

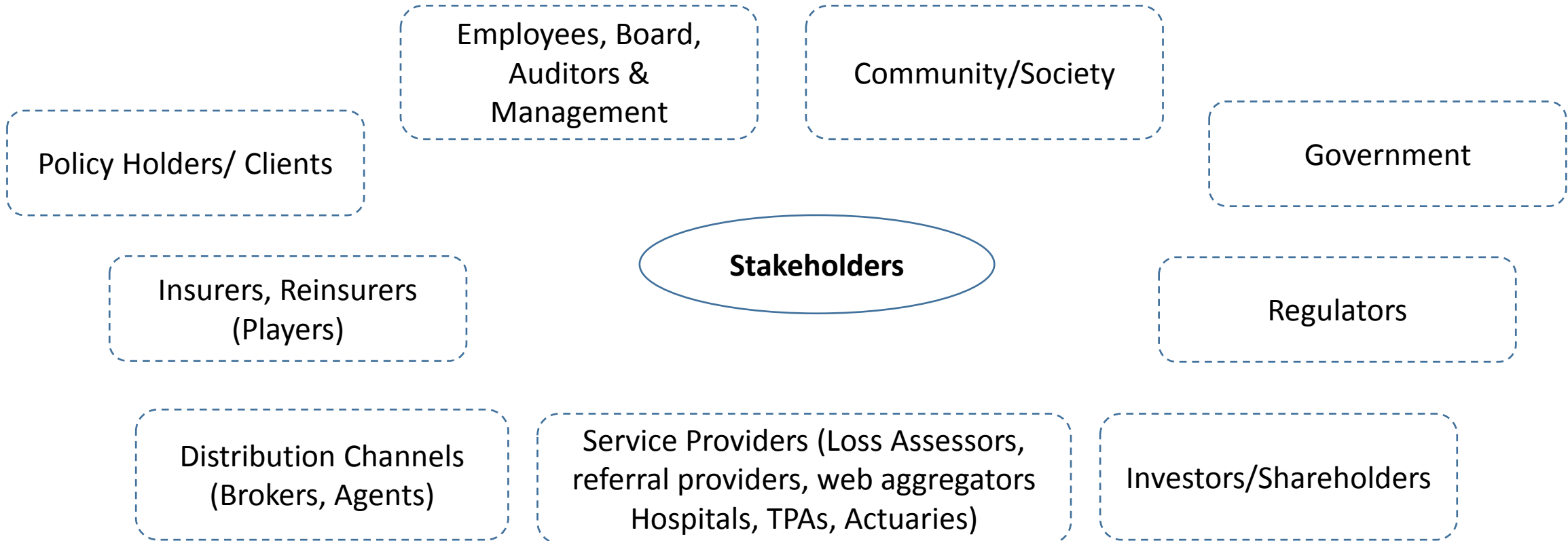
Stakeholder protection

Under Company Law and Insurance Law

26th April 2014

Stakeholders

The Insurance Regulatory and Development Authority (IRDA) considers a stakeholder to be any person, group or organization that has a direct or indirect stake in an insurer. This includes anyone that can affect or be affected by the insurer's conduct, objectives and policies.



Company Law and Insurance Law

- Insurance industry is governed by various Acts, Rules and Regulations framed by the regulators and the government. Two main Laws that we shall examine to understand how stakeholder interests are protected are
 - Companies Law
 - Insurance Law
- The Companies Act of 2013 brings modern regulations for the corporate sector to align with international requirements. The Act purports to deal with -
 - Governance issues
 - Investor protection
 - Fraud mitigation
 - Inclusive agenda and Corporate Social Responsibility
 - Auditors and Directors accountability
 - Reporting framework and
 - Efficient restructuring
- The Insurance Regulations define the obligation of insurers and intermediaries and other related parties and lay down time-frames for compliance that cover the entire life cycle of a product, starting from its sale to servicing, including at the point of claim to protect stakeholders from unfair practices.

