ARIA

Association of
Registered Investment Advisers

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Reimagining Nominations:
Making Succession Smoother and Simpler

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with inputs from ARIA

#ARIAtrulycares

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Foreword

Mr. K V Kamath
Former-President
New Development Bank

The -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

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Reimagining Nominations: Making Succession Smoother and Simpler[3]

Executive Summary

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.

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.

3 Written by and © Pramod Rao, 2021, and draws upon a previously published article: https://www.scconline.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 countless lives it has claimed, and which continues to be a threat, the crisis should only enhance our attention towards better 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 many situations the deceased may have been independently wealthy, represented in various financial or real assets created through hard work, 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 A[4].

Table A

₹28,800 Cr Value of unclaimed shares transferred to IEPF	**₹24,000 Cr** Value of unclaimed mutual fund units	**₹5,454 Cr** Value of unclaimed corporate dividends	**₹48,000 Cr** Unclaimed Public Provident Fund (PPF)
₹15,166 Cr Value of matured Insurance policies	**₹25,860 Cr** Unclaimed amount in bank accounts	**₹11,770 Cr** Unclaimed amount in UTI Schemes	**₹3,78,000 Cr** 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 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.

4 Data from https://recoversy.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

There can be two possible situations:

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

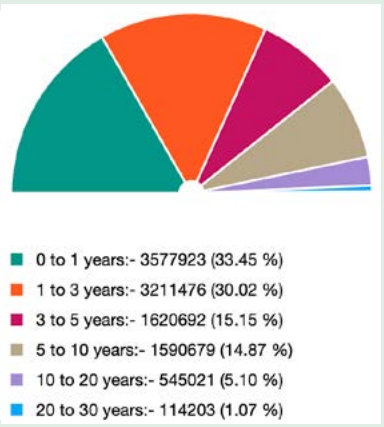
In the first situation, the will specifies the person who would administer the estate – the executor(s). While the will confers the authority on the executor, this authority must be confirmed by a judicial process called 'probate,' which establishes the genuineness of the will.

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 Grid[5] 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.

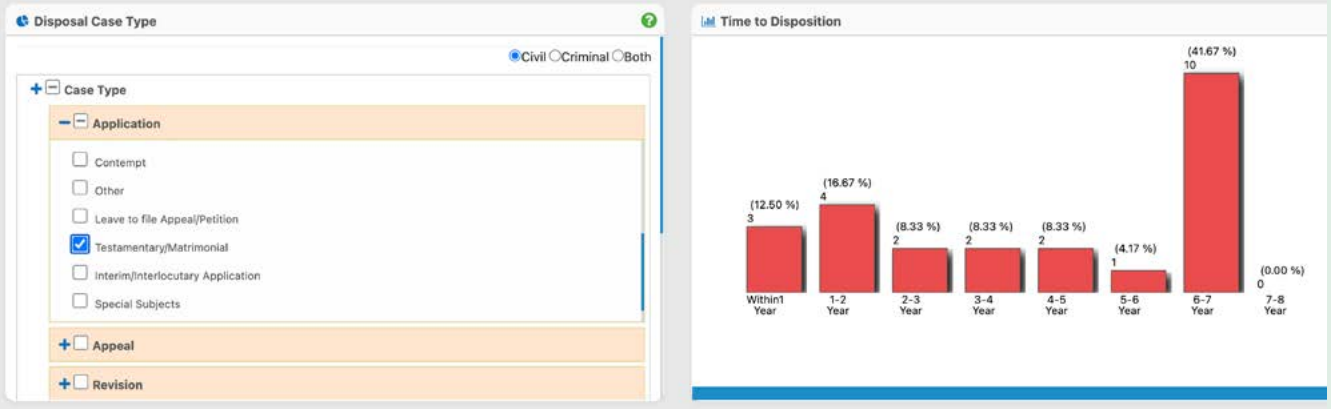
Table B: Age-Wise Pendency — Civil



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.

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 understand, the process itself can be pretty daunting and with no certainty of the time that's taken to reach the conclusion.

Table C: Time to Disposition, Civil — Testamentary/ Matrimonial



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

Indian *Jugaad* - enabled by lawmakers and regulators

It becomes clear that alternatives are needed to allow for a faster, smoother access to assets during their transmission to 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, 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 of financial consumers[6] and their successors[7]
- Due discharge for financial services providers upon providing access to or transmitting the financial assets to the successors
- Eliminating or reducing references to an overburdened judiciary, where litigants face considerable costs and delays

It becomes clear that alternatives are needed to allow for a faster, smoother access to assets during their transmission to the successors, especially in their time of need.

Convenience to Financial Consumers and to Their Successors

Convenience to financial consumers can be ensured 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 nominees[8]
- 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 addressing 'if...then...' scenarios.

Additional 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

6 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 Organisation 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

7 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 utilised to specify the legal heirs or the caregivers as intended and specified by the financial consumer for the financial assets

8 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

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 place[9].
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 nominees[10], 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 has personally examined the financial consumer, and a copy of which can be provided to the financial service providers. Nomination facility should extend to situations of incapacitation or demise of the financial consumer.

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.

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, the need of an independent assessment by a medical practitioner empanelled 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 and 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

9 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

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

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 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 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 successors[11] 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 assets[12]
  - notifying about incapacity or demise
  - verification of KYC and identity of nominees
  - reliance on death certificate and medical practitioners' certificate[13] 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 documents (including indemnities or third party confirmations) or 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).

Easy, simple, frictionless and uniform process in identifying the financial assets and notifying about incapacity or demise

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.

Making nominations mandatory: A key aspect for regulators (or the Parliament or state legislatures, as applicable) to consider is making nominations mandatory for financial consumers[14]. 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 entailed[15]. Such paperwork, costs and delays are obviated by mandating utilisation of nomination facilities. Even ethically or morally, financial consumers not availing of nomination facilities is reprehensible considering the

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

12 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/

13 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

14 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."

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

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 framework[16], 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 that grant speedy, simple and frictionless access and transmission of the financial assets to the nominees upon notification of incapacity or demise of the financial consumer.

Centralised 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 practitioner's certification concerning the financial consumer, KYC 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.

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

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 consumer[17], and/ or in being mandate holders[18] upon the financial consumer being incapacitated subject to claims of creditors of such financial consumers.

Under the current legal and regulatory regime, by and large the nominees of financial assets are regarded as trustees

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

17 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

18 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

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:

- 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 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 sanitisers) 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 the specifying of '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.

It is also a time that compels the specifying of '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 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 thereof[19], 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 up to 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.

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 up to 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 and 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 and 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 utilised as a framework to evaluate nomination facilities for financial assets.

19 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
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
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)
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 concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets

SPOTLIGHT[1] 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 banks[2] and safety lockers[3] 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.

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.

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.

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.scconline.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

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 nominee[5].

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 such[6], 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 authority[7].

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 individual[8]. 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

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

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

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.

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
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		☑
Ability to specify percentage allocation among nominees		☑
Ability to specify successive nominees		☑
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 • 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)	☑	
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		☑

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 ₹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[9].

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[10]

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)

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.

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.

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

A few recent changes that have been made by SEBI[11] 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
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	☑	☑

SPOTLIGHT ON
Mutual Funds

Investments in mutual fund schemes have grown by leaps and bounds, and particularly post demonetisation. The current corpus under management of mutual funds is at ₹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 up to 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.

In the event of the nominee(s) predeceasing the mutual fund investor(s), the nomination is automatically cancelled.

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, if 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 nominee[12].

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 other such 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.

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 up to ₹2 lac, the attestation by a bank manager is required in a prescribed form, and when the transmission amount is more than ₹2 lac, 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 dematerialised and be in a demat account[14] 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 dematerialising the units). This re-emphasises 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/3AMiwIM

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 dematerialisation, 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 recognised 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
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	
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)	☑ Partial - as 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. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	☑	
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 concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	☑	☑

SPOTLIGHT[1] ON:

Physical shares and securities issued by entities governed by the Companies Act, 2013 (and earlier versions of the Companies Act)

Even as the holding of securities in dematerialised form is being encouraged or mandated by policymakers and regulators, investors continue to hold share certificates, bond or debenture certificates issued by companies, corporations, and entities incorporated under the Companies Act 2013 (or earlier versions of the Companies Acts) for a variety of reasons. These can be of:

- listed companies
- unlisted companies or
- private limited companies.

This spotlight paper examines nomination facilities for such physical shares and securities.

Nominations for physical shares and securities

Making a nomination is possible for shares and securities held in physical form. However, only a single nominee is contemplated in section 72 of the Companies Act, 2013 and the relevant rules thereunder[2].

Joint owners of shares may jointly nominate any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

Whilst not specified in the statute or the rules thereunder, nominations for physical shares and securities can be made only by individuals, and only another individual or a natural person can be specified as a nominee[3].

Joint owners of shares may jointly nominate any person to whom all the rights in the securities shall vest in the event of death of all the joint holders

A minor can be a nominee. Whilst a guardian is not required to be specified (in terms of the statute or the rules[4]), a successive nominee can be specified who becomes entitled to the securities in event of death of the nominee during his minority[5].

1 Spotlight sections draw upon https://bit.ly/2WeoH2P written by Pramod Rao and incorporate inputs from ARIA

2 Rule 19 of the Companies (Share Capital and Debentures) Rules, 2014

3 This appears to have been derived from language used in section 72 mentioning death (and disposition on death) and hence limited to individuals

4 The form as prescribed requires the specification of guardian's name and address

5 See section 72(4) and Rule 19(11) of the Companies (Share Capital and Debentures) Rules, 2014; however the prescribed Form doesn't appear to be designed for this purpose

Nomination can be varied or cancelled and fresh nomination made[6].

Nominee = Owner OR Nominee = Trustee

Section 72 of the Companies Act, 2013 (in line with sections 109A and 109B of the Companies Act 1956, added to that statute in 1998) states that the securities would vest in the nominee "*notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise,..*" and the nominee "*become(s) entitled to all the rights in the securities,..., to the exclusion of all other persons, unless the nomination is varied or cancelled...*".

A logical understanding of the above provision and specific language can be to consider the nominee as the legal heir or successor to the securities.

However, courts in general, have taken the view that the nominee does not constitute the successor or inheritor of such securities[7]. This would imply that the successors or legal heirs (*either in terms of the will executed by the shareholder and bond holder and debenture holder, or as per the personal laws of succession governing the shareholder and bond holder and debenture holder who die intestate*) are entitled to claim their rightful share from the nominee[8].

Table 2: **Physical shares and securities**[9]

In the event of:	Transmission in favour of:	
	Nomination provided	Nomination not provided
Death of a single holder	Nominee (holding in trust or custody for benefit of legal heirs)	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 (holding in trust or custody for benefit of legal heirs)	Legal heirs (as per succession certificate / probate / letters of administration)

Clarity & Reforms Required

One key reform is doing away with the limitation of one nominee and permitting percentage allocation among the nominees. Such a change would allow the shareholders and bond holders and debenture holders to specify, as far as possible, their successors as nominees together with the desired percentage allocation among them. It would help reduce or remove possible friction and burden that the nominee may have in dealing with the legal heirs, successors and claimants. This would also be consistent with the law that permits and recognizes multiple owners (or joint owners) of shares and securities.

