

Reimagining Nominations: Making Succession Smoother and Simpler

#ARIAtrulycares

Written By:

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with inputs from ARIA

Foreword

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.



Mr. K V Kamath
Former-President
New Development Bank

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 indeed importantly 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

Reimagining Nominations: Making Succession Smoother and Simpler¹

Executive Summary

For very many 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.

Nominations facilities have provided a level of succor to the successors. However, these reflect a point-in-time view or status when the facilities were instituted and require being relooked at afresh and updated for 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](#).

¹ Written by and © [Pramod Rao](#), 2021, and draws upon a previously published article: <https://www.sconline.com/blog/post/2021/09/14/nomination-facilities-and-joint-ownership-of-financial-assets-in-the-indian-financial-sector/> and inputs from [ARIA](#). Views are however personal.

Introduction

In as much as that death is a certainty, and the elixir for eternal life is yet to be invented or discovered, our preparedness for this event is quite woeful. In the current times of Covid-19 and the many many lives it has claimed, and which continues to be a threat, should only enhance our attention to preparing for the event.

Our lack of attention or preparedness adversely impacts the living, namely our family members and loved ones, who constitute our successors. They try to come to terms with the loss, both grieving and comforting one another, and undertaking the necessary rituals.

The demise of a sole or major breadwinner can also lead to families trying to cope with the loss of steady income and could face financial hardships in the short term. In many situations the deceased may have been independently wealthy, represented in the very many financial or real assets created through hard work, perhaps is well shepherded, and yet the successors struggle to ascertain or discover such wealth. They try to piece together information from private papers, files and so on. The fact that most successors don't succeed in this effort can be understood from the vast sums of financial assets lying unclaimed across the financial and real sector - see Table A².

Table A

			
Rs.28,800 Cr	Rs.24,000 Cr	Rs.5,454 Cr	Rs.48,000 Cr
Value of unclaimed shares transferred to IEPF	Value of unclaimed mutual fund units	Value of unclaimed corporate dividends	Unclaimed Public Provident Fund (PPF)
			
Rs.15,166 Cr	Rs.25,860 Cr	Rs.11,770 Cr	Rs.3,78,000 Cr
Value of matured Insurance policies	Unclaimed amount in bank accounts	Unclaimed amount in UTI Schemes	Amount of physical shares not yet dematerialized

Then comes the all too important question - to whom should these assets pass on?

More often than not, we fail to make a formal expression of our wishes and expectations after our death about our wealth and financial or assets. That is to say, we fail to make our wills. There

² Data from <https://recovery.in>; also see article on unclaimed moneys <https://www.moneylife.in/article/shouldnt-regulators-be-accountable-for-returning-rs82000-crore-of-unclaimed-money-to-savers/64694.html>

appears almost a perception that writing a will is equal to signing one's death warrant. Or that if there's no discord among family members a will is not required. Even if we have full faith that our family members and successors will behave decently and properly with one another or perhaps that our wealth is not too large to require a will, it still leaves the family and successors struggling. The quirk is that even if we do make a will, the situation doesn't improve by a large factor, an item which will become clear shortly.

The fact is that on the demise of an individual, various legal processes have to be engaged with, starting with obtaining the death certificate. Thereafter, one will need to deal with or administer the estate of the deceased, e.g. sell property, collect debts, repay debts, close bank accounts etc. and are often required to be undertaken in prescribed manner so that actions taken are legally effective and final among the successors.

Thus, there can be two situations:

- When a person has died leaving a will; and
- When a person has died without leaving a will, i.e. intestate.

In the first situation, the will specifies the person who would administer the estate - the executor(s). While the will confers the authority on the executor, this authority must be confirmed by a judicial process called probate which establishes the genuineness of the will.

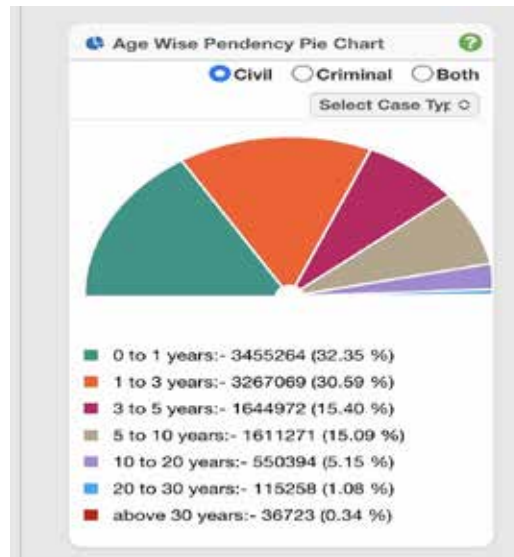
Where a person has died intestate, the court (on an application by an interested party) appoints a person called the administrator. An administrator is also appointed where the will is invalid or an executor is not named in the will or the executor is unable or unwilling to act. Unlike an executor, an administrator's authority to administer the estate is both conferred by and confirmed under the court-issued document called Letters of Administration (LoA). Executors or administrators are treated as personal representatives of the deceased. A further simpler process for obtaining a succession certificate also exists, which however has limited applicability.

Tarikh pe tarikh: It approximately takes about 8-10 months to obtain a grant of probate from the court if it is uncontested or between 6-9 years if it is contested. The time limit also depends on whether the matter is before the district court or the High Court. The process for obtaining an LoA or a Succession Certificate is estimated to take between 6-9 months if it is uncontested. If it is contested, the number and location of other parties will also have to be considered. The process may then extend to between 2 to 5 years (or even more). All of these timelines are even prior to the outset of Covid-19, which has had a further adverse impact on the timelines and pendency.

Another data point to consider is that as per National Judicial Data Grid³ is that about 32.35% of all civil cases are pending for less than a year, with another 30.59% pending for a period between 1-3 years. The balance 37% of the cases have been pending for more than 3 years - see Table B.

Table B

³ Accessible at <https://njdg.ecourts.gov.in/njdgnew/> and tables accessed & saved on September 23, 2021,



Disposition rates, as available for testamentary/matrimonial matters, indicate 13.64% of cases are closed within one year, about 22.73% in the period of 1-3 years, and the balance 63.63% of the cases are disposed after three or more years (bulk of such disposals being only in 6th-7th year) - see Table C.

