitled for their commission amounts by bringing their appointment letters.

Whether an insurance business has come through intermediaries or directly the premium sought from insurers should not vary. If an insurance company makes less premium for businesses that come to the insurance directly this is seen as improper business practice.¹⁵² That is to say insurance companies should not treat direct business and business through intermediaries in a different way. Though this is the customary practice of the insurance sector, there are no

¹⁵⁰AEI, Agreed Commission Rates for individual agents, principal agents and brokers with Effect from 01/04/99 and subsequent amendments on some classes of insurance business.

¹⁵¹Supra note 143

¹⁵²Ibid

mandatory rules that prohibit insurers from treating direct business and those that come through commission payment to intermediaries in a different way. As a result of this, though not in an official way there are times when insurers secretly deal with customers to reduce premium rates if the customers bring their business directly to the insurers or without the use of agents or brokers.¹⁵³ This has made the relationship of brokers and insurers to be problematic. Thus in order to enhance the efficiency of the brokerage industry as well as the insurance sector the regulatory body has to address this gap.

Insurance brokers are entitled for their commission not only at the inception of the first insurance cover or contract but also upon renewal of policies. This is not also a statutory rule rather a customary practice. They are entitled for a similar rate of commission upon renewal irrespective of the fact that there were no additional negotiations or change made to the terms of the expired insurance policy. The issue here will be what is the legal or factual reason for insurance brokers to be entitled the same commission amount upon renewal of insurance policies without making any new negotiation and selection process? There are actors who argue that insurance brokers should not at least be entitled for the same amount of commission upon renewal. Others argue that as the role of insurance brokers continues throughout the life of the insurance policy they should be remunerated during renewals too. The writer of this paper also agrees brokers' role will continue through the life of the insurance policy. However, it does not totally mean that they will have to negotiate in every renewal. Thus the commission to be paid upon renewal should not be the same unless there need to be new negotiation and amendment on the insurance policy.

4.11. Brokers Commission Tariff in Ethiopia

The insurance business proclamations as well as the applicable NBE directives on insurance brokers do not say anything about the commission to be paid for insurance brokers. According to the Commercial Code, the amount and the party who would pay commercial brokers commission is determined by the custom or practice of the business transaction.¹⁵⁴

The amount of commission to be paid to insurance brokers in Ethiopia is determined by the AEI as per the memorandum of understanding signed between the member insurance companies.¹⁵⁵

¹⁵³Interview with an anonymous insurance brokers on April, 2018

¹⁵⁴Supra note 5, Art. 59

¹⁵⁵Supra note 145

The NBE has also endorsed these commission rates and directed all insurance companies in Ethiopia including those that are not members to the association to adhere to those commission rates. The following table shows the commission rates for insurance brokers.¹⁵⁶

Table 2

SN	CLASS OF BUSINESS	COMMISSION
1.	Motor - Private - Commercial - Third Party	11.5% 9% Nil
2.	Fire - Material Damage and LOP	17.5%
3.	Marine - Cargo and Inland Transit	15%
4.	General Accident - Burglary, Householders', Plate Glass, All Risks, Money and Fidelity	15%
5.	Engineering - CAR, EAR, MBKD & LOP	15%
6.	Accident and Health - Workmen's, GPA - Illness Extension	15% 12.5%
7.	Bid, Performance, Supply advance Payment and Customs Bonds	15%
8.	General Liability	15%
9.	Travel	5%
10.	Funeral Insurance	10%
11.	Political Violation and Terrorism Insurance	3.5%

Source: Association of Ethiopian Insurers

The above table shows the commission rates applicable for insurance brokers in Ethiopia by class of business. The classes of insurance business listed in the table are most of the types of insurance products that are available and sold in the market. Those insurance companies that sell other types of insurance covers which are not listed above set their own commission rates to be paid for insurance brokers.

