



Current Accounts, Savings Accounts and Fixed Deposits with Banks and Safe Deposit Lockers

1 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by Pramod Rao and incorporate inputs from ARIA. Views expressed are personal

Foreword

Mr. K V Kamath

Former-President
New Development Bank

The Covid-19 pandemic has brought us face to face with mortality. Many of us have suffered the loss of loved ones which is truly saddening and stressful for spouses and families. At such times, engaging with and completing the formalities for transmission of assets to the rightful heirs translates into an unbearable experience.

The transmission process is neither centralised nor uniform, nor does it have defined turnaround times. As a result, the bereaved family has to deal separately with individual institutions, each with their own set of forms, processes and procedures. If nominations have been made by the deceased person, then the nominees can get control of the assets in a reasonable time frame. But in all cases such transmission needs to be validated through an overburdened court or legal process.

Some of the constraints and authentication requirements laid down in the nominations process may indeed have been required at a time when technology was not developed and KYC and other processes were not present. But today, India is at the leading edge of technology with the India Stack allowing everyone from governments to commercial enterprises to seamlessly provide benefits and services to the billion plus Indian population. The recent launch of the account aggregator framework also signals that a new era of interconnectedness and interoperability among financial institutions is here.

There is no reason why the same technology stack and these emerging platforms cannot be used to reduce the friction points and streamline nominations and transmission of assets on the death of a person.



All that this needs is a short and coordinated effort of say six months, from all the parties involved, and if required, facilitated by the Regulators who could consider modifying the regulations to enable the institutions to use these new approaches. Where necessary, in just a few areas, the government might need to modify the governing law to give primacy to the wishes of the deceased as expressed in her nominations.

Pramod¹ had written a brilliant paper analysing nominations and joint ownership of financial assets and spelt out the need to make the whole succession process smoother and simpler. When Harsh² approached me for support for the #ARIATrulycares initiative, I requested him to work with Pramod to collaborate in this effort. Pramod has since written the white paper with inputs from ARIA and has also helped draw up spotlight papers on bank accounts, safe deposit lockers, dematerialised securities and mutual fund units. Specific recommendations on other assets such as NPS, provident funds, small saving schemes and immovable property are likely to be added soon.

A smoother and simpler succession process will provide quick transmission of assets. It will also relieve the courts of the unnecessary burden of uncontested and undisputed succession matters. Financial institutions will also get discharge from their liability and this will go a long way in mitigating the pain and sorrow of the family and heirs.

I hope and trust that financial institutions and supervisory bodies would consider the suggestions outlined in the White Paper on the nomination facilities and do a quick reset of the process.

¹ Pramod Rao is the Group General Counsel of ICICI Bank and a leading thinker on legal and governance matters

² Harsh Roongta runs an investment advisory firm and is the Vice chair of Association of Registered Investment Advisers (ARIA) – a section 8 not for profit company



Executive Summary of the White Paper

Reimagining Nominations: Making Succession Smoother and Simpler

For multiple reasons as outlined in the paper, the process of claims by successors of deceased financial consumers remains difficult to navigate, especially at a time when the family and those surviving the individual are coping with the loss of a loved one and still grieving.

Nomination facilities have provided a level of succour to the successors. However, these reflect an outdated point-of-view that was more relevant when the facilities were instituted and require a fresh review and update as per the needs of the financial consumers and citizenry. Both the level of unclaimed funds or the tedious and time-consuming legal process and the current situation brought on by Covid-19 signal that a deeper review and recast is all too necessary.

The white paper proposes the expectations for updated, revised and revamped nomination facilities in terms of three policy objectives:

- Convenience to financial consumers and to their successors
- Due discharge for financial services providers upon providing access to and an ability to transact in the financial assets or transmission of the financial assets to the successors
- Eliminating or reducing references to an overburdened judiciary, where litigants face considerable costs and delays

The white paper reimagines the nomination facilities keeping the three policy objectives paramount and also uses the lens of providing ease and convenience harnessing the technological advancements and frameworks which are available today.

The paper outlines 15 measures for financial services providers, financial sector regulators and lawmakers to consider in respect of nomination facilities, more succinctly captured in the Annexure.

Spotlight Papers in Volume 1:

1. Current Accounts, Savings Accounts and Fixed Deposits with Banks and Safe Deposit Lockers
2. Securities Held in Demat Accounts
3. Mutual Funds
4. Physical shares and securities issued by entities governed by the Companies Act, 2013 (and earlier versions of the Companies Act)
5. Employees' provident fund, Employees' Deposit Linked Insurance and Employees' Pension Scheme
Provident funds governed by Employee Provident Funds Act, 1925
Public Provident Funds

Mr. Pramod Rao 7

About ARIA 7

SPOTLIGHT² ON

Current Accounts, Savings Accounts and Fixed Deposits with Banks and Safe Deposit Lockers

The aggregate of balances in current and savings accounts, as well as fixed deposits in India stands at ₹153.1 trillion as of March 31, 2021, and represents a sizable amount of money saved or in transit (to be saved or spent). It also represents the safest savings instrument (barring rare exceptions) in the country.