Table C



The access to and ability to transact in or transmission of the financial or other assets is hence deferred until the conclusion of the judicial process. As one would appreciate the process itself can be pretty daunting and with no certainty of the time that's taken to reach the conclusion.

Indian Jugaad - enabled by lawmakers and regulators

It becomes clear that alternatives are needed to allow for much sooner, simpler access to the assets and in being able to deal or of transmission for the successors, especially in their time of need.

In respect of financial assets in India, there has been recognition of the issues and a set of alternatives emerged over a period of time. One alternative has been instituting a 'nominations facility' for financial assets. Another has been facilitating 'joint ownership' of financial assets. There are also situations for smaller sums that financial services providers take a calculated approach of obtaining indemnities and other papers - this can however widely vary.

This paper attempts to:

- Focus purely on the nomination facilities agnostic of any specific financial assets,
- Outlines the policy objectives for lawmakers and regulators to consider, and
- Proposes measures for enhancing, improving, and upgrading the nomination facilities and thereby achieving simplified, standard and uniform experience for the financial consumers and their successors.

Policy objectives

Three key policy objectives should underpin the design and structure of nomination facilities:

- Convenience to financial consumers⁴ and to their successors⁵
- 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

Convenience to financial consumers and to their successors

Convenience to financial consumers can take place by adopting or instituting the following measures:

- Easy, uniform and simple process to check the status of nominations, make nominations or to change nominations
 - Status of nominations (or even details of nominees) can be displayed on statements of accounts, if any, or on the mobile app or website of the financial services provider (after log-in section)
 - The easy and simple process should also be available for Non-resident Indians, Overseas Citizens of India or Persons of Indian Origin having financial assets in India
- Specifying of a simple common form for nominations across the financial services sector
- Ability to specify any number of nominees
- Ability to specify percentage allocation of the financial asset to such nominees⁶, and

⁴ The term 'financial consumer' used in this paper means and includes individuals who are depositors of banks (having fixed deposit, savings accounts, recurring deposits or current accounts), bank locker hirers, depositors of NBFCs, or are individual investors in investment products, commercial paper, certificates of deposit, government securities, equity shares, bonds and debentures, units of mutual funds or exchange traded funds or alternative investment funds or infrastructure investment trusts or real estate investment trusts or collective investment schemes, indian depository receipts (holding such investment directly in physical form, as an account entry at a registrar or via demat account), or are insurance policy holders, National Pension System subscribers, Employee Provident Fund Organization contributors, account holders or investors in Senior Citizen Savings Schemes or Public Provident Fund or Post Office Monthly Income Scheme or Post Office Savings Account or Sukanya Samruddhi Yojana or National Savings Certificates or Kisan Vikas Patras, PM Vaya Vandana Yojana, as well as employee benefits provided by corporates including employee provident fund, employee pension scheme, employee deposit linked insurance scheme, superannuation, employee stock option plans, and in relation to shares in cooperative housing societies or apartment owners associations

⁵ The term 'successor' used in this paper means and includes legal heirs, survivors or inheritors of the financial consumers, and caregivers in case of incapacitated financial consumer, with nominations being utilized to specify the legal heirs or the caregivers as intended and specified by the financial consumer for the financial assets

⁶ Certain financial assets could be aggregating other financial assets or other assets - for instance, demat accounts can hold equity shares, bonds and debentures, units of mutual funds, etc. Nomination facilities for such types of financial assets should facilitate individual financial asset level percentage allocation among the nominees

- Ability to specify successive nominations (*to address situations of earlier demise of the first nominee/s, whereupon the next set of nominee/s would receive the access and ability to transact or the transmission*) and hence addressing 'if...then...' scenarios.

Certain further changes, which have been elaborated below, are also important measures:

- Ability to make single scrip/folio/security level nominations
- Availability of e-nomination facilities
- Extending nomination facility for incapacitated financial consumers, and
- Making minors nominees, and making optional the specification of an adult or guardian

Single scrip/folio/security level nominations: Certain types of financial assets facilitate aggregation of various financial assets or other assets. Nomination facilities for such types of financial assets should facilitate disaggregated nominations for individual securities/scrip/folio, and its percentage allocation among nominees. *For instance, a demat account can hold equity shares, bonds and debentures, units of mutual funds, etc. At present, the nominations occur at the demat account level itself, which coupled with a limitation on the number of nominees, prevent the disaggregated nominations of the securities among the nominees.*

E-nomination facilities would mean ability to complete and submit nominations through authenticated means such as Aadhaar based eSign, Digital signature certificates or OTP based confirmation or post authentication of credentials of the financial service providers' website or mobile apps where financial transactions take place⁷. In case of e-nomination,

- requirement of witnesses can also be dispensed with,
- obtention of contact and identity details of nominees can be done electronically,
- an option can be provided for completion and updation of the KYC of the nominees⁸, as as a measure of obviating the same at the time of providing access or ability to transact or of transmission, and
- electronic (and physical) issuance of acknowledgement of duly recording of the nominations, and updating of internal records of the financial services provider

Incapacitated financial consumers: As there can be situations when the financial consumer is incapacitated permanently or temporarily, and unable to access or transact in the financial assets. Nomination facilities should extend to enabling nominees to access and transact in such financial assets during the period that such incapacitation subsists. Fact of such incapacitation can be certified by an independent medical practitioner, who

⁷ Every financial service provider operating a website or mobile app that facilitates transactions should also be mandated to provide nomination facility on such website or mobile app

⁸ Today, even video KYC is possible - this can mean undertaking KYC verification remotely and conveniently

has personally examined the financial consumer, and a copy of which can be furnished to the financial service providers. Nomination facility should hence extend to both situations of incapacitation or demise of the financial consumer.

Such a measure needs to be balanced against the risks of deceptive, fraudulent or bad behaviour that financial consumers, especially senior citizens, could face. Accordingly, requiring independent assessment by a medical practitioner empaneled by the financial services provider or other similar such measure for combating such risks can also be considered.