4.12. Requirements for Payment of Insurance Brokers' Commission

One of the major contentious areas of insurance broking regulation is with regards to the requirements for the payment of insurance brokers' commissions. Most of the court litigations between insurance companies and insurance brokers in Ethiopia evolve from this issue. There are

¹⁵⁶The table shows the current applicable insurance brokers commission rate for the stated class of insurance businesses as amended.

no mandatory statutory requirements set to claim insurance brokers' commissions under any of the legislations regulating insurance brokers. The commercial code which deals with remuneration of commercial brokers state that brokers are entitled for the agreed or customary commission if they bring two parties to get into a contractual agreement. In principle the practice in the insurance broking industry shows that insurance companies pay commission to insurance brokers.

Apart from bringing two parties into a contract, commercial brokers do not have any other responsibility. Unlike this we have seen that insurance brokers do have several responsibilities. These would pose an important question whether insurance brokers should get similarly remunerated with other commercial brokers for simply bringing an insured and an insurer in to agreement. My argument to this would be to the negative because given the professional requirements and experience for licensing of insures and the detail of their responsibilities the requirements for commission should be different. Insurance brokers' commission should be determined not merely from the entering of the parties to insurance contracts but also based on the service they rendered to the parties. Furthermore, the amount of commissions should especially vary based on the scope of service insurance brokers give. Paying equal rate of commissions for all insurance brokers indiscriminately would negatively affect the output or effort required of insurance brokers.

The mandatory provisions of the NBE directives in relation to insurance brokers show the duties and responsibilities of insurance brokers. However, they do not prescribe whether these duties and responsibilities of insurance brokers must be proved or met in order to be entitled for commission.

Insurance companies normally require appointment letters from the clients of insurance brokers in order to pay brokerage fee or commission. The client of the insurer must also buy the cover from the particular insurer and pay the agreed premium in order to effect commission. Otherwise, there are no other requirements of the law. The contention in relation to this is should insurance companies pay similar amount of commission for those brokers who have not done anything much except showing the appointment letters? Again the answer to this question should be no.

4.13. Insurance Brokers' Commission Tariff Vis a Vis Trade Practice and Consumer Protection Proclamation of Ethiopia

As has been seen earlier insurance brokers commission amount is issued by the AEI pursuant to the memorandum of agreement signed between the member insurance companies operating in Ethiopia. The first memorandum of understanding signed between insurance companies to fix the amount of commission rates to be paid for each class of business is made in 1999 G.C. An amendment in the amount of commission rate to be paid for motor and medical insurance class of business is made by the AEI on 2016.¹⁵⁷ More over another commission rate was agreed for the newly introduced political violence and terrorism risks insurance policy in 2018.¹⁵⁸

Before the signing of this MOU, insurance companies deal by themselves with each insurance broker to determine the commission amount.¹⁵⁹ But this practice has opened a room for an unfair competition between the insurance companies.¹⁶⁰ That is the insurance brokers started dealing higher commission rates in order to place each insurance business. This in turn had exposed the insurance companies to pay high commissions to attract new business which had increased their expenses. This problem urged the insurance companies to cooperate in the agenda of determining similar commission rates for a common advantage.¹⁶¹ And that was the reason for the insurance companies to issue commission rates through their associations.

One of the issues raised here is whether this act of the AEI is legal as well as relevant. It will also raise the question that who shall have the authority to determine the commission rate of insurance brokers? The trade practice and consumer protection proclamation of Ethiopia art 685/2010 13(1) states that;

“Agreements or concerted practices or decisions by associations or business persons in a horizontal relationship and have the object or effect of the following.”

- 1. Directly or indirectly fixing price.*
- 2. Collusive tendering*

¹⁵⁷ Commission rates for motor insurance and medical insurance are amended by the association in 2012. The rates are shown on table 2 under this chapter.