Further key reform is reiterating and reaffirming that nominees do indeed inherit absolutely as successors (as envisaged in section 72 of the Companies Act 2013 and earlier sections 109A and 109B of the Companies Act 1956), and not as trustees or custodians for other claimants.

The judicial decisions quite so often conflate varying approaches adopted in different statutes or laws governing different financial assets, or cite case law or legal definitions that may not be relevant in today's day and age, and at

6 See Rule 19(9) and Form SH.14 of the the Companies (Share Capital and Debentures) Rules, 2014

7 See *Jayanand Jayant Salgaonkar v Jayashree Jayant Salgaonkar* which extensively reviewed various court decisions and authorities; the Supreme Court had an opportunity to settle the issue (whether Section 72 has an overriding effect on the law of Succession or not) but did not do so - see *Aruna Oswal v Pankaj Oswal*: and cited in https://taxguru.in/income-tax/sc-dispute-inheritance-shares-civil-dispute-decided-companies-act.html)

8 Specification in the will that the nominee is the beneficiary can obviate challenges or issues from arising

9 Having regard to *Jayanand Jayant Salgaonkar v Jayashree Jayant Salgaonkar* and authorities cited therein

times, despite legislative intent to the contrary, read down the letter of the law[10]. Hence, express wordings and explicit communication by the legislature (as done for insurance policies[11]) are desired in specifying nominations leading to succession as a third mode of inheritance[12] and as a measure of promoting Ease of Living. Such a measure will also decongest courts (avoiding probate or issuance of succession certificates), and lead to reduced time and costs for the citizenry for succession related matters.

The above two reforms outlined would need to be in addition to the broader measures outlined in the White Paper and specified in the Annexure to this spotlight paper.

Incidentally, even for situations where probate is undertaken, the issuer of the shares and securities (whether such issuers be listed, unlisted, or private limited companies) or its registrars and transfer agents delay or defer the transmission process, or impose highly unreasonable or unfair conditions on the beneficiaries[13]. For such situations, policymakers and regulators can consider laying down strict norms for listed companies and unlisted public companies and the registrar and transfer agents to abide by nomination or of probate, without imposing any conditions and doing so within a specified period.

Policy on Physical v Digital

One key issue for policymakers and regulators to consider is whether physical shares and securities are indeed desirable, or whether we could move to completely digital and dematerialized shares and securities from the stage of issuance, holding or transfer or transmission.

For listed companies and unlisted public companies, all incremental issuance, subscription, or transfer of securities, after appointed dates, are required to be in dematerialized mode. Hence, the transmission had been the exception. From January 2022, SEBI requires that the transmission or transposition of securities held in physical or dematerialized form shall be effected only in dematerialized form[14]. Accordingly, a key policy measure implemented is that shares and securities of listed companies are to be transmitted in dematerialized mode when the nominee notifies of death of the holder, or when legal heirs approach for transmission. This measure also extends to unclaimed shares or securities, which will be released to the rightful claimant only in dematerialized form. These measures will ensure incrementally physical shares and securities are reduced and eventually eliminated. Furthermore, the option of rematerialisation should be done away with so that securities once dematerialised, are not issued/reissued in physical form thereafter.

In respect of private limited companies, the key legal requirement is that its Articles of Association are required to restrict the right to transfer shares. Depositories, based on board resolutions and indemnities, provide this facility for private limited companies. This could be mandated by the law to pave the way for bringing all the shares and securities of private limited companies into digital and dematerialized mode. Such a measure will be useful for the shareholders in as much as being able to make nominations or undertake pledges of the shares that are available for dematerialized securities.

The Benefits of dematerialization are manifold for corporates, investors, markets, society and the government[15], and not being dwelled in this spotlight paper.

10 Mere usage of the word 'vesting' or even using a notwithstanding clause which override testamentary dispositions or succession laws within the statutes don't appear to cut it with the courts in general; Further the courts in general appear to view: (a) nominations as only assisting in discharge, release and 'valid quittance' of the issuers, depositories or financial institutions, etc; (b) statutes embedding provisions on nomination as having a broader objectives and hence such embedded statutory provisions not being intended to changing laws of succession; (c) nomination procedures not being on par with testamentary disposition procedures and hence not capable of being an alternative to testamentary disposition (ignoring safeguards or procedures that did get instituted in different assets over the years). It is noted that certain court decisions did uphold nominees being successors though appear to be exceptions to the general set of rulings - see https://indiankanoon.org/doc/762343/, https://indiankanoon.org/doc/1285014/

11 See section 39(7) of Insurance Act, 1938, substituted vide the Insurance Laws (Amendment) Act, 2015 w.e.f. December 26, 2014

12 The other two modes being Intestate (without a will, hence succession in terms of personal laws, as applicable) or by a Will and Testament, which requires probate

13 See articles by Rajat Dutta on the issues faced here and here: These could be in violation of section 56 of the Companies Act, 2013, particularly the timelines laid down in section 56(4). Furthermore, only upon loss of instrument of transfer or if the duplicate share certificates require being issued is when indemnity has been specified in the statute and no other or further requirements. Requiring sureties or imposing other conditions are indeed excessive when viewed from such a perspective.

14 See Regulation 40 (1) of SEBI (Listing Obligations & Disclosure Requirements) Regulations, as amended by SEBI in January 2022: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2022_55526.html

15 See here https://nsdl.co.in/guidedtour/investor2.php or https://ww1.cdslindia.com/issuer/issuer-benefits.html

Way forward

Bringing necessary clarity and reforms *as well as* exercising the policy choice on physical certificates giving way to digital and dematerialization can prove transformative. Additionally, implementing the other measures recommended in the white paper, having regard to the assessment appended should be considered.

If indeed, physical shares and securities certificates are continued for any reason, the measures outlined (and addressing the two key items mentioned as requiring clarity and reform) will still be necessary for ensuring ease in the succession process via nominations.

Bringing necessary clarity and reforms *as well as* exercising the policy choice on physical certificates giving way to digital and dematerialization can prove transformative

Assessment of measures recommended for physical shares and securities issued by entities governed by the Companies Act, 2013 (and earlier versions of the Companies Act)

	Who can implement the recommended measures		
	SEBI[16]	Ministry of Corporate Affairs[17]	Parliament [18]
Easy, uniform and simple process to check status of nominations and to make or change nominees	☑	☑	
Simple, common nomination form/e-form across all issuers of physical shares/securities	☑	☑	
Ability to specify any number of nominees			☑ Currently restricted to 1. Should be unlimited
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 securities issuer • 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 physical securities (including in respect of legacy physical securities in a time bound manner)	☑	☑	☑
Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by securities issuers 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. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	☑	☑	
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	☑	☑	☑

*= Can be made available even as the law is being amended to allow for more than 1 nominee. Currently available only for minor nominee where nominee dies during minority: as noted the designated form does not provide for this possibility

16 For listed public companies

17 For unlisted public companies and private companies

18 For legislative measures as outlined

Summary of Spotlight

This set of spotlight papers focuses on following:

- Employees' provident fund, Employees' Deposit Linked Insurance and Employees' Pension Scheme 4
  - The law and set of schemes covers the corporate sector
- Provident funds governed by Employee Provident Funds Act, 1925 10
  - The law covers the government sector, notified government institutions and local bodies
- Public Provident Funds 13
  - This is a voluntary contributory provident fund
- Approach of Provident Funds in Dealing with Ill-health, Incapacitation or Disability 19
  - This outlines the contingencies of ill-health, etc. under all three types of provident funds
- National Pension System Accounts and Annuities 23
  - Retirement savings system

Different laws, different timing and periods of enactment, schemes framed under such laws, as well as clarifications or case laws have resulted in variance and inconsistent treatment of nominations across these sets of financial assets that are similar in intent and purpose to a large extent. It should be mentioned that certain variations are quite progressive, and certain provisions downright discriminatory.

This class of financial asset requires review and reconciliation of the inconsistencies, and upgrading to incorporate the recommendations made in the ARIA White Paper on **Reimagining Nominations: Making Succession Smoother and Simpler.**

SPOTLIGHT[1] ON:

Employees' provident fund, Employees' Deposit Linked Insurance and Employees' Pension Scheme

The aggregate of balances held by the Employees' Provident Fund Organization (EPFO) stands at Rs 15 trillion as of March 31, 2021, representing a pooled retirement savings mechanism created through a contributory provident fund. It is available for an organized workforce across 187 classes of establishments with over 0.68 million contributing establishments in the last financial year[2]. Do bear in mind there are also a select set of exempted establishments that operate private provident fund trusts for their employees[3].

The Employee Provident Funds and Miscellaneous Provisions Act, 1952 (Act)[4] requires the Central Government to frame the Employees' Provident Fund Scheme (EPF Scheme) and establish the Fund to be operated in accordance with the Act and the Scheme. Schedule 2 contains the elements to be specified in the scheme, which includes the nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination. By and large, the approach adopted on nominations (or on lack of nominations) in the EPF Scheme extends to the Employees' Deposit Linked Insurance Scheme[5] (EDLI) also framed under the Act and with elements drawn from Schedule 4 of the Act. The Employee Pension Scheme (EPS), also created under the Act, has a different approach and is called out in the relevant portion of this spotlight.

Nominations

Paragraph 61 of the EPF Scheme specifies that every contributor (member) must make a declaration specifying the nominees to whom the monies standing to the credit of the member in the Fund would be paid in event of the death of member. Family plays an important role in nominations and is dealt with in a separate subsection of this spotlight.

Every contributor (member) must make a declaration specifying the nominees to whom the monies standing to the credit of the member in the Fund would be paid in event of the death of member

There is no limit as to the number of nominees. There is also complete discretion in specifying the allocation of the monies among the nominees. Hence percentage allocation among multiple nominees is completely feasible.

EPFO has also facilitated e-nominations[6]. Making, changing or updating nominees is available electronically.

If the nominee is a minor, the member can choose while making the nomination to appoint another individual (who

1 Spotlight sections draw upon https://bit.ly/2WeoH2P written by Pramod Rao and incorporate inputs from ARIA

2 See EPFO dashboard for statistics around establishments, members etc here: https://mis.epfindia.gov.in/ChartDashboard/

3 For the curious, here's the link to list of exempt establishments: https://www.epfindia.gov.in/site_docs/exmpted_est/exempted_est_list.pdf?id=sm1_index. An individual who is part of an exempted establishment, should review the EPF scheme terms of such employer w.r.t nomination and succession

4 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf

5 See para 23 of EDLI, 1976, accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EDLI_1976.pdf

6 See here for process flow: https://www.epfindia.gov.in/site_docs/PDFs/UAN_PDFs/UAN_ForMembers/ProcessFlow_FilingOnlineNominationForm.pdf; or this YouTube video: https://t.co/91gAey9WZ0?amp=1

is a major and requires being a member of the family[7]), to receive the amounts on behalf of the nominee (during the minority of the nominee) in the event of the death of the member.

Consequences of no nominations

Typically for financial assets without nominations, the law of inheritance applies[8]. However, in the case of the EPF Scheme, EDLI and EPS, there are separate designs for the release of funds.