Policy Holders/Consumers

Companies Act is silent on protection of policy holders or the customers. However Insurance Law has multiple clauses for protection of interests of the policy holders/consumers.

- **IRDA Protection of Policyholders' Interests (PPHI) Regulations, 2002** governs policy holders. Proviso 8 of the Regulation provides guidelines on **claims procedure** in respect of a life insurance policy. It includes details on primary document requirement, time for investigation, interest in case of delay etc.
- Section 45 of Insurance Act, 1938 stipulates that no life insurance policy can be called in question on ground of **mis-statement of facts** after two years from the commencement of policy.
- Redressal of Public Grievances Rules, 1998 provides for appointment of **Insurance Ombudsman**
- IRDA installed an elaborate grievance redressal mechanism, **Integrated Grievance Management System (IGMS)**, which enables consolidated access to grievances lodged with insurers and those lodged on the website of IRDA.
- Guidelines on **Standardization in Health Insurance** issued in 2013
- Website by IRDA called – **policyholder.gov.in** is an informative website for consumer education

Insurers and Reinsurers/ Industry Players

Companies Act prescribes many duties and responsibilities of the companies. At the same time, Companies Act 2013 has clauses that simplify procedures of setting up a company. Insurance Law has multiple clauses for players in Insurance industry. Insurance companies are highly regulated with stringent capital requirements and solvency requirements.

- New categories of '**Promoters**' introduced in Companies Act 2013.
- Liability with respect to public offers and disclosure requirements , attached to category of Promoters.
- Registration of Indian Insurance Companies Regulations, 2000 also defines **Indian Promoter**.
- Concept of **small companies** have been introduced in Companies Act and shall be subject to less stringent regulatory framework.
- Provision for **conversion of companies** has been introduced in Companies Act. **Registration process** is made faster.
- Companies Act prescribes rules for **AGM** while The Insurance Advisory Committee (Meetings) Regulations, 2000 prescribes procedure for **meeting of Advisory Committee**

Insurers and Reinsurers/ Industry Players (Cont'd)

- Registration of Indian Insurance Companies Regulations, 2000 lays down detailed procedure for **registration** of insurance companies.
- Manner of calculation of twenty six per cent **equity capital held by a foreign company** is also defined. Rules on **renewal, suspension or cancellation of certificate** are also defined.
- Regulations governing Reinsurance business(Life Insurance) in India are provided by Life Insurance - Reinsurance Regulations, 2000. General Insurance - Reinsurance Regulations, 2000 governs the reinsurance business in India
- **Price de-regulation:** IRDA allowed insurance companies the freedom to price their policies.
- The Companies Act contains provisions regarding **mergers and restructuring**.
- **Sec 35 of Insurance Act , 1938** and IRDA Regulations highlights the process to undertake amalgamation / transfer of insurance business.
- The IRDA in February , 2013 issued the IRDA (Scheme of Amalgamation and Transfer of Life Insurance business) Regulations , 2013. It sets out the manner for seeking IRDAs approval for a proposed amalgamation or transfer of the life insurance business , which is required under Sec 35 of the Insurance Act , 1938.

Insurers and Reinsurers/ Industry Players (Cont'd)

- The regulations prescribe a **2 stage process** involving a pre-transaction in principle approval stage and a final approval to give effect to the amalgamation or the transfer after all regulatory / statutory approvals have been obtained.
- The Companies Act , 2013 contains separate provisions for :
 - Merger or Amalgamation between two small companies or between a holding company and a wholly owned subsidiary company.
 - **Cross border amalgamations** between Indian companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government
 - **Purchase of minority shares** in case an acquirer or person acting in concert with the acquirer become holder of 90% or more of the issued capital of the company, either directly or by virtue of any amalgamation, share exchange, conversion of securities or any other reason.
- The Companies Act also provides guidelines on winding-up of a company in case of discovery of fraudulent activities

Distributors

Companies Act is silent on protection of distributors. However Insurance Law has multiple clauses for protection of interests of various stake holders including the Agents under Agents Regulation Act , 2000