¹⁵⁸The applicable commission rates are shown on table 2

¹⁵⁹Supra note 143

¹⁶⁰Ibid

¹⁶¹Supra note 86

3. *Allocating customers, or marketing territories or production or sell by quota*¹⁶²

As can be deduced from the reading of the above provision business persons are not allowed to make agreements in order to fix pricing. From this one can contend that the act of the AEI member companies determining the commission tariff of insurance brokers by a memorandum of understanding is completely an illegal act. Historically insurance brokers' commission rate was used to be determined by insurers in a concerted effort in the UK. However this practice vanished at the end of the last century as the **Competition Act 1998** made it illegal for any concerted effort to determine commission rates.¹⁶³

The memorandum of understanding signed between the members of the AEI is not a legally binding document so to say between the signatories themselves. As a result, it cannot be enforced against any of the members. As a result, any insurance company may deviate and determine the commission that it is going to pay to insurance brokers that are willing to work with it. This in effect might lead insurers and insurance brokers to an unfair trade practice and competition. This might pose a problem in the healthy operation of the industry. As a result of this there are people who argue that the regulatory body NBE shall be the one who can and shall determine the commission rate of insurance brokers.¹⁶⁴ The writer of this paper argues that insurance brokers' commission rate should be determined by the market itself based on the type and quality of service. This approach would help to enhance the insurance broking sector and to get the most out of it. Perhaps the writer further argues that the regulatory body or NBE shall only intervene as necessary if the market fails.

4.14. Supervision of Insurance Brokers

Supervision of insurance brokers is the responsibility of the NBE. The NBE is authorized by the insurance business proclamation no 746/2012 to supervise all insurance auxiliaries.¹⁶⁵

Supervision is mainly done through the on-site and off- site examination to be made by the NBE. The off-site supervision is made by reviewing the regular reports that are required to be

¹⁶² Trade Practice and Consumer Protection Proclamation No. 685/210 of Ethiopia, Federal Negarit Gazeta 18th Year No. Art. 13(1)

¹⁶³ CII, Advanced Insurance Broking, Study Material, Chapter 12, p. 12/5

¹⁶⁴ Ibid.

¹⁶⁵Supra note 6

submitted to the bank in a certain time interval. While the onsite examinations are made by physically sending the auditors and officers of the Bank to the offices of the brokers. The NBE used to supervise insurance brokers in this form before some years. But due to unknown reasons it has stopped investigation and audit on the operations of Insurance Brokers at all.

The main reason why the insurance supervision of the NBE fails to perform many of its responsibilities is due to the lack of attention given to the insurance sector in general and the insurance broking industry in particular. Major actors in the insurance industry suggest that the insurance supervision directorate that is working as one directorate in the NBE has to be separately established as an independent body from the Bank. This is so because the main focus of the authority as the name itself signifies is on Banking rather than insurance.¹⁶⁶

¹⁶⁶Supra note 156

Conclusion

The provision of goods and services both in the local and international market involve several players. Among these players, commercial intermediaries are one. Commercial intermediaries play important role in the sale of goods and services among individual persons and/or business entities. This role is exercised by intermediaries as a middle person between vendors and vendees. The domain of the service of commercial intermediaries embrace from merely bringing two parties into agreement to the extent of consulting clients and representing and acting on behalf of traders or individual persons.

Like other business sectors, the insurance industry uses the service of its own commercial intermediaries. These intermediaries are usually called insurance agents or insurance brokers. Both insurance agents and insurance brokers are required to secure license from the NBE to work as agents or brokers. The requirements for licensing of these intermediaries as well as their responsibilities differ a lot. The requirements for licensing of insurance agents are by far lesser than the requirements for insurance brokers. Insurance agents are insurance intermediaries that usually work as agents of insurance companies. The major functions of insurance agents is soliciting and negotiating the sale of insurance services. Whereas Insurance brokers are required and expected to have sufficient knowledge and extensive working experience in Insurance industry. It can shortly be said that insurance brokers are professionals in the insurance sector who are expected to play extensive role for the insurance industry. The main focus of this research paper was about the regulation of insurance brokerage in Ethiopia.