So, in the case of EPF Scheme and EDLI, when no nomination subsists, or nomination is only for a part of the money (*for eg., if the member said 50% to mother, and failed to specify anyone else for the balance*), then the money standing to the credit of the member when no nomination subsists or the part on which no nomination subsists, is payable to the members of the family[9] in equal shares.

However, when there are other family members, the following individuals are not entitled to a share:

- sons who have attained maturity
- sons of a deceased son who have attained maturity
- married daughters whose husbands are alive,
- married daughters of a deceased son whose husbands are alive
- A person convicted of murder or abetting the murder of the member (- during the trial/proceedings, right to receive stands suspended)[10]

Even the widow(s) and children of a deceased son can receive between them in equal parts only the share which that son would have received **if** he had survived the member **and** had not attained the age of majority at the time of the member's death.

A further scenario is also contemplated in the EPF Scheme: situations when the above doesn't apply, then the person legally entitled to such money, shall receive the money.

For EPS, do see the Annexure, with the last two bullet points dealing with situations of no family.

Table 1: **Employees' Provident Fund and EDLI**

In the event of:	Transmission in favour of:	
	Nomination provided	**Nomination not provided**
Death of member	Nominees, per the allocation, specified	Equal share to family members[11], and when there are other family members, the following individuals are not entitled to a share: • sons who have attained maturity • sons of a deceased son who have attained maturity • married daughters whose husbands are alive, or • married daughters of a deceased son whose husbands are alive • A person convicted of murder or abetting the murder of the member If the above doesn't apply: the person legally entitled receives the money

Incapacity

While the EPF Scheme contemplates the release of sums of money when the member is fully or totally incapacitated[12]

7 Proviso to para 61(4A) does specify that "*...where there is no major person in the family, the member may, at his discretion, appoint any other person to be a guardian of the minor nominee*". Definition of family is examined subsequently

8 For a brief recap, of the two situations (with will or intestate), see the relevant portion of the ARIA White Paper: https://aria.org.in/wp-content/uploads/2021/09/ARIA_White-Paper_Spotlight_Combined_V2.pdf

9 An explanation adds that a member's posthumous child, if born alive, shall be treated in the same way as a surviving child born before the member's death.

10 Para 70A of the EPF Scheme

11 Defined term - see below section

12 Para 69 of the EPF Scheme

guidance could be provided to nominees or family members on how to do so smoothly and simply.

Family centricity & circumstances for invalidation

A unique aspect of nominations under the EPF Scheme is the importance it places on 'family, which is a defined term in the EPF Scheme.

Take a few specifications:

- If a member has a family at the time of making a nomination, the nomination is required to be **only** in favour of one or more persons belonging to her family. Any nomination made by such a member in favour of a person not belonging to her family is invalid.

- If at the time of making a nomination the member has no family, the nomination may be in favour of **any** person or persons. If the member subsequently acquires a family, the earlier nomination becomes invalid. The member then has to make a fresh nomination in favour of one or more persons belonging to her family.

- Similarly, a fresh nomination is required to be made by the member on her marriage. Nomination made before such marriage becomes invalid.

Legally recognized adoption by another person of a child of a member (or child of a deceased son of the member) results in such a child being excluded from the family of the member for purposes of the EPF Scheme

Invalidity impacts the persons previously nominated adversely as also the family members when no fresh nominations have been made by a member.

Who, then, comprises 'Family'?

In terms of para 2(g) of the EPF Scheme, "family" means:

- In the case of a male member,
  - his wife[13],
  - his children, whether married or unmarried,
  - his dependant parents and
  - his deceased son's widow and children:

- in the case of a female member,
  - her husband[14],
  - her children, whether married or unmarried,
  - her dependant parents,
  - her husband's dependant parents[15] and
  - her deceased son's widow and children.

Legally recognized adoption by another person of a child of a member (or child of a deceased son of the member) results in such a child being excluded from the family of the member for purposes of the EPF Scheme.

In the case of EPS, 'family' has a different definition[16]. An outline of what type of pension is paid to whom in terms of the EPS is outlined in the Annexure.

It's complicated

For a large set of the workforce governed by the EPF Scheme, perhaps the limitations placed on nominees having to be family members or of invalidation in certain circumstances probably do work or have no visible impact.

13 A member can exclude his wife, if he **proves** that she's ceased being entitled to maintenance under the personal law or community customary law which governs the couple. Then she stops being recognized as a member of the family for the purposes of the EPF Scheme; the member can subsequently reinstate her recognition as a family member by notifying EPF Commissioner

14 A member can exclude her husband (and consequently his dependent parents) by giving a notice to such effect to the EPF Commissioner; she can also cancel such exclusion subsequently by giving notice to the EPF Commissioner

15 If the member has excluded her husband, then husband's dependent parents also stand excluded; see footnote above. Presumably, canceling the exclusion of the husband also will result in re-inclusion of his dependent parents

16 In terms of para 2(vii) of the EPS, 'family' means: wife in the case of male member; husband in the case of a female member; and sons and daughters of a member and include children legally adopted by the member

It may, however, not be so for everyone.

Take the most commonplace situation: An individual at the start of her career would make the EPF nominations at the time of joining the establishment. If she's unmarried, more often than not, the nominees would be her parents. Upon marriage, such nomination is rendered invalid. If she fails to update the nominations, her legal heirs would be hamstrung in receiving the monies without judicial process.

Situations of separation (as a prelude to divorce) that may cause an individual to reconsider nominations could be curtailed due to the requirements of the EPF Scheme. Perhaps the exclusion of spouses, as contemplated in the EPF Scheme may assist. But again, think of how many individuals consider nominations or their validity/invalidity when passing through such situations.

Morbidity in the current circumstances of Covid-19 can also play spoilsport.

Certain portions of the definition of 'family' itself could be considered sexist. For a woman member, the husband's dependent parents are family. For the man, the wife's dependent parents are not. Widows and children of a deceased son are family. A widower and children of a deceased daughter are not family.

Consider also the situations of domestic relationships or live-in relationships[17] (termed as common law partners in certain jurisdictions), when couples choose to cohabitate or stay together: if either or both of them want to specify the other as a nominee, they would be stymied due to lack of fulfilling the definition of 'family'.

Finally: unlike any other financial asset, and due to lack of fulfilling the definition of 'family', individuals belonging to the LGBTQ+ community who incidentally no longer face criminality in India, and have gained a wider acceptance in the society, the requirements of the EPF Scheme still prevent their partner from being a nominee or from being considered family. Members of this community would require either the ability to marry to be recognized in the law (which will also require a recast of the definition of 'family' in the EPF Scheme) or the requirements of a nominee having to be a member of the 'family' being reconsidered.

Concluding remarks

Hence, while in many aspects EPF (and EDLI) are progressive (*no limit as to several nominees, or percentage allocation being permissible, or e-nominations facility*), the limitation posed due to the requirement of nominees having to be family members, requires to revisit. For EPS, the design of the scheme reckons only a family comprising spouse and children, and merits an evaluation of whether it fulfills the underlying objectives. The overall scheme or approach, if also embeds or encourages nomination as the fulcrum, then those that the member considers appropriate would be the beneficiaries rather than a pre-set flow among persons specified by the scheme.

At a broader level, for all three - EPF, EDLI and EPS, need for review and reforms is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or dispensing with linkage to 'family' altogether when making nominations. Similarly, the consequences of no nominations and who are entitled (or disentitled) could also be reviewed and made non-discriminatory.

At a broader level, for all three - EPF, EDLI and EPS, need for review and reforms is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or dispensing with linkage to 'family' altogether when making nominations

The invalidity of nominations that occurs on the happening of life events also could be recast: perhaps, the approach could be to treat the nominees prior to the life event as trustees or custodians, and hence who can receive the money in trust or custody for the legal heirs.

All in all, if references to the judiciary can be avoided or reduced, and the provisions updated to reflect the societal changes and progressive approach, to enable the rightful individuals as per the member's desire to receive the money, the broader objectives will be achieved.

17 Recognised by the Supreme Court in Kushboo v Kanniammal https://indiankanoon.org/doc/1327342/, also see Indra Sarma v VKV Sarma https://indiankanoon.org/doc/192421140/ for a further analysis of live-in relationships

Assessment of measures recommended for Employees' Provident Fund, EDLI and EPS

	Who can implement the recommended measures	
	Central Government/EPF Organisation	Parliament
Easy, uniform and simple process to check status of nominations and to make or change nominees	*Available* - however nominees are limited to 'family' members as defined, which requires revisit	
Simple, common nomination form/e-form across EPF, EDLI & EPS	☑	
Ability to specify any number of nominees	Available	
Ability to specify percentage allocation among nominees	Available	
Ability to specify successive nominees	☑	
Ability to make single scrip/folio/security level nominations	N.A.	
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such providers that facilitate financial transactions Option for completing or updating KYC of nominees at any time	Available Available	
Extending nomination facilities for addressing situations of incapacitated financial consumer	☑ exists partially - to be simplified	
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 EPF/EDLI/EPS (including with respect of legacy accounts in a time bound manner)	☑	
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	☑	
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on the advantages and benefits of nomination. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	☑	
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 the concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	☑	

Annexure on EPS:
Employees' Pension Scheme[18]

In the event of death of the member, who opted for deferring the age of drawing pension under this sub-paragraph, after attaining the age of fifty-eight years and before the commencement of the pension so deferred: the family of the member will be entitled to a pension under EPS from the date following the date of death as if the member monthly pension had commenced on the date of death.

Subject to certain conditions applicable to the member, pension to the family is payable from the date following the date of death of the member. EPS outlines the payments as follows:

- Monthly widow/widower pension
  - payable upto the date of death of the widow/widower or remarriage, whichever is earlier
  - If there are 2 or more widows, pension shall be payable to the eldest surviving widow. On her death, it shall be payable to the next surviving widow, if any. "Eldest" means seniority with reference to the date of marriage

- Monthly children pension
  - Any surviving children, within the definition of family, shall be entitled to a monthly children pension (in addition to the monthly widow/widower pension)
  - Such pension for each child is equal to 25% of the amount payable to the widow
  - Such pension is payable until the child attains the age of 25 years
  - Such a pension is payable to a maximum of two children at a time and runs from the oldest to the youngest child in that order
  - If the son or daughter of the deceased member is permanently and totally disabled, such son or daughter shall be entitled to payment of monthly children pension or orphan pension, as the case may be, irrespective of age & of number of children in the family

- Monthly orphan pension
  - If the member is not survived by any widow and is survived by children within the definition of family, or if the widow pension is not payable, the children shall be entitled to a monthly orphan pension equal to 75% of the amount of the monthly widow pension
  - Such pension is payable to each orphan till such orphan attains the age of 25 years
  - Such pension shall be payable to an orphan beyond the age of 25 years, if such orphan is suffering from a disorder or disability of mind or who is physically crippled or disabled.
  - In the event of death or remarriage of the widow/widower after sanctioning of widow/widower pension, the children shall be entitled in lieu of the monthly children pension, to a monthly orphan pension from the date following the date of death/remarriage of the widow/widower

- A member who is not married or who does not have any living spouse and/or an eligible child, may nominate a person to receive benefits as laid down hereinafter provided that in the event of his/her acquiring a family subsequently, the nomination so made shall become void. Such a nominee is entitled to the monthly widows pension in accordance with EPS terms.