Nomination facility for bank accounts and fixed deposits is encoded in a statutory provision, viz Section 45ZA of the Banking Regulation Act, 1949, added in 1985 to ease the release of deposits to the nominee specified by the depositor upon death of the depositor. The section governs credit balances in savings accounts, current accounts and fixed deposits with banks. The norms for access to articles kept in safe custody with banks³ and safety lockers⁴ are also contained in statutory provisions of the BR Act that also follow principles and norms applicable for deposits (unless otherwise noted in this paper).

Individuals who jointly own and operate bank accounts or deposits are also permitted to make nominations.

Nominations can only be made when the deposits are held in an individual capacity, and not in a representative capacity (including as a holder of an office or otherwise).

The forms as prescribed are part of the Banking Companies (Nomination) Rules, 1985.⁵

If the nominee is a minor, the depositor can choose while making the nomination to appoint another individual (who is a major), to receive the amounts on behalf of the nominee (during the minority of the nominee) in the event of the death of the depositor.

A depositor can vary or cancel the nomination during the tenure of the deposit. Banks are required to provide acknowledgment of nominations to the depositor and register the nomination, cancellation or variation in its records.

It is important to note that while the nominee is legally entitled to receive the money from the bank, the nominee doesn't constitute the successor or inheritor of such sums. The successors or legal heirs (*either in terms of the will executed by the depositor, or as per the personal laws of succession governing the depositor who dies intestate*) are entitled to claim their rightful share from the nominee⁶.

It is important to note that while the nominee is legally entitled to receive the money from the bank, the nominee doesn't constitute the successor or inheritor of such sums.

Many a time one sees claimants (claiming to be legal heirs or successors of a deceased depositor) serve notice of their claim or interest to the bank. As such⁷, a bank is not bound to receive such notice nor is bound by such notice even

2 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by Pramod Rao and incorporate inputs from ARIA. Views expressed are personal

3 Governed by section 45ZC of the Banking Regulation Act, 1949

4 Governed by section 45ZE of the Banking Regulation Act, 1949

5 <http://www.sconline.com/DocumentLink/XoKC1xdv>; Vide Noti. No. S.O. 264(E), dated March 29, 1985, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 29th March, 1985, pp. 10-18

6 Proviso to section 45ZA(4) of the Banking Regulation Act, 1949; also specification in the will that the nominee is the beneficiary can obviate challenges or issues from arising

7 Section 45ZB of the Banking Regulation Act, 1949

when it has been expressly delivered to it. Only and only if a decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is notified or served on the bank, is the bank required to take due note of such decree, order, certificate or other authority⁸.

Table 1: Current and Savings Accounts, Fixed Deposits, Safe Custody and Safety Lockers

In the event of	Transmission in favour of	
	Nomination provided	Nomination not provided
Death of single holder	Nominee	Legal heirs (as per succession certificate/ probate / letters of administration)
Death of one of the joint holders where joint account is held on either or survivor, anyone or survivor, latter or survivor, former or survivor any such similar basis	Surviving joint holder(s)	Surviving joint holder(s)
Death of all the joint holders	Nominee	Legal heirs (as per succession certificate/ probate/ letters of administration)

A further element which bears consideration is that in terms of the current law, the nomination by a bank depositor is limited to a single individual⁹. Hence, it appears that almost by design the bank or the nominee, or both could be placed in a situation of having to deal with the legal heirs, successors and claimants, and which could also lead to litigious situations.

Section 45ZA of the Banking Regulation Act (and consequently the rules there under) should be amended to facilitate depositors being able to specify multiple nominees (together with percentage allocation of the money among them).

Providing e-nominations facility: Bank can under the provisions of the Information Technology Act of 2000 and the various mechanisms specified therein for concluding contracts, extend the facility of nomination forms being completed and submitted through authenticated means (such as internet banking or mobile banking apps) and which are legal, valid and effective (just as the transactions conducted over such internet banking sites or mobile banking apps). Adoption of such means—Aadhaar-based eSign or OTP-based confirmation or simply undertaking the nomination after authentication of credentials of the internet banking site or mobile banking app—would also mean that requirement of witness, if any, can be dispensed with.

Section 45ZA of the Banking Regulation Act (and consequently the rules there under) should be amended to facilitate depositors being able to specify multiple nominees (together with percentage allocation of the money among them).

In respect of articles kept in safe custody or kept in the safety lockers, one item worthy to call out as a difference (from treatment of deposits) is that the bank, before returning any articles to the nominee prior to removal of contents of the safety locker by the nominee, is required to prepare an inventory of such articles. The nominee is required to sign a copy of such the inventory, and is entitled to receive a copy of the inventory.

