ARIA
Association of
Registered Investment Advisers

SPOTLIGHT ON

Securities Held in Demat Accounts

Foreword

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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 where 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.

Pramod[1] 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 Harsh[2] 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

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Securities Held in Demat Accounts

With a growing number of investors in the equity markets, or those holding bonds and debentures or even sovereign gold bonds, having a depository account (more popularly referred to as demat account) with a depository participant (which in turn are linked to either of the two securities depositories licensed by the Securities and Exchange Board of India - SEBI) is a given. The total count of demat accounts stood at 55 million plus as of March 31, 2021, with ₹518.83 trillion constituting the total value of securities held in such demat accounts.

Nomination is possible for demat accounts. There is flexibility to specify up to three nominees, and in case of multiple nominees, the demat account holder/s can specify the percentage of share of each nominee. In the event percentage allocation is not specified, the presumption of equal division among the nominees applies.

Individuals who jointly own demat accounts are also permitted to make nominations. Nominations can be made only by individuals, and only individuals / natural persons can be specified as nominees[1].

A minor can be a nominee, subject to the name and address of the guardian being provided.

The prescribed forms require photographs of the nominee and other details to help identify and give effect to the nomination. Additionally, the form requires a witness for nomination.

There is flexibility to specify up to three nominees, and in case of multiple nominees, the demat account holder/s can specify the percentage of share of each nominee.

Nominations can be varied or cancelled and fresh nominations made.

The key benefit that nominations provide to depositories and depository participants is that they receive a full discharge of the liability upon the transmission of the securities balances in the demat account to the nominee.

It is important to note that while the nominees are legally entitled to receive the transmission of the securities balance in the demat account, the nominees don't constitute the successors or inheritors of such securities. The successors or legal heirs (either in terms of the will executed by the demat account holder, or as per the personal laws of succession governing the demat account holder who dies intestate) are entitled to claim their rightful share from the nominees[2]

1 Akin to nominations for bank accounts excluding non-individuals

2 Specification in the will that the nominee/s is / are the beneficiary/ies can obviate challenges or issues from arising; one potential challenge that should be considered is that when more than one nominee has been specified, they could transform into joint holders, and if they get along (or don't) could impact operation of the demat account, and hence segregating securities into distinct demat accounts with one nominee each could be a better approach (unless securities level nomination is permitted)

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Table 2
Depository or Demat Accounts

In the event of	Transmission in favour of	
	Nomination provided	Nomination not provided
Death of single holder	Nominee(s)	Legal heirs (as per succession certificate /probate/ letters of administration)
Death of one of the joint holders	Surviving joint holder(s)	Surviving joint holder(s)
Death of all the joint holders	Nominee(s)	Legal heirs (as per succession certificate /probate/ letters of administration)

Demat accounts permit more than one nominee (though imposes a limit of three nominees). It permits percentage allocation among the nominees for all the securities held in the demat account (in the aggregate and not of individual securities).

One reform to consider would be to do away with the limitation of three nominees. It would facilitate demat account holders being able to specify multiple nominees without limitation (while continuing with the percentage allocation of the money among them). Such a change would allow the demat account holders to specify, as far as possible, their legal heirs as nominees together with the percentage allocation among them. It would help reduce or remove possible friction and burden that the nominees carry in having to deal with the legal heirs, successors and claimants.

It permits percentage allocation among the nominees for all the securities held in the demat account (in the aggregate and not of individual securities).

Another limitation is the manner in which nominations along with the percentage allocations takes effect: such nominations and allocations apply across the securities balances held in the demat account, and securities-wise nominations or allocation are not currently possible. Hence, if there are multiple sets of shares and securities held, the nomination and percentage allocation uniformly cut across all the shares and securities.

A few recent changes that have been made by SEBI[3] as the regulator of depositories and depository participants that provide demat accounts, in respect of nomination, are important to consider:

A. On and from October 1, 2021, investors opening new demat accounts have a choice of providing nomination or opting out of making a nomination by making a formal declaration to that effect. Due formats have been prescribed for either course, and for changes to or cancellation of nominations made.
B. All existing eligible demat account holders are required to make a choice of providing nomination or opting out of making a nomination on or before March 31, 2022, failing which no debits can be made to the demat account, effectively freezing trading of securities held therein.
C. A key change has been dispensing with the witnessing of the nomination form in the following circumstances:
   - Nomination form signed under wet signature of the demat account holders
   - Online nomination form signed using e-Sign facility
   - Witness signature is however required when the demat account holders affix thumb impression (in lieu of signatures).

3 https://bit.ly/3m4HoyS

Assessment of Measures Recommended for Depository or Demat Accounts

	Who can implement the recommended measures	
	SEBI	**Parliament**
Easy, uniform and simple process to check status of nominations and to make or change nominees	☑	
Simple, common nomination form / e-form across financial assets	☑	
Ability to specify any number of nominees	☑ Currently restricted to 3. Needed unlimited number	
Ability to specify percentage allocation among nominees		
Ability to specify successive nominees	☑	
Ability to make single scrip / folio / security level nominations	☑	.
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions • Option for completing or updating KYC of nominees at any time	☑ ☑	
Extending nomination facilities for addressing situations of incapacitated financial consumer	☑	
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) • Ability to defer the age of vesting (as regards minor nominees)	☑ ☑	
Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)	☑ Partially implemented (as it provides a choice to not nominate)	
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	☑	
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	☑	
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	☑	☑

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.

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More Spotlight sections to follow soon

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