Making minors nominees and making specification of an adult an optional: An important issue for financial consumers is being able to specify minors as nominees. However, for most financial assets this also requires specification of an adult or of a guardian. Financial consumers, many of whom comprise nuclear families, pause at this stage. Regulators (or the Parliament or state legislatures, as applicable) can consider enabling minors to be designated as nominees and making the requirement of specifying an adult or guardian optional for the following reasons:

- Firstly, it builds on the principle that whilst minors are incapable of contracting & hence of assuming obligations, the proposition is about financial assets and *its ownership*. The transmission would be for the *benefit* of the minor, and not constitute the minors' obligation.
- Secondly, it is noteworthy that minors are capable of owning real estate (without being able to deal or dispose of the same). Hence, transmission of financial assets to minor nominees is a logical extension and could be enabled without the ability to transact in the financial assets until the minor reaches the age of majority. Consequently, the discharge of the financial services provider would be deferred until such time.
- Thirdly, the minor nominees may achieve the age of majority, without the demise of the financial consumer occurring during their minority, and hence worries or concerns of requiring an adult or guardian being designated or that the financial service provider may not be able to obtain due discharge would stand obviated.
- Finally, when an adult or guardian has been specified for minor nominees by the financial consumer in the nomination process, or a guardian is appointed under the applicable legal process, such persons would be able to deal with the financial assets on behalf of the minor. Upon the guardian approaching the financial service provider to access or operate the financial asset on behalf of the minor, the same could be enabled after verifying the validity of the specification or of appointment of guardian.

Ability to defer vesting (as regards minor nominees): In respect of minors, a further proposition to consider is the financial consumer having ability to specify the age at which the minor nominees gain access and ability to transact in or the transmission of the financial asset. Hence, specifying an age beyond the age of majority that the financial consumer considers appropriate. This can become applicable when the demise of the

financial consumer occurs during the time nominees are minors and no adult or guardian has been specified. Such an ability could address the concern that successors may lack maturity in dealing with financial assets immediately on attaining the age of majority and hence deferring to a later age, when hopefully maturity has dawned. Then again, maturity on financial matters may be elusive even for adults of various ages. Decisions such as these are indeed intensely personal and situational, and yet making available a choice to the financial consumer is worthy of being considered in the redesign of nomination facilities.

Convenience to successors

Convenience to successors⁹ can be viewed from the following lens, keeping in mind they are faced with a bereavement (or coping with incapacity):

- Easy, simple, frictionless and uniform process in:
 - identifying the financial assets¹⁰
 - notifying about incapacity or demise
 - verification of KYC and identity of nominees
 - reliance on death certificate and medical practitioners' certificate¹¹ regarding incapacitation of the financial consumer
- Nominees being provided immediate access to, and ability to transact in financial assets or to obtain transmission of the financial asset
- Nominees not being required to:
 - furnish or execute any other or further documents, (including indemnities or third party confirmations), perform or obtain needless attestations, or
 - obtain succession certificate or court orders (in case of intestate succession) or probate or letters of administration (in case of the testamentary instrument (will) being available).

Due discharge for financial services providers

Providing access or ability to transact in financial assets or its transmission to nominees as specified by financial consumers serves to provide due discharge to the financial services providers. This ensures that the financial services providers are not embroiled in dealing with succession claims, or (rival) claimants of deceased financial consumers.

⁹ Including successors who may be Non-resident Indians, Overseas Citizens of India or Persons of Indian Origin

¹⁰ A possible solution for discovery by successors and nominees of financial assets of the deceased financial consumer or an incapacitated financial consumer **and** also for resolving the vast amounts of unclaimed funds across various financial assets by harnessing the account aggregator framework, since their own personal details would be captured in the nomination process. Certain use cases have already been considered, eg., unclaimed or forgotten investments: <https://sahamati.org.in/blog/account-aggregators-making-investing-and-borrowing-simpler/> and also marshaling a case for unified nominations register: <https://sahamati.org.in/blog/unified-nominations-register-with-account-aggregator-framework/>

¹¹ Together with a measure to check or combat deceptive, fraudulent or bad behaviour such as undertaking evaluation by empaneled medical practitioners of the financial services provider

Making nominations mandatory: A key aspect for regulators (or the Parliament or state legislatures, as applicable) to consider is making nominations mandatory for financial consumers¹². For many financial assets, making of nominations has been seen as a choice exercised by the financial consumer (including at times exercising explicit opt-out in availing of the nomination facilities). This is suboptimal and frustrating for financial services providers and for the successors of the financial consumer - both have to deal with cumbersome paperwork and have to await outcomes of judicial procedures entailed¹³. Such paperwork, costs and delays are obviated by mandating utilization of nomination facilities. Even ethically or morally, financial consumers not availing of nomination facilities is reprehensible considering the avoidable costs, delay and lurch that their successors are placed in, and also having a second order impact on the financial services providers.

Such mandatory requirement of making nominations can be specified as an upfront requirement for all newly established or created financial assets. A deadline can be specified for legacy financial assets after which deadline, restrictions or prohibitions on transacting in such financial assets would apply. Discovery of current status of nominations across financial assets is possible via the Account Aggregator framework¹⁴, and together with provision of e-nomination facilities by the financial services providers, financial consumers would be able to view, review, provide or update the nominations.

Apart from due discharge, financial services providers earn gratitude, goodwill and good repute when providing easy and simple e-nomination facilities, and by providing speedy, simple and frictionless access, transaction ability or transmission of the financial assets to the nominees upon notification of incapacity or demise of the financial consumer.