⁸ Proviso to section 45ZB of the Banking Regulation Act, 1949

⁹ In case of jointly operated lockers i.e., by two or more individuals jointly, such hirers may nominate one or more persons to whom, in the event of the death of such joint hirer or hirers, the bank may give, jointly with the surviving joint hirer or joint hirers, access to the locker and liberty to remove the contents of such locker

Assessment of Measures Recommended for Current Accounts, Savings Accounts, Fixed Deposits, Articles in Safe Custody and Safety Lockers

Measures	Who can implement the recommended measures	
	RBI / IBA	Parliament
Easy, uniform and simple process to check status of nominations and to make or change nominees	<input checked="" type="checkbox"/>	
Simple, common nomination form / e-form across financial assets	<input checked="" type="checkbox"/>	
Ability to specify any number of nominees		<input checked="" type="checkbox"/>
Ability to specify percentage allocation among nominees		<input checked="" type="checkbox"/>
Ability to specify successive nominees		<input checked="" type="checkbox"/>
Ability to make single scrip / folio / security level nominations	N.A.	N.A.
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions <ul style="list-style-type: none"> Option for completing or updating KYC of nominees at any time 	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
Extending nomination facilities for addressing situations of incapacitated financial consumer		<input checked="" type="checkbox"/>
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) <ul style="list-style-type: none"> Ability to defer the age of vesting (as regards minor nominees) 	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)	<input checked="" type="checkbox"/>	
Centralised Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + triggering proactive outreach by financial services providers to the nominees	<input checked="" type="checkbox"/>	
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on advantages and benefits of nomination. Awareness campaigns on reimagined nomination facilities becoming operational can be conducted	<input checked="" type="checkbox"/>	
Elevating or equating nominees to being legal and beneficial owners of the financial asset (up to the percentage allocation as specified) and doing away with the concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets		<input checked="" type="checkbox"/>

Mr. Pramod Rao

Pramod is serving as an Executive Director at the Securities and Exchange Board of India, handling the Department of Debt and Hybrid Securities (DDHS), and Enquiries and Adjudication Department (EAD). The white paper — “Reimagining Nominations: Making Succession Smoother and Simpler” was written by Pramod in his personal capacity prior to joining the Securities and Exchange Board of India.

Pramod has extensive experience in the Indian financial services sector, having served as Group General Counsel at ICICI group, General Counsel for Citi South Asia cluster, as a partner at IndusLaw and as General Counsel of ICICI Bank, with many professional accomplishments in such roles.

He has also served as a member of the Board of Directors of ICICI Securities Ltd, ICICI Prudential Trust Ltd, ICICI Trusteeship Services Ltd, and as a member of the National Committee for Regulatory Affairs of the Confederation of Indian Industry (CII), of the Advisory Council of Sahamati & of the SEBI Subcommittee for Regulatory Sandbox.

Pramod has a deep interest in Fintech, LawTech & startups: He has co-founded a LawTech enterprise, & served as a Board member of 2 startups. He also advised & mentored startups under the aegis of ICICI Bank’s Startup Engagement Team & its Innovation Lab, NSRCEL of IIM Bangalore, SINE of IIT Bombay & of No Changemaker Left Behind program by Agami. He has also led piloting and adoption of innovative approaches and technology-led solutions for various business, operational and legal requirements. He has collaborated on certain iSPIRT projects including Sahay-GeM and the Sahamati AA Ecosystem.

He has played a pivotal role in conceptualizing & adoption of online dispute resolution (ODR) at ICICI Bank & digital ecosystems such as Sahamati, Sahay GeM, Sahay GST and ONDC. He also engaged with policy makers, the government & the judiciary on ODR, which culminated in the Niti Aayog constituted committee report on Designing the Future of Dispute Resolution: The ODR Policy Plan for India, available at <https://bit.ly/3AVS247>, & in the launch of ODR Handbook, available at www.disputeresolution.online

Pramod has also been associated with IDIA – Increasing Diversity by Increasing Access – an NGO dedicated to assisting students from underprivileged backgrounds in attending premier law schools in India. He has served as a founding member of the Governing Board of the NLSIU Alumni Association from 2015-2020.

He has participated in & contributed to various law and regulatory reform initiatives of the government, regulators & industry forums, and written or contributed to several papers containing his personal view and opinions on matters of law and policy including for SCC Blog, IndiaCorplaw Blog, ARIA and for reputed digital business news platforms.

About ARIA

The Association of Registered Investment Advisers (ARIA) was born out of the need to support the development of the investment adviser community post the introduction of the investment adviser regulations by SEBI in 2013. ARIA was set up as a part of the inaugural RIA summit in 2017 from where an RIA Task force emerged to enable the development of the RIA profession, and bring it to the standards of other established professions that have been in existence since multiple decades. ARIA members come from different parts of the country and are a mix of individuals and corporates who are focussed on doing what is right for the investor without conflict of interest or high levels of disclosure.

Email id: reimagine@aria.org.in





Association of
Registered Investment Advisers

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More Spotlight
sections to
follow soon

Association of Registered Investment Advisers

7th Floor, 701 / 702,
Madhava Bldg, Bandra Kurla Complex
Bandra East,
Mumbai 400051

membership@aria.org.in