- Insurance Law specifies the **code of conduct** for the **Agents** to protect the interest of the stakeholders and bring discipline in the actions of the Agents.
- A license of an agent is granted or renewed by a designated person in compliance with criteria listed under Agents Regulation , 2000
- Every person holding a license shall adhere to the code of conduct specified in the Act and -
 - Identify himself and the Insurance company of whom he is an agent.
 - Disclose his license to the prospect and provide information on products offered and scales of commission if requested by the prospect.
 - Promptly inform the prospect about the acceptance or rejection of the proposal by the insurer.
 - Bring to the notice of the insurer any adverse habits or income inconsistency of the prospect, in the form of a report (called "Insurance Agent's Confidential Report") along with every proposal submitted to the insurer, and any material fact that may adversely affect the underwriting decision of the insurer as regards acceptance of the proposal, by making all reasonable enquiries about the prospect

Service Providers (TPAs, Loss Assessors, Web aggregators, Referral providers, Actuaries, Hospitals etc.)

Companies Act does not delve in details of service providers to the companies. However, Insurance Law has multiple clauses for protection of interests of stakeholders by regulating various parties including Web aggregators and Referral providers.

- **Third Party Administrators-** Health Regulations, 2001 deals with regulation of TPAs. Prescribes procedure for license, renewal and cancellation of TPAs and the code of conduct for TPAs. It further prescribes maintenance of confidentiality of information by TPAs.
- Insurance Surveyors and Loss Assessors Regulations, 2000 contains detailed rules and regulations laid down by IRDA for individuals/corporates to become **surveyors and loss assessors**. It prescribes the procedure for license, renewal and cancellation along with constitution and functions of surveyors and loss assessors, their duties and responsibilities, categorization, code of conduct, practical training and others.
- Appointed Actuary Regulations, 2000 contains rules and regulations that guide the **appointment of Actuaries**. This lists procedure for appointment and cessation along with statement of powers, duties and obligations of Actuaries. An appointed actuary shall have access to all information. Appointed actuary shall be entitled to attend all the meetings of the management, shareholders or the policyholders of the insurer
- Guidelines on **Standardization in Health Insurance** issued in 2013 helps in protecting stakeholders from irregularities of hospitals and other service providers.

Investors/Shareholders

Company Law and Insurance Law both have clauses that protect the interest of shareholders/investors. Companies Act 2013 especially talks about protecting minority shareholders.

- Companies Act provides for:
 - Ability to execute legally enforceable contracts relating to transfer of securities in a public company.
 - Encouragement for **wider participation of shareholders** in General Meetings
 - Articles containing entrenchment provisions.
 - Blanket exemption to private companies to issue shares of different class (beyond equity and preference) eliminated. Shares with differential rights to be issued in accordance with Rules which are yet to be notified.
 - Investors may be considered as 'promoters' if they have contractual rights which are considered to fall within definition of control.
- Investment Regulations, 2000 and Investment (Amendment) Regulations, 2001 provide protection to the shareholders and the consumers by prescribing the **investment and exposure norms** for Life and General Insurance business.
- Assets, Liabilities, and Solvency Margin of Insurers Regulations, 2000 specifies the minimum **solvency margins** to be maintained by Insurers. In addition, it also specifies the **reporting procedures** to be followed by insurers. This ensures that the industry players act with caution and are responsible for shareholder's interests.

Regulators & Government

Regulators and government help in protecting the interest of various stakeholders by framing rules and regulations which address the concerns of stakeholders, protect their interests and support the growth of the industry. IRDA, the regulatory authority of Insurance industry plays a significant role in protecting the interest of various stakeholders.