Centralized reporting: Financial sector regulators can also consider means and measures to eliminate or reduce the multiplicity of outreach that successors need to do across different financial services providers upon the demise or incapacitation of a financial consumer. This could be achieved by enabling usage of CKYC registry or KYC registration agencies (or also through the Account Aggregator framework if that be feasible), such that the first financial services provider who receives and processes the nominees request, also uploads the information received to the CKYC registry and to the KYC registration agencies. Such data would include the death certificate or medical practitioners certification concerning the financial consumer, KYC

¹² This would also be in accordance with an observation of the Allahabad High Court (“it will be most appropriate that the Reserve Bank of India issues guidelines to the effect that no Savings Account or Fixed Deposit in single name be accepted unless name of the nominee is given by the depositors. It will go a long way to serve the purpose of the innocent widows and children, who are dragged on long drawn proceedings in the Court for claiming the amount, which lawfully belongs to them”) cited by the Reserve Bank of India in its circular of April 5, 2007 accessible here: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=3399&Mode=0>; the RBI circular, as can be seen, counsels the banks on following lines: firstly, ‘generally insist’ on nomination; secondly, explain the advantages of nomination; thirdly, require written refusal from the customer if still not persuaded to nominate, and finally, if declines to provide the refusal in writing, then the bank can open the account: “Under no circumstances, a bank should refuse to open an account solely on the ground that the person opening the account refused to nominate.”

¹³ Such judicial procedures include applying for and obtaining duly notarized copy of succession certificate or an order of a court of competent jurisdiction (when the financial consumer has not left a will) OR duly notarized copy of probate or letter of administration (when the financial consumer did execute a will)

¹⁴ See here <https://sahamati.org.in/blog/unified-nominations-register-with-account-aggregator-framework/>

information of the nominees and related papers. Since, the information of demise or incapacitation would also be available in the CKYC registry and with KYC registration agencies and can even trigger proactive outreach by the financial services providers to the nominees (some of whom may differ across financial assets). Such a measure would serve to smoothen the claim process for the nominees across the financial services sector by harnessing the available financial market infrastructure.

Claim on estate of the deceased: Credit facilities obtained by the deceased financial consumers that are outstanding could also trigger alert of the demise to the creditors. This could allow them to notify the nominees of the claim that subsists on the estate of the deceased requiring due discharge and repayment.

Eliminating or reducing references to the judiciary

Successors, even without any dispute among themselves, are compelled to approach the judiciary in case of death or incapacitated individual. The judiciary which is already overburdened, understaffed and facing huge backlogs is daunting to any ordinary citizen, and doubly so for successors coping with bereavement or caring for incapacitated individuals in terms of judicial procedures, costs and time entailed.

Equating or elevating nominees to legal and beneficial owners upon demise of financial consumer: Apart from making nominations mandatory for financial assets, a further measure that regulators (or the Parliament or state legislatures as applicable) must consider in respect of nomination facilities is equating or elevating nominees (as specified by the financial consumer) becoming legal and beneficial owners of such financial assets upon the demise of the financial consumer¹⁵, and/or in being mandate holders¹⁶ upon the financial consumer being incapacitated subject to claims of creditors of such financial consumers.

Under current legal and regulatory regime, by and large the nominees of financial assets are regarded as trustees or custodians of the financial assets, holding the same for the benefit of the legal heirs of the deceased financial consumer. This is further compounded by limitations on the number of nominees that may exist for certain financial assets, or inability to specify the percentage allocation of the financial asset when there are two or more nominees.

Combined with other measures (as also outlined earlier), such as financial consumers being able to:

¹⁵ Such a measure has already been specified for life insurance policies - see section 39(7) of the Insurance Act (amended and restated vide Insurance Laws (Amendment) Act, 2015, in force from December 26, 2014); also read: https://www.business-standard.com/article/opinion/statutory-nominations-can-reduce-disputes-121061300753_1.html which postulates similar approach; such a status also needs to factor that the estate may have outstanding debts and claims to be discharged, which would have in effect a prior charge before the claim of the nominees

¹⁶ Meaning or implying that the person is mandated or duly empowered to operate or deal with the financial asset on account of the incapacity of the financial consumer, which mandate or authority can be fully relied upon by the financial services provider; there can be facility to specify the mode of operation when multiple nominees have been specified including whether the operation is by the first named nominee OR anyone of the nominees OR joint operation by the nominees

- Specify any number of nominees,
- Specify percentage allocation of the financial asset to such nominees
- Specify successive nominees
- Specifying minors nominees (with or without specifying an adult or guardian)

the financial consumer can align the inheritance and succession plan of her financial assets by specifying the nominees who would constitute the inheritors and legal and beneficial owners of the financial assets upon the demise of the financial consumer.

This also removes the trustee or custodian status of a nominee or limited number of nominees vis-a-vis the inheritors, and possible conflict, contests or challenges that may be posed due to such roles, and which oftentimes results in approaching the judiciary for due determination.

Enabling such measures could serve to eliminate or reduce references to the judiciary on succession related matters (as concerns financial assets).

It is not to say that there will be no succession situations requiring reference to the judiciary or issues requiring judicial determination.

There can be real estate assets which in certain cities or states require probate. Similarly, if the financial consumer had contracted loans and debts, the creditors or claimants would have a prior charge on the estate: failure to discharge the same from her estate (as may be transmitted to the successors) may result in legal action. Courts may also need to appoint guardians if no adult or guardian was specified in the nomination of minors who need access or ability to transact for the benefit of the minors prior to such minor nominees reaching the age of majority. Finally, rival claimants to the deceased's estate may seek to challenge the inheritance and succession and hence approach the judiciary.

One hopes such situations, cases and circumstances requiring judicial reference or determination are limited.

Truly caring in the time of need

The advent of COVID-19 brought home the fragility of life in a way that none in living memory had considered. Both the first wave and the second wave, and the impending third wave, make it all too clear that taking safeguards (masks, frequent hand wash or use of sanitizers) and precautions (taking both the doses of the vaccine) are all too necessary lest life or health be placed in severe jeopardy.

It is also a time that compels specifying 'precautions' to reduce the impact of what the successors and financial services providers face on the demise of a financial consumer in relation to financial assets of such consumers even as the successors cope with the bereavement.

Financial sector regulators have done a lot to ease the process of accessing or transacting in financial assets and In transmission of financial assets to nominees, and it has by and large proved efficacious. However, such a process can be quite tedious, time consuming, and contains

many pain points, friction, lack of uniformity and is overall stressful to the successors (comprising nominees and claimants) navigating the deceased claims process.