- If a member dies leaving behind no spouse and/or an eligible child falling within the definition of family, and no nomination exists, the widow pension shall be paid either to the dependent father or dependent mother as the case may be. On grant of pension to such a dependent father, in the event of death of the father, the pension shall be extended to the surviving mother for her lifetime[19].

18 See https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPS95_update102008.pdf

19 If the deceased member had not rendered pensionable service on the date of exit from the employment which would have made him entitled to a monthly members pension, but had opted to retain the membership of EPS, the nominee or the dependant father or the dependant mother, as the case may be, shall be entitled to a withdrawal benefit as provided in the EPS terms

SPOTLIGHT[20] ON:

Provident funds governed by Employee Provident Funds Act, 1925

The Employee Provident Fund Act, 1925[21] governs provident funds for those in the government sector, including the government provident fund, the railway provident fund as well as provident funds of notified government institutions and of local authorities.

It contemplates nomination in a manner that merits a special callout.

Rights of nominees

A key right that is conferred on the nominees is that the nominees are entitled to the sums held in the EPF to the exclusion of all other persons, and notwithstanding anything specified in any law, or in any disposition, testamentary or otherwise[22]. Hence in respect of the sums released from the EPF, the nominees become legal and beneficial owners of the sums, and are not subject to the concept of regarding nominees as trustees or custodians for legal heirs in respect of such sums.

A key right that is conferred on the nominees is that the nominees are entitled to the sums held in the EPF to the exclusion of all other persons, and notwithstanding anything specified in any law, or in any disposition, testamentary or otherwise

The above right is subject to the nomination being validly made, not being varied or canceled, or becoming invalid due to a specified contingency. Further, if the nominee predeceases the subscriber or depositor, then the nomination becomes void and is of no effect.

This makes EPF (of the category specified) a financial asset that devolves without reference to a will or the personal laws of the deceased, sidesteps the need for judicial reference, and simplifies the entire inheritance process. It may be mentioned that it is not entirely free from doubt on whether the judiciary gives the effect as contemplated in the statute in this respect.

Successive nominees

The EPF Act also recognizes the concept of successive nominees[23]. It states that when provision has been made in the nomination, in accordance with the rules of the fund, conferring upon some other person such right in the stead of the person deceased, such right shall, upon the death as aforesaid of the said person, pass to such other person.

Such a concept of successive nomination enables individuals to plan for contingencies, and smoothes the process considerably. It extends the benefit of devolution or disposition to a second set of nominee/s without reference to a will or the personal laws of the deceased, sidesteps the need for judicial reference, and simplifies the entire inheritance process even for the contingency.

20 Spotlight sections draw upon https://bit.ly/2WeoH2P written by Pramod Rao and incorporate inputs from ARIA

21 Accessible here: https://legislative.gov.in/sites/default/files/A1925-19.pdf

22 Section 5(1) of the EPF Act, 1925

23 See proviso to section 5(1) of the EPF Act, 1925

Consequence of no nomination

Briefly, the statute outlines the approach to release of sums standing to the credit of a subscriber or depositor in any fund, subject to the rules of the fund, as follows, in sequential order:

- the sums shall be payable to a dependent[24] or such person authorized under law to receive the sums
- subject to a cap of Rs 5000/-, and when sums not payable to dependent or person authorized under law, then:
  - any person nominated to receive the sums under the rules of the fund,
  - If no person is nominated, then any person appearing to be entitled to the sums
- When the above two scenarios are not applicable, then the sums shall be payable to:
  - any person nominated to receive the sums under the rules of the fund, subject to furnishing the probate or letters of administration (granting administration of the estate of the deceased) or succession certificate entitling the holder to receive the sums
  - where no person nominated, to any person who produces probate, letters of administration or succession

It will be noted that the above also describes or refers to nominees and hence could be confusing on the status of nominees and their entitlement. Such a reference or the amounts specified in the provision is part of the statute since 1925. Given that the separate provision on 'rights of nominees' (as outlined earlier) has a non-obstante clause - which means it has an overriding effect - and was added/substituted in 1946 (hence is a later addition to the 1925 statute), would mean that a valid nomination will prevail over the above described sequence. In the absence of a nomination, or an invalid nomination or if the nomination becomes void, then the above sequence has relevance.

The rules of the provident fund governed by the EPF Act, 1925 and case law require a closer look and a deeper review on whether they reflect the above, or continue to specify the sequence described and utilize the enabling framework that the EPF Act, 1925 specifies.

Concluding remarks

The subscribers or depositors (or members) of the Government provident fund, railway provident fund and provident funds of other notified institutions and of local bodies can specify nominees who would receive the sums accumulated and saved upon death of the subscriber or depositor.

In terms of the statute atleast, such nominees receive the sum overriding testamentary disposition or personal laws of succession when a person dies intestate. This is a laudatory measure as it doesn't put the nominees through the rigors of seeking recourse to the judiciary for probate or letters of administration or succession certificate, and completes the inheritance process right away.

The law governing such provident funds is also progressive in terms of recognizing the concept of successive nominees, and addresses the unfortunate circumstances of demise of both the subscriber/depositor/member and of the first set of nominee/s. These measures should be reflected in the rules of the provident fund, as the statute enables the same. Such rules should be reviewed and if required revised to take full benefit of the enabling provisions.

The subscribers or depositors (or members) of the Government provident fund, railway provident fund and provident funds of other notified institutions and of local bodies can specify nominees who would receive the sums accumulated and saved upon death of the subscriber or depositor

The enabling provisions in the EPF Act 1925 - of conferring legal and beneficial ownership on nominees, and recognition of successive nominations - are a part of the 15 recommendations made in the *ARIA White Paper on Reimagining Nominations: Making Succession Smoother and Simpler* as measures that should extend to all financial assets. For the regulators and policymakers, the EPF Act provides strong legislative precedent and as something available for employees of various governments, railways and various governmental authorities, boards and institutions, and which can also become available to and extend to financial consumers in respect of all financial assets.

24 See section 2(c) of the EPF Act, 1925: "*...means the following relatives of a deceased subscriber or depositor...namely: a wife, husband, parent, child, minor brother, unmarried sister and a deceased son's widow and child, and, where no parent of the subscriber or depositor is alive, a paternal grand-parent*"

Assessment of measures recommended for Employees' Provident Fund (under EPF Act, 1925)

	Who can implement the recommended measures	
	Central Government	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	Available	
Ability to specify percentage allocation among nominees	Available	
Ability to specify successive nominees	Available	
Ability to make single scrip/folio/security level nominations	N.A.	
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)	☑	
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	☑	
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	☑	
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	Available	

*nominees limited to 'family' members as defined, which requires revisit

SPOTLIGHT[25] ON:

Public Provident Funds

Unlike Employee Provident Fund Act, 1925 or Employee Provident Funds and Miscellaneous Provisions Act, 1952 which provide for a mandatory provident fund for government employees and corporate employees respectively, Public Provident Fund is a voluntary contribution provident fund system.

The Public Provident Funds Act, 1968 (PPF Act)[26] required the Central Government to frame the Public Provident Fund Scheme (PPF Scheme) and establish the Fund to be operated in accordance with the Act and the PPF Scheme.

In 2018, the PPF Act was repealed and the PPF Scheme was brought under the purview of the Government Savings Promotion Act, 1873 (the GSP Act)[27].

Having regard to the savings clause of the GSP Act when repealing the PPF Act, both sets of provisions and PPF schemes established and operative under the PPF Act and GSP Act are referenced and specified in this spotlight. Under the GSP Act, there are also GSP General Rules, 2018: Given the specification of nominations, consequences of no nominations, etc in the GSP Act, reflected in the PPF Scheme and its Form 1, and having regard to the following para 16, the General Rules may not be applicable: *Provisions of the General Rules shall, so far as may be, apply in relation to the matters for which no provisions have been made in this Scheme.* Do see Annexure for a short synopsis of General Rules re nominations and related provisions.

Specification in the PPF Scheme (& clarifications thereto!)[28]

A subscriber may specify one or more nominees. When there are more than one nominee, the subscriber can mention the percentage allocation to each nominee. If this is not mentioned, the amounts will be payable in equal shares to all the nominees after the death of the subscriber. It is noteworthy, that when there is more than one nominee, and either or any of them is dead, the amounts are payable to the surviving nominee/s.[29]

When there are more than one nominee, the subscriber can mention the percentage allocation to each nominee. If this is not mentioned, the amounts will be payable in equal shares to all the nominees after the death of the subscriber

Nominations can be cancelled or varied. In the case of a single nominee predeceasing the subscriber, or where there are two or more nominees, and all of them predecease the subscriber, the nomination becomes void.

If any nominee is a minor, the subscriber may appoint any person to receive the amount due under the account in the event of the death of the subscriber during the minority of the nominee[30]. Where there is no such person appointed or specified, the amounts can be received by the guardian of the minor for the use of the minor[31].

On the death of a subscriber, the nominees are required to make an application in a prescribed form, together with proof of death. The amounts, net of any loan or interest on loans taken by the subscriber, is released to the nominees. The PPF account is itself closed and cannot be continued.

25 Spotlight sections draw upon https://bit.ly/2WeoH2P written by Pramod Rao and incorporate inputs from ARIA

26 Accessible here: https://legislative.gov.in/sites/default/files/A1968-23.pdf

27 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=148

28 PPF Scheme under PPF Act is accessible here: http://www.nsiindia.gov.in/writereaddata/FileUploads/PPF.pdf; PPF Scheme 2019 under GSP Act is accessible here: https://www.indiapost.gov.in/VAS/DOP_PDFFiles/Savings%20Bank/Public%20Provident%20Fund%20Scheme%202019%20English.pdf

29 See section 4A(3) of the GSP Act; it is not clear how the percentage allocation is redone in such situations

30 See section 4(3) of the GSP Act; It will also be of interest to note that in section 8(2) of the PPF Act, it was specified that where the nominee is a minor, the amounts shall be payable to any guardian of the property of the minor appointed by a competent court, or where no such guardian has been so appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

31 See section 4A(2)(b) of the GSP Act

When there are more than one nominee, they are required to give a joint discharge on the prescribed form at the time of receiving payment. However, in case some nominee/s are not available or are not interested to take payment, payment may be made to the nominee/s who want to take payment of her share/s leaving the share of other nominee/s in the account. This is a laudable measure, as it doesn't hold up the payment on account of the unavailability of one or more nominees (*for example, if they are non-resident Indians, or as in the current Covid-19 circumstances, cannot travel*).

It is noteworthy that under the PPF Act, though there could be any number of nominees, or even percentage allocation among them, the nominees didn't get the right of ownership. Nominees were only authorized to collect the money on the death of the subscriber and keep it as a trustee for the benefit of the persons entitled to it under the law of succession. This position changed under the GSP Act. The subscriber can specify the nature of entitlement of nominees and whether receives the amounts as an owner or a trustee[32]. Such entitlement however is subject to rights of an executor or an administrator or legal representative of the deceased to recover from the person receiving the amounts[33], as also as the right of recovery by every creditor or the claimant against the estate of the deceased[34].