As important as it is for society, the sector of insurance and its business transaction in general is full of intricacies. Its intricacy mainly evolves from the variety and complexity of the products or insurance policies sold to the public. Starting from identifying the best insurance company for the negotiating on the insurance cover to be bought from an insurance company up to handling of the claims process during the occurrence of the covered risk requires sufficient know how and skill. This character of the insurance sector makes it more susceptible or demanding of the service of insurance brokers.

Insurance brokers serve as an important bridge between insurance companies and the public at large. International practice shows that most insurance transactions are conducted through

insurance intermediaries more significantly through insurance brokers. In some countries the service and products of insurance are not even available to customers directly. In principle insurance brokers are professional persons that work on behalf of the insured in dealing and handling insurance contracts.

Insurance brokers have responsibilities starting from the inception of the policy, throughout the insurance period and at times of claims handling. Each step of insurance service involves careful and scrutinized professional intervention. That is what makes the services of an insurance broker very much important. That is starting from looking the best insurance cover, negotiating the terms of the policy, consulting the client, providing the necessary information and documents to the insurer, assisting in the assessment of the risk and the underwriting process insurance brokers serve a lot. The claim process also requires professional advice and assistance. As a result the proper regulation and supervision of insurance brokers is necessary for the proper functioning of the insurance sector in general and in order to get the best out of the services of insurance brokers.

The functions of insurance brokers are expected to be driven by the highest professional and ethical standard. In addition to this insurance brokers have to manage conflict of interest that might arise between their clients and themselves in dealing with insurance companies properly. They will be expected to guarantee the interests of their clients first. Insurance brokers have to make their services and dealings with insurers transparent to their clients. They are also required to keep the secrecy of all confidential information of both their clients and the insurance companies they come across due to the conduct of their services

Insurance broking practice is relatively young in our country. Licensing and operation of insurance broking started in 1994 G.C after the coming in to effect of Directive No SIB/3/1994 pursuant to the repealed insurance business proclamation no 86/1994. Perhaps the role and involvement of insurance companies is steadily growing. This requires enhanced regulation of the insurance brokerage industry. The applicable Ethiopian legislations on insurance brokerage are not adequate enough to address several issues in the sector which requires proper revision.

Insurance brokers are paid remuneration for their services from insurance companies. There are also arrangements whereby insurance brokers are paid by their clients. There are different types

of insurance brokers' remunerations. However, the most commonly applied or customary insurance brokers' remuneration is commission. The commission is usually paid in percentage from the premium. Based on an agreement with insurance companies insurance brokers may earn fees for additional services. The commission amount is determined by agreement between insurance companies and the brokers. The payment is also subject to the scope of service rendered by the insurance brokers.

Unlike this international practice, in Ethiopia insurance brokers only get their commission from insurance companies. The commission is paid at the inception of the insurance policy and up on renewal of the policy. Whereas insurance brokers are required to render service until the expiry date of insurance policy. Insurance brokers are not required to prove rendition of any service to either parties. Presenting their appointment letters from clients will entitle them to receive the whole amount of the commission. These customary practices have made clients to be reluctant of demanding the proper service from insurance brokers. It has also contributed to much of the mal practices in the industry.

The rate of commission payment to be paid to insurance brokers is determined by the AEI based on the agreement of the member insurance companies. This might have helped to create uniformity of commission amounts. Perhaps the legality of this act is challenged as the fixing of price is prohibited under the trade practice and consumers protection of Ethiopia.

The legal frame work regulating insurance brokerage in Ethiopia can be traced from the 1960s commercial code, the insurance business proclamation and the NBE directives. These legislations are not comprehensive and adequate enough to address the problems of the industry. For one thing they lack comprehensiveness. Moreover the laws on the different legislations are not coherent too. These gaps in the laws have affected the development of the insurance brokerage industry.