Financial services providers which process such claims have to adhere to rules framed by the financial sector regulators or the Parliament or state legislatures, running the risk of not securing due discharge and/or of receiving regulatory reprimands or penalties if deviating from such rules. Some financial services providers may have also crafted their own procedures leading to lack of uniformity.

Additionally, a few of the limitations – *number of nominees or inability to specify percentage allocation* – most likely have come from a technology system capabilities and design perspective, where the recordkeeping capability or capacity (at the time when such limitations were specified) perhaps acted as the reason for the limits. In case of bank accounts, such limitations are in fact coded into the statute. In real life and relationships such limits don't apply. The technology and systems should accordingly adapt and be upgraded to enable financial consumers to deal with financial assets in the mode, manner and extent that they desire. In any case, technology has advanced sufficiently to address these needs and can be quite easily harnessed.

As this paper outlines, there are three high-level policy objectives against which to evaluate the current nomination facilities framework. The financial services providers can review and ease the process and requirements, and align to a common industry approach. The evaluation also indicates that many more measures, also outlined in this paper, that financial sector regulators can and should take. This includes extending nomination facilities addressing situations of the financial consumer being incapacitated. The Parliament of India or the state legislatures, as applicable, could also consider amending the relevant statutes governing certain financial assets to give effect to the measures outlined.

Adopting such measures would be a reassuring signal to the society at large, the financial consumers and their successors in particular, and to anyone who has lost or faces the prospect of losing a loved one and coping with an unfamiliar and difficult process, aggravated by the circumstances COVID-19 has brought, that the Indian financial services sector and its key stakeholders (including the financial sector regulators and the financial services providers) truly care.

The way forward

Nominations facility for each and every type of financial asset, within the regulatory domain of the financial sector regulators, viz, the *Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, and Pension Funds Regulatory and Development Authority*, as well as the *Ministry of Finance, Ministry of Labour and Ministry of Corporate Affairs*, require being evaluated (utilizing the table containing the measures recommended) for examining the current status of the nomination facilities and moving towards upgrading the same by changes to relevant laws, rules and regulations. Financial sector regulators make operational the measures recommended and undertake wider consultations if

necessary. Financial services providers can take the steps and measures in their own control and provide empathy, ease and convenience to the financial consumers and their successors.

Given the mention of the unclaimed funds at the beginning of the paper, it would not be out of place to also note the following: such unclaimed funds and the accumulations thereof¹⁷, during the time that they remain unclaimed, are intended for education or awareness of the financial consumers. Among the education or awareness campaigns could be to bring forth the advantages of nominations and overcome the hesitations. Upon the reimagined nominations process becoming operational, will also require education and awareness campaigns being undertaken that such unclaimed funds could provide.

The Government of India is also urged to consider changing the laws as required. India owes a debt to its investors who save or invest or keep their hard earned money with financial services providers. It is upto the financial sector regulators to ensure that such funds don't become part of the unclaimed financial assets, and are indeed available to the successors of the financial consumer in an easy, timely and simple manner.

ARIA & the author have, based on the white paper and the author's original article, evaluated three types of financial assets, and identified the appropriate authority which can consider adopting the measures recommended. ARIA & the author will continue to provide and publish further evaluations of other and further types of financial assets.

A consolidated listing of the measures is set forth in the Annexure and can be utilized as a framework to evaluate nomination facilities for financial assets.

¹⁷ For example, the Depositor Education and Awareness Fund administered by RBI or the Investor Education and Protection Fund administered by the Ministry of Corporate Affairs and other such funds that constitute unclaimed amounts belonging to successors of financial consumers who clearly remain unaware of these moneys

Annexure

	Summary of measures recommended for nominations facilities in financial assets	
	<i>Easy, uniform and simple process to check status of nominations and to make or change nominees</i>	
	<i>Simple, common nomination form/e-form across financial assets</i>	
	<i>Ability to specify any number of nominees</i>	
	<i>Ability to specify percentage allocation among nominees</i>	
	<i>Ability to specify successive nominees</i>	
	<i>Ability to make single scrip/folio/security level nominations</i>	
	<i>Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions</i> • <i>Option for completing or updating KYC of nominees at any time</i>	
	<i>Extending nomination facilities for addressing situations of incapacitated financial consumer</i>	
	<i>Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees)</i> • <i>Ability to defer the age of vesting (as regards minor nominees)</i>	
	<i>Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)</i>	
	<i>Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees</i>	
	<i>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. On reimaged nomination facilities becoming operational, further awareness campaigns can also take place.</i>	
	<i>Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets</i>	

Mr. Pramod Rao

Group General Counsel, ICICI Bank

Pramod presently serves as the Group General Counsel of ICICI Bank and provides strategic oversight to the legal function for the ICICI group including its banking subsidiaries in the UK and Canada. Pramod also oversees the Whistle Blower Policy of the Bank, and reports to the Audit Committee of the Bank for this role. Pramod is also a member of Board of Directors of ICICI Securities Ltd, ICICI Prudential Trust Ltd and ICICI Trusteeship Services Ltd. Pramod also serves as a member of the National Committee for Regulatory Affairs constituted by the Confederation of Indian Industry (CII), of the Advisory Council of Sahamati and of the SEBI Subcommittee for Regulatory Sandbox, which inter alia evaluates suitability of applications in the regulatory sandbox framework.



Pramod has previously served as the General Counsel for Citi India cluster for over 5 years, partner at IndusLaw and as the General Counsel of ICICI Bank for over 7 years, with many professional accomplishments in such roles. Pramod has a deep interest in Fintech, LawTech & startups: He has co-founded a LawTech enterprise, and served as a Board member for two startups. He also advises and mentors startups under the aegis of ICICI Bank's Startup Engagement Team & its Innovation Lab, NSRCEL of IIMB and of the No Changemaker Left Behind program by Agami, and leads piloting and adoption of technology solutions for various business, operational and legal requirements at ICICI group.