A Minor Complication

PPF Account can be opened on behalf of minors. However, in terms of the PPF Scheme under the PPF Act no nomination was permissible for accounts opened for minors. Accordingly, in the event of death of the minor, the guardian was not entitled to the amounts, and the amounts were payable to the legal heirs of the minor.

This changed under the GSP Act. For a PPF Account of a minor, the guardian[35] can designate the nominees[36]. Furthermore, for legacy PPF Accounts of minors, for which no nominations were being accepted, the amounts are payable to the guardian[37].

PPF Account can be opened on behalf of minors. However, in terms of the PPF Scheme under the PPF Act no nomination was permissible for accounts opened for minors

There can also be the situation of death of the guardian. The account of the minor remains operative and unaffected by such demise. The surviving natural guardian or a guardian appointed by a competent court may continue the account of minors after producing necessary guardianship certificates.

Consequence of no nomination

As such, the usual judicial process of probate (if there is a will) or of appointment of administrator when the death has been intestate (without a will) or securing of succession certificate is triggered on no nomination being in force at the time of death of the subscriber.

However, one noteworthy provision made is that if within three (3) months of death of the subscriber, if probate or letters of administration or succession certificate is not produced to the relevant bank or post office, then subject to such procedures as prescribed, the bank or post office can up to a limit prescribed, pay the same to any person appearing to be entitled to receive or administer the estate of the deceased subscriber[38]. Such a measure, at least provides a time bound relief to the legal heirs or successors bereft of nomination in their favor since ordinarily the judicial process of obtaining probate or letters or administration or succession certificate easily exceeds the time period specified to obtain a release of amounts.

32 See Section 4(1) of the GSP Act and also see Form 1, para 13 in https://www.indiapost.gov.in/VAS/DOP_PDFFiles/Savings%20Bank/Public%20Provident%20Fund%20Scheme%202019%20English.pdf

33 See Section 5(2) of the GSP Act; it is arguable that if the subscriber designated the nominee as an owner, then the executor or administrator or legal representative should give effect to the same; it would be when the nominee is designated as a trustee, that the amounts are recoverable and applied as per the will or the personal laws governing succession in case of intestate death. These items require clarity.

34 See Section 5(3) of the GSP Act

35 GSP Act defines a guardian in section 3(h) as follows: *either of the parents; or where neither parent is alive or where neither or the only living parent is incapable of acting as such, a person entitled under the law for the time being in force to have the care of the property of a minor; or legal guardian appointed by a court;* and minor in section 3(i) as follows: *a person who has not attained the age of majority under the Indian Majority Act, 1875*

36 Proviso to section 4(1) of the GSP Act

37 See Section 4A(3A) of the GSP Act

38 See Section 4A(4)(a) of the GSP Act; Such judicial process rarely concludes within 3 months, and hence may be seen as authorizing release ahead of conclusion of the judicial process as means of relief to the legal heirs. Presumably, the balance amounts, over and above the prescribed limit, would be released against the production of probate, letters of administration or succession certificate

Concluding Remarks

The Public Provident Fund is a very popular savings instrument, especially given the voluntary nature of contributions, minimum level of contribution necessary (Rs 100/- in a financial year) for keeping the PPF account operational and tax benefits (*Exempt-Exempt-Exempt*) which accrue to the subscriber.

As such, the changes that have been made to matters of nominations, including the choice of specifying whether a nominee is entitled as an owner or trustee, ability to specify percentage allocation among multiple nominees, or in guardian being able to specify nominees for PPF accounts of minors are all laudable measures.

The rigor of legal draughtsmanship also appears to be absent in the GSP Act, which is necessary to ensure due certainty for subscribers and their nominees and legal heirs

There are however elements requiring further clarity or removal of inconsistencies which have been noted above, including reconciling the provisions of the GSP Act, the GSP General Rules and the PPF Scheme 2019. The rigor of legal draughtsmanship also appears to be absent in the GSP Act, which is necessary to ensure due certainty for subscribers and their nominees and legal heirs. In addition to providing clarity and removing inconsistencies, incorporating the various measures outlined in the recommendations in the ARIA White Paper will provide huge comfort, confidence and certainty to the subscribers of PPF, and their nominees and legal heirs.

Assessment of measures recommended for Public Provident Fund (under GSP Act, 1873)

	Who can implement the recommended measures	
	Central Government	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	Available[39]	
Ability to specify percentage allocation among nominees	Available	
Ability to specify successive nominees	☑	
Ability to make single scrip/folio/security level nominations	N.A.	
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)	☑	
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	☑	
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	☑	
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	Available	

39 However: GSP General Rules limit the number of nominees to 4

Annexure: GSP General Rules 2018

The GSP General Rules[40] anticipate both single and joint accounts, as savings schemes under the GSP Act can comprise either type. For purposes of PPF Accounts, the treatment will be as a single account. As noted, the General Rules have applicability when no provision has been made in the PPF Scheme. Whilst several of the nominations related matters are specified in the GSP Act or the PPF Scheme and its Form 1, the General Rules also contain certain specifications which may differ and hence merit a review.

Summary of Nominations under GSP General Rules 2018

Limit on number of nominees[41]	A Depositor in a Single Account is required to nominate one or more individuals as nominee but not exceeding four individuals
Ability to specify percentage allocation and nature of entitlement[42]:	the General Rules and form thereunder contemplates specifying: • Percentage share each nominee shall be entitled to • Whether the nominee shall receive the amount as a beneficiary with absolute and exclusive right of ownership, or as a trustee for the benefit of the legal heirs of depositor
Where the nominee is a minor[43]	Depositor can appoint an individual to receive payment of the eligible balance during the minority of the nominee *(in event of death of depositor)*
Mandatory Nomination[44]	The General Rules require that in case of accounts where no nomination has been made, the depositor shall do so immediately and in any case before the maturity of the account • This does not apply to accounts of minors or persons of unsound mind opened before April 1, 2018: in the event of death of the depositor, the payment is required to be made to the guardian[45] • Nomination in accounts of minors or of persons of unsound mind, opened on and after April 1, 2018 is to be made by the guardian, and can be any individual including the guardian[46]
Variation or Cancellation of Nominations[47]	Nominations can be varied any time before the maturity of the account. Nominations stand cancelled[48] on: • Death of all nominees • Pledge or transfer of the account as security
Witnesses for making or varying nominations[49]	No witnesses are required for literate depositors 2 witnesses are required for illiterate depositors affixing thumb impression

40 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=149
41 See Rule 14(1) of the GSP General Rules
42 Ibid
43 See Rule 14(2) of the GSP General Rules
44 See Rule 14(4) of the GSP General Rules
45 See proviso to Rule 14(5) of the GSP General Rules
46 See Rule 14(5) of the GSP General Rules
47 See Rule 14(3) (- for variation) and Rule 14(6) (- for cancellation) of the GSP General Rules
48 In Rule 14(7) of the GSP General Rules, it has been specified that a fresh nomination is required to be made. Presumably, this has effect on death of all nominees, and when the pledge is released or the transfer by way of security is reversed
49 See Rule 14(8) of the GSP General Rules

Payment on Death of Depositor[50]	Payment to Nominees if nomination is in force. Application required to have proof of death of depositor (and of any nominee if has died). When 2 more nominees: payment in the proportion specified, and if no proportion specified, then payment in equal proportions. When 2 more nominees and a nominee has died: the specified share in the eligible balance of the deceased nominee is distributed among the surviving nominees in the same proportion as their specified shares When a nominee is minor: payment to the person specified by depositor, and in absence of specification, to guardian of the minor
	When no nomination is in force, and grant of probate, letters of administration or succession certificate is not produced within 6 months of the death of a depositor, then payment upto Rs 5 lacs can be made against certain documents being submitted[51]. Amounts exceeding Rs 5 lacs released on submission of succession certificate and certain documents[52].

Certain of the above specifications may be inconsistent with or in variance with provisions of the GSP Act, earlier PPF Schemes and PPF Scheme 2019, and requires reconciliation.

50 See Rule 15 of the GSP General Rules; It may be noted that vide Rule 17 of the GSP General Rules, if the depositor is serving in the Army, Air Force or Navy dies or deserts, the Commanding Officer of the Corps, department, detachment, unit or ship to which the depositor belonged, or the Committee of Adjustment, can requisition the amounts (under the applicable Act governing the Service/Force) requiring payment to the CO or the Committee of Adjustments, which shall be complied with regardless of whether a nomination is in force or not.

51 See Rule 15(6)(i) of the GSP General Rules, which specifies furnishing of Death certificate, Pass Book or deposit receipt/ statement of account in original, and following documents in prescribed format Affidavit, Letter of disclaimer and Bond of Indemnity. *Among these, furnishing of the original passbook or statement of account in original could pose a challenge to the legal heirs making the claim.*

52 See Rule 15(6)(i) of the GSP General Rules, which specifies furnishing of the following along with the Succession Certificate: Death certificate, Claim form, and the Pass Book or deposit receipt or statement of account in original. *As mentioned above, furnishing of the original passbook or statement of account in original could pose a challenge to the legal heirs making the claim.*

SPOTLIGHT[53] ON:

Approach of Provident Funds in Dealing with Ill-health, Incapacitation or Disability

Provident funds, mandatory or voluntary, are largely to ensure that an individual is able to undertake savings for and towards her retirement. An important contingency - of death of the member / account holder / depositor / subscriber[54] - is addressed by nominations facility, as analyzed in separate spotlight papers.

A further contingency which requires review is when the contingency of ill-health, incapacitation or disability of the member or her family occurs: Accordingly, this spotlight paper examines how the laws governing provident fund or schemes thereunder address these situations.

The **Employee Provident Fund Miscellaneous Provisions Act, 1952**[55] (the Act) deals with the corporate sector, and administers the schemes for Employees' Provident Fund (EPF Scheme), Employees' Pension (EPS) and Employees' Deposit-Linked Insurance Scheme 1976 (EDLI) for the employees of the establishments to which the statute applies.

In respect of EPF Scheme, Schedule 2 of the Act which specifies the matters for which provision may be made in a scheme makes this brief mention: *'the conditions under which withdrawals from the Fund may be permitted*'. In respect to EPS, there's a brief mention of permanent total disablement pension[56] and also in Schedule 2, specifies the matters for which provision can be made in EPS includes: *The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees*, and *Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme*. Finally, in respect of EDLI, Schedule 3 specifies the matters that can be made in EDLI includes: '*The scales of insurance benefits and conditions relating to the grant of such benefits to the employees',* and *'Any other matter which is to be provided for in the Employees' Deposit-linked Insurance Scheme or which may be necessary or proper for the purpose of implementing that Scheme*'.

A member may withdraw the full amount standing to her credit in the EPF on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity duly certified by the medical officer of the establishment, or where an establishment has no regular medical officer, by a registered medical practitioner designated by the establishment

In the **EPF Scheme**[57] there are several measures for people with disabilities. The below analysis is however focused on accessing the sums standing to the credit of a member in the EPF in situations of ill-health, incapacitation or disability. In this behalf following is relevant:

> A member may withdraw the full amount standing to her credit in the EPF on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity duly certified by the medical officer of the establishment, or where an establishment has no regular medical officer, by a registered medical practitioner designated by the establishment[58]. Specific situation of mass or individual retrenchment, and manner of dealing with medical certification has been elaborately dealt with as well[59].