The requirements and manner of insurance brokers' commission payment are not articulated under any of the legislations regulating insurance brokers in Ethiopia. This has led to several controversies between insurance companies and brokers. More over the gap in the legislations have made handling of litigations in relation to payment of insurance brokers' commission by courts to be unpredictable and problematic. In general as has been seen in detail in this work the

regulation and supervision of insurance brokerage in Ethiopia requires proper examination and revision by the concerned government bodies.

Recommendations

As insurance brokerage plays significant role for the efficient functioning of the insurance industry in general proper attention must be given to it. The healthy and efficient operation of the insurance brokerage industry requires adequate regulation and supervision. To this end, Ethiopia has to come up with adequate legal rules that would help to address the efficient operation of the insurance broking industry. The few provisions of the Commercial Code of Ethiopia as well as the applicable insurance business proclamation are too general to address the current issues and development of the sector. More over the applicable NBE directives which were promulgated pursuant to the repealed insurance business proclamation are not only inconsistent with the commercial code and the insurance business proclamation but also defective and outdated. Thus appropriate legislative intervention is sought in order to address this gap.

As the insurance industry is growing so does the insurance broking sector. Separate insurance proclamation that govern the relationship of insurance brokers, insurance clients and insurance companies must be promulgated.

Currently the insurance brokerage industry is tied up with different malpractices and challenges which affected the growth and role of the sector. Thus, to minimize this problem NBE has to come up with detailed directives pursuant to the authority vested on it. Up until that time, the regulatory body should use its executive power to check the functions of insurance brokers in the country. Detailed code of conduct should be promulgated adherence to it must be checked the operation of insurance brokers shall be reviewed and audited by NBE so as to check and control that insurance brokers are working in accordance with the applicable laws and acceptable customary practice or standards.

As we have seen in detail one of the contentious areas of insurance brokerage is with regards to the commission paid to insurance brokers. The payment of commission to insurance brokers should see the service of the brokers. Rather than setting up the commission rate of insurance brokers which by itself is not legally supported, insurance companies should strive to assist and bring brokers to work to the required professional standards.

Courts are given the authority to reduce the commission to be paid to commercial brokers under the commercial code of Ethiopia if they found it to be excessive compared to the service given by brokers. Despite this rule, the researcher could not see in any of the court decisions given in relation to litigations for payment of insurance brokers' commission to determine in accordance with this rule. Most of the litigations, if not all between insurance brokers and insurance companies involve the issue that whether insurance brokers have rendered the proper service to claim their full amount of commissions. Facts of all the cases also show that such insurance brokers did not prove their services. Thus courts must apply the provision of the commercial code which allows them to determine the amount of commission to be paid to brokers. By doing so, courts can set a standard and make a positive influence towards the operation of the insurance broking profession.

The achievement to the adherence of the professional standard of the insurance brokers requires the concerted effort of all the concerned stake holders in the sector. Thus, both insurance companies and insurance brokers must work together towards the realization of what is expected from the sector. Especially insurance brokers must strengthen their professional association and fight for the efficiency of their own industry.

Bibliography

Books and Journal Articles

- Black, H.C., et al, Black's Law Dictionary, (9thed., St. Paul, Minn., West Group, 2007)
- Birds, J., Modern Insurance Law, (5th ed., New Delhi, Universal Law Publishing Co, 1997)
- Hailu Zeleke, Insurance in Ethiopia, Historical Development, *Present Status and Future Challenges*, (2007)
- Ivamy, E.R, General Principles of Insurance Law, (3rd ed., London, Butterworths Publishing, 1975)
- James S. Trieshmann, et al, Risk Management and Insurance, (12th ed., New Delhi, Congage Learning India Private Limited, 2005)
- Mira Tordovich Synionides, Duties and Responsibilities of Insurance Brokers, Focus on the Information to exchange and duty to advice in Greek, Serbian and UK Law, 2012
- Robert E. Keeton and Alan I. Widiss, Insurance Law, A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices (student ed., West publishing Co. St. Paul, MINN., 1988)
- Robert Merkin, The Legal Position of Insurance Brokers, University of Cardif, 11 S. Afr. Mercantile L.J.78, (1999)
- Tamara Cohen, The Regulation of Insurance Brokers-Time to Tighten the Reins?, University of Natal Durban, 9 S Afr. Mercantile L.J.30, (1997)