He has collaborated on certain iSPIRT projects including Sahay-GeM and the Sahamati AA Ecosystem. In the last few years, Pramod has also played a pivotal role in conceptualizing and adoption of online dispute resolution (ODR) by ICICI Bank and ICICI group. Pramod also engaged with policy makers, the government and the judiciary on ODR, which culminated in Niti Aayog constituted committee chaired by Justice Sikri penning the report on Designing the Future of Dispute Resolution: The ODR Policy Plan for India and separately, in the launch of ODR Handbook available at www.disputeresolution.online. He continues to play a key role in the ODR ecosystem.

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 advisor regulations by SEBI in 2013. ARIA was set up as a part of the inaugural RIA summit in 2017 from where a 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, and high levels of disclosure.

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Spotlight on: Current accounts, savings accounts and fixed deposits with banks and Safe deposit lockers

#ARIAtrulycares

Written By:

Mr. Pramod Rao

Group General Counsel, ICICI Bank
with inputs from ARIA

Spotlight¹ 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 Rs 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 most safe 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 and current accounts, and fixed deposits with banks. The norms for access to articles kept in safe custody with banks² and safety lockers³ 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, 1985.⁴

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 nominee⁵.

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 such⁶, a bank is not bound to receive such notice nor is bound by such notice even 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 authority⁷.

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

² Governed by section 45ZC of the Banking Regulation Act, 1949

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

⁴ <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..

⁵ 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

⁶ Section 45ZB of the Banking Regulation Act, 1949

⁷ Proviso to section 45ZB of the Banking Regulation Act, 1949

Table 1: Current and savings accounts, fixed deposits, safe custody and safety lockers

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

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 individual⁸. 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).

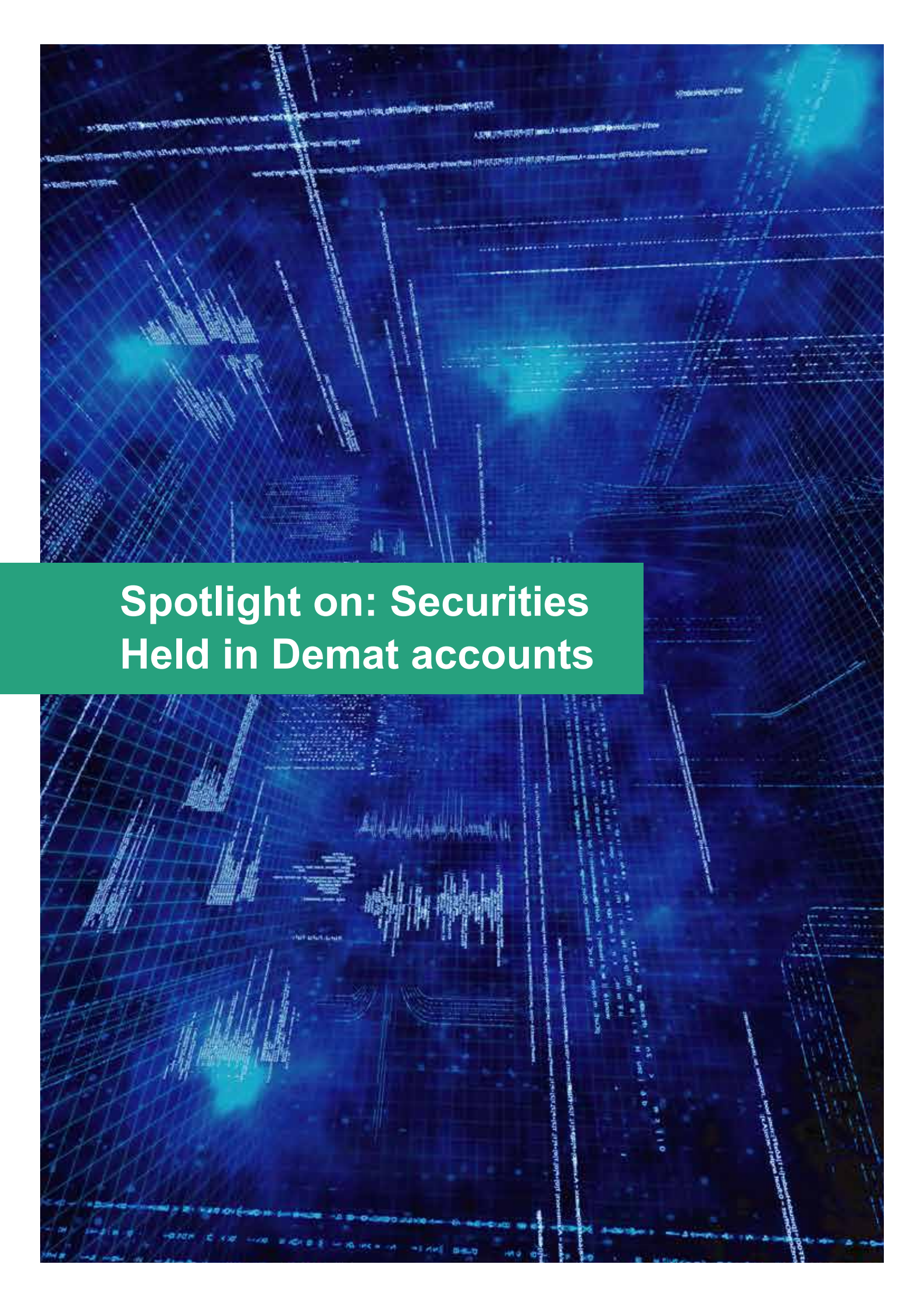
Providing e-nominations facility: Bank can under the provisions of the Information Technology Act of 2000 and the various mechanisms specified therein for concluding contracts, extend the facility of nomination forms being completed and submitted through authenticated means (such as internet banking 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.