53 Spotlight sections draw upon https://bit.ly/2WeoH2P written by Pramod Rao and incorporate inputs from ARIA

54 Different legislations or schemes thereunder use these different terms. For this spotlight paper, for ease of reading and consistency, the term 'member' is used here onwards.

55 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf

56 Section 6A (1)(a) of the Act

57 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFScheme.pdf

58 Para 69(b) of the EPF Scheme, also similar provision specified for International Workers

59 Para 69(1A) of the EPF Scheme

Measures, for certain situations, by way of provision of non-refundable advances, have also been specified in the EPF Scheme. These include:

- Certain cases of illness of a member or her family[60]
- In case of abnormal circumstances including calamities[61]
- In case of members who are physically handicapped[62]

Issues with above: Adequacy of such measures or provisions requires a rethink, along with the expansion of list of illnesses or diseases such as additional critical illnesses or strokes.

Review of the period of hospitalization with a strong bias towards reducing the time currently specified could be undertaken given the advancement in medical technologies, treatment standards and level of care.

The permitted levels of withdrawals as well as frequency of withdrawals require review. For instance, the extent of money withdrawable in case of calamity appears grossly inadequate in today's day and age.

There is also a need for the scheme to deal with situations of incapacitation, and empowering the nominees or family members to approach or apply on behalf of an incapacitated member.

The permitted levels of withdrawals as well as frequency of withdrawals require review. For instance, the extent of money withdrawable in case of calamity appears grossly inadequate in today's day and age.

In terms of **Employee Pension Scheme**[63] the following has been specified:

"Permanent total disablement" has been defined to mean such disablement of permanent nature as incapacitating an employee for all work which she was capable of performing at the time of disablement, regardless whether such disablement is sustained in the course of employment or otherwise.

A member, who is permanently and totally disabled during the employment, is entitled to pension as admissible notwithstanding the fact that she has not rendered the pensionable service entitling her to pension if she has made at least one month's contribution to the Pension Fund. The monthly member's pension in such cases is payable from the date following the date of permanent total disablement and shall be tenable for the life-time of the member. The member applying for benefits is mandated to undergo such medical examination as may be prescribed by the Central Board to determine whether or not she is permanently and totally unfit for the employment which she was doing at the time of such disablement.

The **EDLI Scheme**[64] does not have any provision focused on ill-health, incapacitation or disability.

The **Employee Provident Fund Act, 1925**[65], which deals with government provident fund, railway provident fund and funds of other notified government institutions and of local bodies, does not have any provision focused on ill-health,

60 Para 68-J of the EPF Scheme, which specifies the following : (1) A member is allowed non-refundable advance from her EPF account in cases of: (a) hospitalisation lasting for one month or more, or (b) major surgical operation in a hospital, or (c) suffering from T.B., leprosy, paralysis, cancer, mental derangement or heart ailment and having been granted leave by her employer for treatment of the said illness, (2) deleted (3) A member may be allowed non-refundable advance from her EPF account for the treatment of a member of her family who has been hospitalised, or requires hospitalization, for one month or more- (a) for a major surgical operation, or (b) for the treatment of T.B., leprosy, paralysis, cancer, mental derangement or heart ailment, (4) The amount advanced under this paragraph shall not exceed the member's basic wages and dearness allowance for six months or her own share of contribution with interest in EPF, whichever is less.

61 Para 68-L of the EPF Scheme, which specifies that on an application from a member whose property, movable or immovable, has been damaged by a calamity of exceptional nature, such as floods, earthquakes or riots, authorise payment to her from the provident fund account, a non-refundable advance of rupees five thousand or fifty per cent of her own total contribution including interest thereon standing to her credit on the date of such authorisation, whichever is less, to meet any unforeseen expenditure. This requires the State Government to have declared that the calamity has affected the general public in the area; the member produces a certificate from an appropriate authority to the effect that her property (movable or immovable) has been damaged as a result of the calamity; and the application for advance is made within a period of 4 months from the date of declaration made by the State Government

62 Para 68-N of the EPF Scheme, which specifies that a member, who is physically handicapped, may be allowed a non- refundable advance from her EPF account for purchasing an equipment required to minimize the hardship on account of handicap. Advance is made on the basis of a self-declaration to that effect. The amount advanced under this paragraph shall not exceed the member's basic wages and dearness allowance for six months or her own share of contributions with interest thereon or the cost of the equipment, whichever is the least. No second advance under this paragraph shall be allowed within a period of three years from the date of payment of an advance allowed under this paragraph

63 Accessible here https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPS95_update102008.pdf

64 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EDLI_1976.pdf

65 Accessible here: https://legislative.gov.in/sites/default/files/A1925-19.pdf

incapacitation or disability. However, the rules of the provident fund governed by the EPF Act, 1925, may deal with such situations.

In relation to **the Public Provident Fund Scheme, 1968**[66], the guidance issued stated:

> Only those cases of extreme compassionate ground such as medical support in life-threatening diseases or cases, death cases, etc. deserve consideration for granting permission for premature closure. In other non-deserving cases, the members should avail of the facility of loans and withdrawals available under Rule 9 and 10 of the PPF Scheme.

In the **Public Provident Fund Scheme 2019**[67], the following has been specified[68]:

> A member shall be allowed premature closure of her account for treatment of life threatening disease of member, her spouse or dependent children or parents, on production of supporting documents and medical reports confirming such disease from treating medical authority. In case of a member who is a minor or person of unsound mind, the guardian can make such an application.

Issues with above: Removal of the threshold of requiring a disease to be 'life threatening' may be considered. Addition of mental illnesses can also be considered. Overall, given that costs of hospitalization and medical treatment have increased and hence access at times of need should be enabled.

There is also a need for the scheme to deal with situations of permanent or temporary incapacitation or disabilities, and in such situations, empowering the nominees or family members to approach or apply on behalf of an incapacitated member.

There is also a need for the scheme to deal with situations of permanent or temporary incapacitation or disabilities, and in such situations, empowering the nominees or family members to approach or apply on behalf of an incapacitated member.

In the **GSP General Rules, 2018**[69] (which have applicability for matters not dealt with in the PPF Scheme[70]), the following has been specified[71]:

> If in case a member suffers from physical infirmity, or if the member is a differently-abled person[72] which makes her incapable of operating the account herself, may through any literate individual she authorizes for this purpose operate (including making withdrawals) the account. This can be done at the time of opening the account or subsequently. Such authorization has to be made in writing by the member, together with attested specimen signature and photograph of authorized individual, and can be withdrawn or varied at any time.
>
> Furthermore, it has been specified that a member suffering from physical infirmity, including blindness, that renders her incapable of operating her account, may avail the facility of loan or partial withdrawal through the authorized individual[73].
>
> Finally, in case of a member who is a minor or a person of unsound mind, the guardian may avail the facility of loan or partial withdrawal[74].

Issues with above: It appears fallacious and illogical to require the member to give the authorization in writing if and when the member is incapable of operating the account. Separately events may happen when no such authorization as outlined is in place, and hence, a change that could be considered is specifying that the nominee can operate the account on behalf of the member.

Further, provision for partial withdrawal or obtaining a loan could be dispensed with, and withdrawals be by way of non-refundable advances.

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66 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=79

67 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=169

68 Para 13 of the PPF Scheme, 2019, accessible here:

69 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=149

70 Para 16 of the PPF Scheme, 2019

71 Rule 11 of the GSP General Rules, 2018

72 Which includes persons with autism, cerebral palsy and mental retardation

73 Rule 20(4) of the GSP General Rules, 2018

74 Rule 20(2) of the GSP General Rules, 2018. Also, the guardian is required to furnish a certificate that states: *"Certified that the amount sought to be withdrawn is required for the use and welfare of Shri/Smt./Master/ Kumari..... who is a minor/ a person of unsound mind/ a person incapable of operating his account due to physical infirmity and is alive on this.....the day of.....(month), ...(year)."*

Concluding remarks

As would be noted from the above, there is no uniformity across different types of provident funds schemes in dealing with situations of ill-health, incapacitation or disabilities.

Uniformity in specifying the diseases, disabilities and specific cases of ill-health: *this will serve to remove doubts, discretion or disparate treatment across different types of provident fund*

Certain designs and approaches require rethink. For instance, specification in the relevant scheme can be on these lines:

- If the member or family member is incapacitated, temporarily or permanently, the nominee/s or family member/s is/are authorized to access the funds:
  - this can draw on the precedent of guardians doing so in case of members who are minors or persons of unsound mind

- Uniformity in specifying the diseases, disabilities and specific cases of ill-health: *this will serve to remove doubts, discretion or disparate treatment across different types of provident fund*

- Ability to make Non-refundable advances (or withdrawals) for ill-health, incapacitation or disabilities (temporary, permanent, total or partial) should be balanced against the primary objective of such accounts (i.e. towards old age and retirement savings)

SPOTLIGHT[75] ON

National Pension System Accounts & Annuities

National Pension System (NPS) is a voluntary defined contribution pension scheme administered by the NPS Trust, and is regulated by the Pension Funds Regulatory and Development Authority.

NPS started with the decision of the Government of India to stop defined benefit pensions for all its employees who joined after 1 April 2004. While the scheme was initially designed for government employees only, it was opened up for all citizens of India in 2009, and for OCI card holders and PIOs in October 2019. The entry age originally had been between 18 and 65, which has since been revised to be between 18 and 70[76].

One key aspect to bear in mind is that there are two distinct stages of an NPS relationship: Firstly, the creation of the accumulated pension wealth in the NPS Permanent Retirement Account (NPS Account), and secondly, the culmination of NPS Account at retirement or thereafter, with the purchase of annuity and commencement of monthly pension. The nomination facility for the first stage is outlined in the section titled 'Nominations for NPS Accounts', and for the second stage is outlined in the section titled 'Approach for Annuity'.

Nominations for NPS Accounts[77]

A subscriber, at the time of joining NPS, is required to make a nomination conferring on one or more persons the right to receive the amount that may stand to her credit in the accumulated wealth or fund in the event of her death before that amount becomes payable or having become payable has not been paid. *Family plays an important role in nominations and is dealt with in a separate subsection of this spotlight*.

In the Regulation there is no limit as to the number of nominees. *However, the FAQs specifies that a subscriber can appoint up to 3 nominees*[78]. When there is more than one nominee, the subscriber is required to specify the percentage allocation of the amounts among the nominees, which has to collectively aggregate 100%.

Successive nominees are also recognized. Ordinarily, if the nominee predeceases the subscriber, the nomination becomes void and of no effect. A provision can be duly made conferring upon some other person the right to receive all the amounts in the event of the nominee predeceasing the subscriber.

Nominations can be modified by the subscriber at any time by submission of the prescribed form[79]. The modifications take effect, to the extent that it is valid, on the date on which it is received by the intermediary under the NPS.