Other Bibliographic Materials

- The Chartered Insurance Institute, Study text, Insurance Law, (2010)
- The Chartered Insurance Institute, Study text, Underwriting Practice, (2013)
- Minutes of the AEI on Insurance Agents and Brokers Commission Rate, (1999)
- Minutes of the drafting forum of the Compulsory Vehicle Insurance for third party risks proclamation no. 559/2008

) LAWS

- The Civil Code of the Empire of Ethiopia, 1960, Proclamation No. 165, *Negarit Gazeta* (Extraordinary Issue) Year 19, No.2

The Commercial Code of the Empire of Ethiopia, 1965, Decree No. 52, *Negarit Gazeta* (Extraordinary Issue). Year 25, No.3

A Proclamation to Provide For Insurance Business, 2012, Proclamation 746 No. 57, *Negarit Gazeta*. Year 18th No.53

A Proclamation to Provide for Insurance Business, 1994, Proclamation 86 No Negarit Gazeta. Year

J **INTERVIEWS**

Interview with Ato Belay Tulu, Insurance Supervision Directorate Director at NBE, on May 05, 2018

Interview with W/Ro Serkadis Insurance Supervision Directorate Senior Officer at NBE, on May 23, 2018

Interview with Ato Mussie Amare , A/Legal Service Directorate Director at Ethiopian Insurance Corporation ,on April 15,2018 and on various occasions

Interview with Ato Eyesus Work Zafu, Advisor to the CEO at United Insurance Company S.C, on May 6 2018

Interview with W/Ro Meseret Bezabih, CEO/GM at The United Insurance Company S.C and president of the AEI, on April 10, 2018

Interview with Ato Wubetu Abate, a Broker and President of Ethiopian Brokers Association, on April 15, 2018

Interview with Ato Hadush Hintsay,a Broker and Secretary of AEI, on April 10, 2018 and on various occasions

Interview with Ato Nahom Shewangizaw, Former Legal Service Manager at Ethio Life and General Insurance Company S.C and currently Consultant and Attorney at law, on Various Occasions

Interview with Ato Tewodros Tesfaye, Former Senior Attorney at Nile Insurance Company S.C and currently Consultant and Attorney at law on various occasions

J **CASES**

Habitu and Anteneh Insurance Brokers Vs EIC, (File No. 161877, Fed. High Court. Lideta 9th Bench , 29/05/2010 Eth. Cal.)

General Insurance Brokers Vs Nile Insurance, (File No. 86785, Fed. High Court. Lideta Bench, Tahisas 17, 2010 Eth. Cal)

Addis Insurance Brokers Vs EIC, (File No. 138486, Fed. High. Court., Miazia 15, 2007 Eth. Cal)

Hailemariam Berhe Insurance Brokers Vs Ethiopian Insurance Corporation (File No. 130364, Federal High Court, Lideta 8th Bench, Hamle 12, 2005 Eth. Cal)

Appealant Hailemariam Berhe Insurance Broker Vs EIC (File No. 93349, Federal Supreme Court, Yekatit 24, 2006 Eth. Cal)

Hailemariam Berhe Insurance Brokers Vs Ethiopian Insurance Corporation (File No. 130364, by remand from Federal Supreme court, Federal High Court, Lideta 8th Bench, Sene 22, 2008 Eth. Cal)

EIC Vs Hailemariam Berhe Insurance Brokers (File No. 131763, Federal Supreme Court, Tir 15, 2009 Eth. Cal.)

Appendixes/Annexes