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 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

		Who can implement the recommended measures	
		RBI/IBA	Parliament
	<i>Easy, uniform and simple process to check status of nominations and to make or change nominees</i>	✓	
	<i>Simple, common nomination form/e-form across financial assets</i>	✓	
	<i>Ability to specify any number of nominees</i>		✓
	<i>Ability to specify percentage allocation among nominees</i>		✓
	<i>Ability to specify successive nominees</i>		✓
	<i>Ability to make single scrip/folio/security level nominations</i>	N.A.	N.A.
	<i>Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions</i>	✓	
	Option for completing or updating KYC of nominees at any time	✓	
	<i>Extending nomination facilities for addressing situations of incapacitated financial consumer</i>		✓
	<i>Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees)</i>	✓	
	Ability to defer the age of vesting (as regards minor nominees)	✓	
	<i>Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)</i>	✓	
	<i>Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees</i>	✓	
	<i>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. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place</i>	✓	
	<i>Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets</i>		✓



Spotlight on: Securities Held in Demat accounts

Spotlight on: 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 Rs 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 upto 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 nominees⁹.

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.

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 nominees¹⁰.

Table 2: Depository or demat accounts

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

⁹ Akin to nominations for bank accounts excluding non-individuals

¹⁰ 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)

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 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.

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 cuts across all the shares and securities.

A few recent changes that have been made by SEBI¹¹ 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.

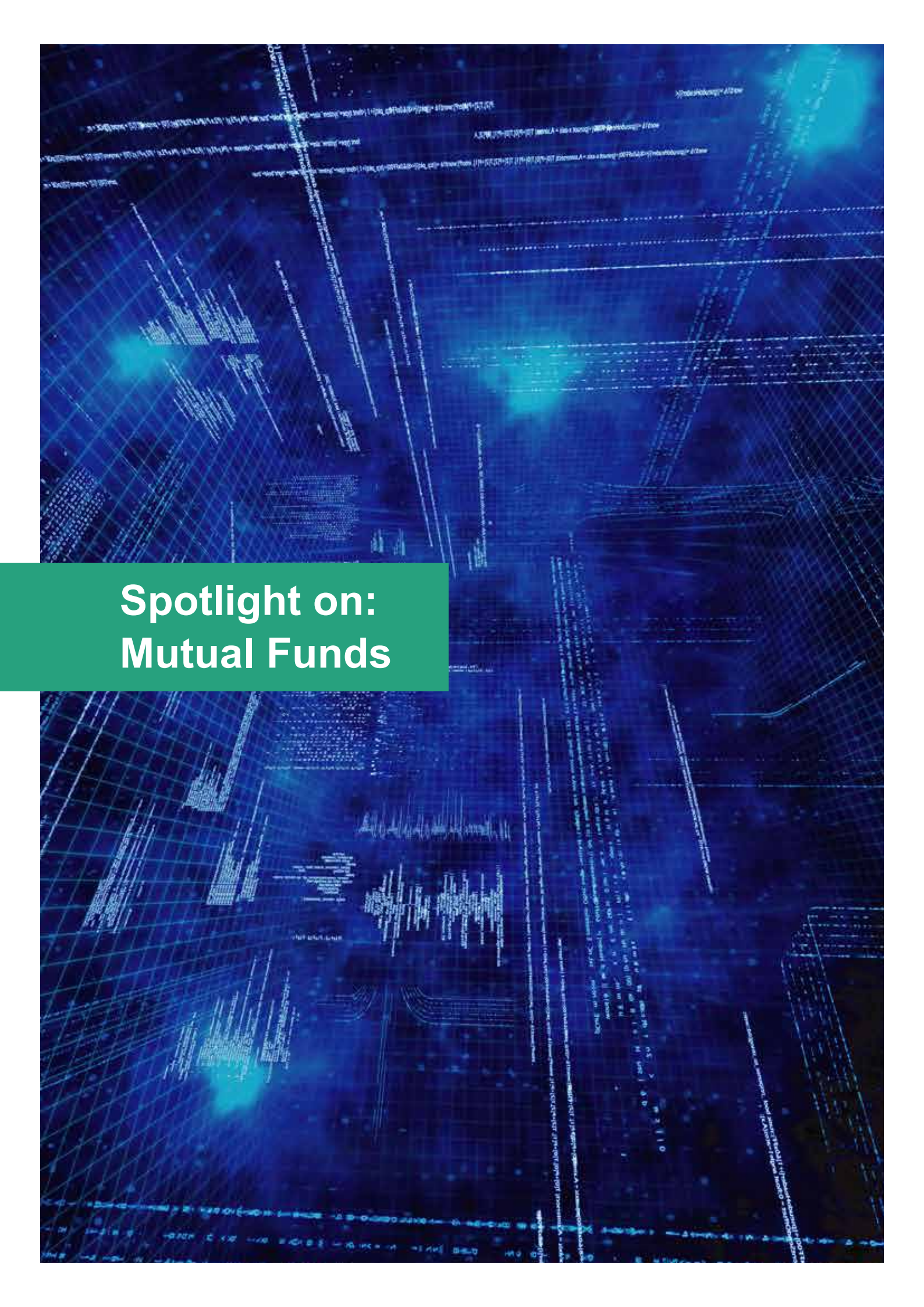
C. A key change has been dispensing with the witnessing of the nomination form in the following circumstances:

- 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).

¹¹ <https://bit.ly/3m4HoyS>

Assessment of measures recommended for depository or demat accounts

		Who can implement the recommended measures	
		SEBI	Parliament
	<i>Easy, uniform and simple process to check status of nominations and to make or change nominees</i>	✓	
	<i>Simple, common nomination form/e-form across financial assets</i>	✓	
	<i>Ability to specify any number of nominees</i>	✓ Currently restricted to 3. Needed unlimited number	
	<i>Ability to specify percentage allocation among nominees</i>		
	<i>Ability to specify successive nominees</i>	✓	
	<i>Ability to make single scrip/folio/security level nominations</i>	✓	
	<i>Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions</i> Option for completing or updating KYC of nominees at any time	✓ ✓	
	<i>Extending nomination facilities for addressing situations of incapacitated financial consumer</i>	✓	
	<i>Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees)</i> Ability to defer the age of vesting (as regards minor nominees)	✓ ✓	
	<i>Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)</i>	✓ Partially implemented (as provides a choice to not nominate)	
	<i>Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees</i>	✓	
	<i>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. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place</i>	✓	
	<i>Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets</i>	✓	✓



Spotlight on: Mutual Funds

Spotlight on: Mutual Funds

Investments in mutual fund schemes have grown by leaps and bounds, and particularly post demonetization. The current corpus under management of mutual funds is at Rs 31.4 trillion as on March 31, 2021.