75 Spotlight sections draw upon https://bit.ly/2WeoH2P written by Pramod Rao and incorporate inputs from ARIA

76 See here https://www.pfrda.org.in/writereaddata/links/circular%20to%20cras%20on%20increase%20of%20entry%20age%20up%20to%2070%20years%20under%20nps%201fe102dd-e5cd-475a-920b-b303f23aaee7.pdf

77 Specified in Regulation 32 of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015, accessible here: https://npscra.nsdl.co.in/download/pdf/Pension%20Fund%20Regulatory%20and%20Development%20Authority%20(Exits%20and%20Withdrawals%20under%20National%20Pension%20System)%20Regulations,%202015.pdf

78 See relevant bullet on page 5 here: https://www.pfrda.org.in/writereaddata/links/faqsallcitizensmodelbf322a1a-be90-4eba-9356-4258f4bdfafd.pdf

79 It is noted that the FAQs mention that if the subscriber at the time of opening the NPS Account or at the time of registering for PRAN, no charges will be levied. However, a subsequent request for nomination update is considered as a service request and a charge of Rs. 20/- plus applicable service tax for each request is payable

NPS Trust has also facilitated e-nominations[80]. Adding or updating nominees is available electronically.

If the nominee is a minor, the subscriber can choose while making the nomination to appoint another individual (who is a major and requires being a subscriber of the family), to receive the amounts on behalf of the nominee (during the minority of the nominee) in the event of the death of the subscriber. Where there is no major person in the family, the subscriber may, at her discretion, appoint any other person to be a guardian of the minor nominee for this purpose.

The nominees are entitled, on the death of the subscriber, to receive, to the exclusion of all other persons. This is when the death of the subscriber occurs before the obligation to purchase the annuity becomes applicable.

Approach for Annuity

A variety of permutations and combinations of situations and circumstances are contemplated or specified for the different categories of subscribers when they are reaching or have reached their retirement age. Given the variance and not necessarily being linked to death of the subscriber, these situations and circumstances have been considered out of scope for the analysis of nominations[81]. Hence, for the purposes of this analysis, the following have not been considered: the categories of subscribers, the age specified for mandatory purchase of annuity, ability to defer the annuity purchase, situations when annuity need not be purchased (including on account of withdrawal of accumulated pension wealth to the extent specified) or the lump sum amounts (if any) paid to the subscriber.

Rather, this section focuses on when an annuity has been purchased from an Annuity Service Provider (ASP) empaneled by PFRDA. There can be several types of annuity contracts provided by a variety of ASPs. In this spotlight section, we take a look at the default annuity scheme[82] and the default annuity contract terms specified in PFRDA Regulations.

As noted by PFRDA[83], the default option (of the default ASP, and default annuity scheme) has been purely provided in the subscribers' interest and to avoid any delay in claim processing and is not with a view to endorse/promote any particular ASP or annuity variant being offered by the ASP.

The default ASP is LIC of India. The default annuity scheme has been outlined as follows:

- Payment of monthly annuity for life of the annuitant
- On death of the annuitant, payment to her spouse during his lifetime
- Payment ceases on death of the annuitant and the spouse (or after death of the annuitant if the spouse predeceases the annuitant)
- No return of purchase price.

By limiting the payment to the annuitant and spouse during their lifetime, and doing away with return of purchase price of annuity, the need to deal with any further aspect is avoided in the default annuity scheme.

The other key item specified in the regulations is 'default annuity contract' (different from the default annuity scheme above). Ordinarily, the subscriber is required to purchase the default annuity contract from one of the annuity service providers empaneled by PFRDA. It may be suggested that the default annuity scheme for the default ASP be kept the same as that for the default annuity contract for simplicity as well as the fact that the return of purchase price option tends to be the most popular option.

Ordinarily, the subscriber is required to purchase the default annuity contract from one of the annuity service providers empaneled by PFRDA. It may be suggested that the default annuity scheme for the default ASP be kept the same as that for the default annuity contract for simplicity as well as the fact that the return of purchase price option tends to be the most popular option

80 See here https://www.pfrda.org.in/writereaddata/links/circular%20on%20enomination%20facility%20for%20nps%20subscribers934fdd52-02ec-4906-a70c-0084dd5de56c.pdf

81 While outside the scope of this spotlight, the complexity and differential treatment among the various categories of subscribers can contribute to a lot of issues. These should ideally be simplified and uniform (to the extent possible) across the categories of subscribers

82 In Regulation 10(5) of the PFRDA (Exits and Withdrawals under the NPS) Regulations 2015, PFRDA has been empowered to specify a 'default annuity service provider' and a 'default annuity scheme'; interestingly, it notes that such default annuity scheme shall not be available or applicable in the case of government subscribers covered under regulation 3.

83 See page 8 of FAQs accessible here: https://www.pfrda.org.in/writereaddata/links/faqsallcitizensmodelbf322a1a-be90-4eba-9356-4258f4bdfafd.pdf

In the construct of the default annuity contract and regulations, the following has been specified[84]:

- The designated percentage of the accumulated pension wealth will be utilized for annuity purchase from an Annuity Service Provider
- Annuity Service Provider shall provide for monthly or periodical pension for life of the subscriber and her spouse (if any), with provision for return of purchase price of the annuity
- Upon the demise of such subscriber and her spouse, the annuity is to be re-issued to the following family members (in the order specified) @ the premium rate prevalent at the time of purchase of such annuity by utilizing the (otherwise returnable) purchase price of the annuity contract (until all the family members in the order specified below are covered) :
  - living dependent mother of the deceased subscriber
  - living dependent father of the deceased subscriber
- Thereafter, the purchase price or the amount which was to be utilised for purchase of annuity shall be returned to the surviving children of the subscriber
- In the case of absence of children, the purchase price or the amount which was to be utilised for purchase of annuity shall be returned to the other legal heir(s) of the subscriber, as the case may be

In certain situations of demise of certain categories of subscribers (including before retirement or after retirement and during a deferral availed to purchase the annuity), the onus of purchasing the annuity has been placed on the spouse (if any), and thereafter, on the spouse's death, the above mentioned sequence applies.

Situations have also been specified where it is optional on the family to purchase the annuity, without specifying the consequences of demise of annuitant.

Critique of default annuity scheme and of default annuity contract: There are certain inbuilt inflexibilities in the default annuity contract that are noteworthy:

- *Subscriber and her spouse as one unit*: The regulation treats the subscriber and her spouse as one unit during their respective lifetimes for receipt of pension from the annuity service provider and the pension continues even when one predeceases the other. However, certain situations where marriage has not occurred (such as live-in relationships or common law partnerships) or cannot occur (such as of LGBTQ+ couples under current legal framework) or where the married couple are separated, remains unaddressed and unattended to. *This critique is also applicable for the default annuity scheme.*

- *Mandatory re-issuance of annuity for designated dependents:* The regulation has chosen the dependents (living mother of the subscriber and after her, the living father of the subscriber) for whom the annuity is required to be repurchased on death of the subscriber and her spouse. No flexibility exists for the subscriber or the annuitant to specify whether re-issuance is required and if so, who the re-issuance should be for.

Certain situations where marriage has not occurred (such as live-in relationships or common law partnerships) or cannot occur (such as of LGBTQ+ couples under current legal framework) or where the married couple are separated, remains unaddressed and unattended to

- *Return of purchase price:* The regulation has specified that the surviving children of the subscriber shall receive the purchase price. In absence of any surviving children, the legal heirs are to receive the purchase price. No flexibility exists for the annuitant selecting or specifying the nominee to whom the purchase price for the annuity should be paid/returned.

- *Obligation to purchase annuity:* In certain situations, the regulation places an obligation on the spouse of the subscriber to purchase the annuity. Furthermore, on death of such an annuitant, mandatory re-issuance is required - in favor of the subscriber's dependents (and not of the annuitant). There is no flexibility available to the subscriber to determine whether annuity is necessary, and if so on who should constitute the annuitant (and whether the designated annuitant is amenable to do so as a matter of choice). Separately, no flexibility exists for the annuitant to specify whether re-issuance is required and if so, who the re-issuance should be for.

The terms, as above, of the default annuity contract require a rethink and provision of choice and flexibility to the subscriber or annuitant. In the default annuity scheme, the first issue - of only treating the subscriber and her spouse as a unit - with the inflexibilities noted merit review.

84 See proviso (i) to Regulation 3(a) or proviso to Regulation 3(b) or proviso (i) to Regulation 3(c) of PFRDA (Exits and Withdrawals under the NPS) Regulations 2015

Consequences of no nomination

A measure made for government sector subscribers and corporate sector subscribers, is the specification that in absence of a valid nomination on account of death while in service, the nomination, if any existing in the records of such subscriber with her employer for the purpose of receiving other admissible terminal benefits shall be treated as nomination exercised for the purposes of receiving benefits under the National Pension System. In such situations, the employer is required to send a confirmation of such nomination in its records, to the NPS Trust or the central recordkeeping agency, while forwarding the claim for processing[85].

(Presumably) subject to the above, for citizens and corporate sector subscribers: if in case the nomination has not been registered by the subscriber, the accumulated pension wealth is paid to the family members on the basis of the legal heir certificate issued by the competent authorities of the State concerned or the succession certificate issued by a court of competent jurisdiction.

For NPS Lite and Swavalamban subscribers: if in case the nomination has not been registered by the subscriber, the accumulated pension wealth is paid to the family members on the basis of the legal heir certificate issued by the revenue authorities of the State concerned or the succession certificate issued by a court of competent jurisdiction[86].

In respect of default annuity contracts, where the last eligible set for return of purchase prices are legal heirs: there is no issuing authority specified for identifying legal heirs. Presumably, the general law for identifying legal heirs is considered sufficient.

There is no issuing authority specified for identifying legal heirs. Presumably, the general law for identifying legal heirs is considered sufficient

Incapacitation

During the period of operating the NPS Account, there are situations specified when the subscriber can make withdrawal from her NPS Account. Financial limits[87], purpose limitations as well as certain criteria[88] and frequency[89] at which withdrawals can be made are specified in the regulations[90] in relation to

In respect of ill-health, incapacitation or disability, withdrawal is permitted for the following:

- treatment of the subscriber, her legally wedded spouse, children (including a legally adopted child) or dependent parents, and comprising hospitalization and treatment of the specified diseases[91]
- meeting medical and incidental expenses arising out of the disability or incapacitation suffered by the subscriber[92]

The regulation contemplates the request for withdrawal being submitted through any family member of the subscriber where a subscriber is suffering from any specified illness or disease[93].