- Recent regulations to protect the interest of stakeholders
- Removal of certain constraints restricting the growth of competition and the growth of the industry
- Prescribing code of conduct for various stakeholders to protect the interest of other stakeholders and bring in discipline
- Prescription of strict action against those violating the rules and regulations.
- Government's decision to allow 49% FDI
- Prescription of certain mandatory committees by IRDA to execute prudence at various levels – (a) Audit committee (b) Investment Committee (c) Risk Management Committee (d) Asset Liability Management Committee and (e) Policyholder protection committee

Community/Society

Both Company Law and Insurance Law have considered society and community at large while framing the regulations. These laws encourage or enforce contribution to the society at large thus upholding the interest of the society in which the firms are operating.

- The concept of **CSR** is governed by clause 135 of the Companies Act, 2013. The CSR provisions are applicable to companies with an annual turnover of 1,000 crore INR and more, or a net worth of 500 crore INR and more, or a net profit of five crore INR and more.
- The new rules require companies to set-up a CSR committee consisting of their board members, including at least one independent director.
- The Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities
- IRDA has laid down insurers **obligations towards Rural and Social Sectors** - Obligations Of Insurers To Rural Social Sectors Regulations, 2002 governs this.
- IRDA has laid down norms governing **advertising and promotional aspects** for Insurance companies in Insurance Advertisements and Disclosure Regulations, 2000. This is to avoid any kind of mis-representation of services to the public at large.

Employees

Both Company Law and Insurance Law have clauses protecting the interest of the employees of the Company.

- Companies Act provides for certain rights and privileges to the employees of the company. Eg:
 - No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares unless it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
 - A company proposing to increase its subscribed capital by issuing further shares, shall offer such shares to the persons who, at the date of the offer, are holders of equity shares of the company, employees under a scheme of employees' stock option, and any persons, if it is authorized by a special resolution.
- IRDA also specifically requires the board of the company to develop policies that encourage employees to raise concerns or report possible breaches of law or regulations, with appropriate measures to protect against retaliation.

Auditors

Both Company Law and Insurance Law place a lot of importance on Audit as it protects the stakeholders from falling prey to the financial fraud in the company.

- Some clauses within Companies Act protect the stakeholders from any fraud involving the auditors whose duty is to ensure financial discipline:
 - Rotation of auditors (maximum term of 5 years for individuals and two terms of five years for auditing firms) for certain classes of companies. Network firms not allowed to replace an outgoing firm.
 - Bar on providing non audit services to a company , where it is appointed as an auditor.
 - Disqualification on a number of grounds – holding of securities in the company by relatives , engaged in business relationship with the company etc.
- Insurance Law prescribes a mandatory Audit committee
- Preparation Of Financial Statements And Auditor's Report Of Insurance Companies Regulations, 2002 elucidates regulations addressing matters relating to **financial statements, management reports and auditor's reports** to be submitted by insurance companies.

Board and Governance

Both Company Law and Insurance Law lay huge emphasis on the board and the governance to protect the interest of the stakeholders especially the minority stakeholders.

- Companies Act talks about the composition of the board, requirement of independent directors and women directors, term of directors, meeting of the board, the duties and responsibilities of the board along with stringent regulations on governance and accountability of the directors, role of directors in balancing the conflicts among the stakeholders and their obligation to undertake Corporate Social Responsibility activities.
- IRDA issued its Corporate Governance Guidelines for Insurers to ensure stakeholder protection and strong governance.
- IRDA says that where there is a **conflict of interest between shareholders, management and policyholders**, the board's duty is to act in the interest of policyholders or prospective policyholders and to put in place adequate systems, policies and procedures to address potential conflicts of interest.

Management

Companies Act has multiple clauses in relation to managerial personnel. Insurance Law is silent on managerial personnel as stakeholders.

- According to Companies Act, no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time;
- No person shall be appointed as MD as well as Chairperson at a same time except when articles provides otherwise ;
- Every company as may be prescribed shall have the following whole-time key managerial personnel —
 - Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director
 - Company secretary; and
 - Chief Financial Officer
- Every whole-time key managerial personnel of the company shall be appointed by means of a board resolution. If the office of such personnel is vacated, the vacancy needs to be filled by a board resolution within 6 months.

Thank You

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