Nomination is possible for mutual fund holdings. Nomination made by a mutual fund investor is applicable for units held in all the schemes under the respective folio / account and gets rescinded on redemption of such units or its transfer.

There is flexibility to specify upto three nominees, and in case of multiple nominees, the mutual fund investor can specify the percentage of share of each nominee with such allocation/share being required to be in whole numbers without any decimal. In the event percentage allocation is not specified, the presumption of equal division among the nominees applies.

Individuals who are joint investors in mutual funds (irrespective of the mode of operation) are also permitted to make nominations, being required to do so jointly.

Nominations can be made only by individuals. Non-individuals including a Society, Trust, Body Corporate, Partnership Firm, Karta of Hindu undivided family, a Power of Attorney holder and/or Guardian of Minor mutual fund investor cannot nominate.

Nominations can be in favour of individuals/ natural persons, and also the Central Government, State Government, a local authority, any person designated by virtue of his/her office or a religious or charitable trust can be specified as nominees. *This is an expanded set of eligible nominees (distinct from nominations permitted for bank accounts or demat accounts).*

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

Nominations can be varied or cancelled, and fresh nominations made.

Uniquely, there is a specification of consequences in case of death of a nominee. In the event of the nominee(s) predeceasing the mutual fund investor(s), the nomination is automatically cancelled. In case of multiple nominations, if any of the nominee is deceased at the time of claim settlement, that nominee's share would be distributed equally amongst the surviving nominees. Upon successive nominations being implemented and being specified by the mutual fund investor, such successive nominations will become operative instead.

Table 3: Mutual Fund folios/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)

Transmission of units in favour of the nominee(s) constitutes valid discharge of the asset management company, the trustee company and the mutual fund. It's important to note that while the nominee is legally entitled to receive the units, the nominee doesn't constitute the successor or inheritor of such units. The successors or legal heirs (*either in terms of the will executed by the mutual fund investor, or as per the personal laws of succession governing the*

mutual fund investor who dies intestate) are entitled to claim their rightful share from the nominee¹².

To claim the units after the death of a unitholder, the nominee has to complete the necessary formalities, such as completion of KYC process, along with proof of death of the unit holder, signature of the nominee duly attested, furnishing of proof of guardianship in case the nominee is a minor, and such other document as may be required for transmitting the units in favour of the nominee(s)¹³.

One key element, which appears to be excessive or contributing to avoidable friction is requirement of attestation of nominee's signatures. When the transmission amount is upto Rs 2 lacs, the attestation by a bank manager is required in a prescribed form, and when the transmission amount is more than Rs 2 lacs, the attestation by a Notary Public or a Judicial Magistrate First Class (JMFC) is required. Attestation requirements also extend to various documents including bank passbook / bank statement, death certificate and so on - all of which appear excessive and could be dispensed with.

A notable quirk is transferability of mutual fund units requires that the units be dematerialized and be in a demat account¹⁴ only after can it be transferred. This can adversely impact estate or succession planning by individuals in their own lifetimes as it limits the making of settlements or gifts (without dematerializing the units). This re-emphasizes the relevance of nomination facilities being upgraded to address succession issues and overcoming such constraints. It is also important to note that when units in mutual fund schemes are held in a depository or a demat account, the nomination details provided to the depository / depository participants will be applicable to such units and govern the transmission.

¹² 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 mutual fund folios/accounts, and hence segregating the folio with one nominee for each folio could be a better approach

¹³ See here for a very useful resource: <https://bit.ly/3AMiwlM>

¹⁴ Transferability of units is worthy of comment: *Regulation 37 of SEBI (Mutual Fund) Regulations, 1996 permits free transferability of mutual fund units, however since units are held in non-demat form, specified only in account statement and without issuance of unit certificates, and the specification that scheme documents can restrict or prohibit transfers, has meant that transfer of mutual fund units including by way of gifts has been significantly constrained. Equally, from the mutual fund providers, the ease and speed of redemption of units has also meant signaling that transferability may not be necessary. However, SEBI could consider measures to facilitate transferability including gifting or at least specifically gifting, so that estate and succession planning by individuals in their own lifetime can be eased. This would also place mutual fund units on par with most other financial assets which permit transferability without dematerialization, and not only on death as and by way of transmission.*

Regulation 37 of the SEBI (Mutual Fund) Regulations, 1996 specifies the following:

(1) A unit unless otherwise restricted or prohibited under the scheme, shall be freely transferable by act of parties or by operation of law.

(1A) A unitholder, in a close ended scheme listed on a recognized stock exchange, who desires to trade in units shall hold units in dematerialised form.

(2) The asset management company shall, on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production: Provided That if the units are with the depository such units will be transferable in accordance with the provisions of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996

Assessment of measures recommended for mutual fund investments

		Who can implement the recommended measures	
		SEBI/AMFI	Parliament
	<i>Easy, uniform and simple process to check status of nominations and to make or change nominees</i>		
	<i>Simple, common nomination form/e-form across financial assets</i>		
	<i>Ability to specify any number of nominees</i>	 Currently restricted to 3	
	<i>Ability to specify percentage allocation among nominees</i>		
	<i>Ability to specify successive nominees</i>		
	<i>Ability to make single scrip/folio/security level nominations</i>		
	<i>Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions</i>		
	Option for completing or updating KYC of nominees at any time		
	<i>Extending nomination facilities for addressing situations of incapacitated financial consumer</i>		
	<i>Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees)</i>		
	Ability to defer the age of vesting (as regards minor nominees)		
	<i>Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)</i>	 Partial - as provides a choice to not nominate	
	<i>Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees</i>		
	<i>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. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place</i>		
	<i>Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets</i>		



**More Spotlight sections
to follow soon**