85 See proviso (xii) of Regulation 32 of the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

86 This reflects differential treatment across the three categories: for **government sector subscribers**, there is no prescription for situations of no nominations - presumably the specification of nominees for other admissible benefits cited above or the general law for identifying legal heirs is considered sufficient for them (additionally they are also governed by the Central Civil Services (Implementation of National Pension System) Rules, 2021); for **citizens and corporate subscribers** see Regulation 4(c)(ii) of the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015 (who die before attaining the age of 60 years or the age of superannuation as prescribed by the respective service rules applicable) which by an amendment updated the reference from 'revenue authority' to 'competent authority' of the state concerned for issuance of legal heir certificate and who also benefit from specification of nominees for other admissible benefits cited above; for **NPS Lite and Swavalamban subscribers** (who die before attaining the age of 60 years): see proviso to Regulation 5(c) which continues to refer to *"...Revenue authorities of the State concerned...."* - such inconsistency can create challenges and hardship for legal heirs of such subscribers; Such differences again serve to highlight need for uniformity and simplification in the regulations

87 Partial withdrawal of upto 25% of the contribution of the subscriber, and excluding contributions by her employer - Regulation 8(1) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015; for Tier 2 accounts partial or full withdrawal is permitted without purpose or other limitations - see Regulation 8(2) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015 (unless is a tax saver scheme, withdrawal from which can be after completion of specified lock-in period)

88 the subscriber shall have been in NPS at least for a period of 3 years from the date of her joining

89 Set a maximum of 3 times during the entire tenure of subscription under the NPS

90 See Regulation 7 and 8 of the PFRDA (Exits and Withdrawals under the NPS) Regulations 2015

91 Specified diseases are Cancer; Kidney Failure (End Stage Renal Failure); Primary Pulmonary Arterial Hypertension; Multiple Sclerosis; Major Organ Transplant; Coronary Artery Bypass Graft; Aorta Graft Surgery; Heart Valve Surgery; Stroke; Myocardial Infarction (xi) Coma; Total blindness; Paralysis; Accident of serious/ life threatening nature; any other critical illness of a life-threatening nature as stipulated in PFRDA circulars, guidelines or notifications issued from time to time; from Regulation 8(1)(A)(d) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

92 Regulation 8(1)(A)(e) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

93 See proviso to Regulation 8(C) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

Moving to the stage of exit from NPS, for citizen and corporate sector subscriber or NPS Lite and Swavalamban subscriber who is physically incapacitated or has suffered a bodily disability leading to her incapability to continue with her NPS Account, exit is contemplated as follows:

The subscriber is required to submit a disability certificate from a Government surgeon or Doctor (treating such disability or incapacitation[94] of the subscriber) stating the nature and extent of disability and also certifying:

- that the affected subscriber shall not be in a position to perform her regular duties and there is a real possibility of the subscriber not being able to work for the remaining period of her life; and
- Percentage of disability is more than seventy five percent.

In case of a government sector subscriber[95], the employer is required to certify that the subscriber has been discharged from the services of the concerned office on account of incapacitation or disability.

Family centricity & circumstances for invalidation

An aspect of nominations under the NPS (which appear to have been drawn from the provisions of the EPF Scheme governing the corporate sector) is the importance it places on 'family', which is a defined term in the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015.

Take these few specifications:

- If a subscriber has a family at the time of making a nomination, the nomination is required to be **only** in favour of one or more persons belonging to her family. Any nomination made by such a subscriber in favour of a person not belonging to her family is invalid.

- If at the time of making a nomination the subscriber has no family, the nomination may be in favour of **any** person or persons. If the subscriber subsequently acquires a family, the earlier nomination becomes invalid. The subscriber then has to make a fresh nomination in favour of one or more persons belonging to her family.

- Similarly, a fresh nomination is required to be made by the subscriber on her marriage. Nomination made before such marriage becomes invalid.

Invalidity impacts the persons previously nominated adversely as also the family members when no fresh nominations has been made by a subscriber.

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Who, then, comprises 'Family'?

In terms of *Explanation 1 of Regulation 32* of the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015, "family" means:

- In the case of a male subscriber,
  - his legally wedded wife[96],
  - his children, whether married or unmarried,
  - his dependant parents and
  - his deceased son's widow and children:

- in the case of a female subscriber,
  - her legally wedded husband[97],
  - her children, whether married or unmarried,
  - her dependant parents,
  - her husband's dependant parents[98] and

94 The regulation in this context uses the word 'invalidation'; it is felt the appropriate word can be 'incapacitation'

95 Reference may also be made to Rules 10, 16, 17 and 20 of Central Civil Services (Implementation of National Pension System) Rules, 2021 for individuals governed by such Rules

96 A subscriber can exclude his wife, if he proves that she's ceased being entitled to maintenance under the personal law or community customary law which governs the couple. Then she stops being recognized as a part of subscriber's family; the subscriber can subsequently reinstate her recognition as a family member by express notice in writing to the designated intermediary

97 A subscriber can exclude her husband (and consequently his dependent parents) by express notice in writing to the designated intermediary; she can also cancel such exclusion subsequently by giving notice to such designated intermediary

98 If the subscriber has excluded her husband, then the husband's dependent parents also stand excluded; see footnote above. Presumably, canceling the exclusion of the husband also will result in re-inclusion of his dependent parents

- her deceased son's widow and children.

Legally recognized adoption by another person of a child of a subscriber (or child of a deceased son of the subscriber) results in such a child being excluded from the family of the subscriber for purposes of NPS.

It's complicated

For a large set of subscribers within the NPS framework, perhaps the limitations placed on nominees having to be family members or of invalidation in certain circumstances probably does work or has no visible impact.

It may, however, not be so for everyone.

Take the most commonplace situation: An individual could choose at any time to join the NPS including at the start of her career, and would make the NPS nominations at that time. If she's unmarried, more often than not, the nominees would be her parents. Upon marriage, such nomination is rendered invalid. If she fails to update the nominations (or have a will - which is highly unlikely at this age), her legal heirs would be hamstrung in receiving the monies without judicial process.

Situations of separation (as a prelude to divorce) which may cause an individual to reconsider nominations could be curtailed due to the requirements governing NPS Accounts. Perhaps the exclusion of spouses, as contemplated in the relevant regulation may assist. But again, think of how many individuals consider nominations or their validity/invalidity when passing through such situations. Morbidity in the current circumstances of Covid-19 can also play spoilsport.

Certain portions of the definition of 'family' itself could be considered sexist. For a woman member, the husband's dependent parents are family. For the man, the wife's dependent parents are not. Widows and children of a deceased son are family. A widower and children of a deceased daughter are not family.

Consider also the situations of domestic relationships or live-in relationships[99] (termed as common law partners in certain jurisdictions), when couples choose to cohabitate or stay together: if either or both of them want to specify the other as nominee, they would be stymied due to lack of fulfilling the definition of 'family'.

Finally: unlike any other financial asset, and due to lack of fulfilling the definition of 'family', individuals belonging to the LGBTQ+ community who incidentally no longer face criminality in India, and have gained a wider acceptance in the society, the requirements of NPS Accounts still prevent their partner from being a nominee or from being considered family. Members of this community would require either the ability to marry being recognized in law (which will also require recast of the definition of 'family' in the PFRDA Regulations) or the requirements of a nominee having to be a member of the 'family' being reconsidered.

Certain portions of the definition of 'family' itself could be considered sexist. For a woman member, the husband's dependent parents are family. For the man, the wife's dependent parents are not. Widows and children of a deceased son are family. A widower and children of a deceased daughter are not family

Concluding remarks

Hence, while in many aspects NPS is progressive (*percentage allocation being permissible, or e-nominations facility or successive nominations*), the limitation posed due to the requirement of nominees having to be family members, requires revisit. There is also inconsistency in the regulation not limiting the number of nominees, while its FAQs do so.

For NPS, the design reckoning only a 'family' comprising spouse and children, merits an evaluation of whether it fulfills the underlying objectives. The overall scheme or approach, if also embeds or encourages nomination as the fulcrum, then those that the member considers appropriate would be the beneficiaries rather than a pre-set flow among persons specified by NPS and for default annuity contracts.

At a broader level, the need for review and reforms to NPS Regulation is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or of dispensing with linkage to 'family' altogether when making nominations. Similarly, the consequences of no nominations and who are entitled (or disentitled) could also be reviewed and made non-discriminatory.

99 Recognised by the Supreme Court in Kushboo v Kanniammal https://indiankanoon.org/doc/1327342/, also see Indra Sarma v VKV Sarma https://indiankanoon.org/doc/192421140/ for a further analysis of live-in relationships

The invalidity of nominations that occurs on happening of life events also could be recast: perhaps, the approach could be to treat the nominees prior to the life event as trustees or custodians, and hence who can receive the money in trust or custody for the legal heirs.

It is also noteworthy that while the three distinct categories of subscribers may be necessary, a huge need to ensure consistency, uniformity and simplicity is required. This is especially so on the death of a subscriber, but also in various other respects. The situations and circumstances for the various types of subscribers are resulting in differing, and often inconsistent treatment. *For instance, there are situations when an NPS Lite and Swavalamban subscriber or citizen and corporate sector subscriber have to purchase annuity. However, consequences upon death of an annuitant, akin to how the same has been specified for default annuity contract, are not specified.* This can cause avoidable hardship or strife. Review and revision of the PFRA (Exits and Withdrawals under the NPS) Regulation is warranted to ensure due uniformity, consistency and simplification. It is also important to have clarity on when annuities have to be purchased and when providing for flexibility in several different aspects noted and choices that the annuitant or subscriber can exercise.

All in all, if the life leading up to retirement (*when NPS Account can be harnessed*) and the post retirement life (*when the annuity is purchased*) are eased, situations that can create hardship or strife removed or reduced, references to the judiciary avoided or reduced, and the provisions updated to reflect the societal changes and progressive approach, NPS and Annuities will be important and attractive to the citizenry, subscribers and annuitants.

At a broader level, the need for review and reforms to NPS Regulation is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or of dispensing with linkage to 'family' altogether when making nominations. Similarly, the consequences of no nominations and who are entitled (or disentitled) could also be reviewed and made non-discriminatory

Table 1: **Assessment of measures recommended for NPS Account**

	Who can implement the recommended measures
	PFRDA
Easy, uniform and simple process to check status of nominations and to make or change nominees	☑
Simple, common nomination form/e-form	☑
Ability to specify any number of nominees	☑ Since Form S2[100] and FAQs limit to 3 nominees
Ability to specify percentage allocation among nominees	Available
Ability to specify successive nominees	Available
Ability to make single scrip/folio/security level nominations	Not Applicable
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	Available ☑
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)	Available ☑
Making nominations mandatory for NPS (including in respect of legacy accounts in a time bound manner) consider do away with automatic cancellation of nominations on occurrence of life events.	Already mandatory
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	☑
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	☑
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	☑

100 See https://npscra.nsdl.co.in/download/non-government-sector/all-citizens-of-india/forms/S2-Subscriber_Details_Change.pdf and https://npscra.nsdl.co.in/download/Nodal%20Office/NPS_FAQ%27s.pdf (FAQ 23 and response thereto)

Table 2: **Assessment of measures recommended for Annuity**

	Who can implement the recommended measures
	PFRDA
Easy, uniform and simple process to check status of nominations and to make or change nominees	available
Simple, common nomination form/e-form	available
Ability to specify any number of nominees	available
Ability to specify percentage allocation among nominees	available
Ability to specify successive nominees	☑
Ability to make single scrip/folio/security level nominations	not applicable
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	available Available
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 Annuity contracts (including in respect of legacy accounts in a time bound manner) consider do away with automatic cancellation of nominations on occurrence of life events.	☑
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	☑
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	☑
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	☑

Mr. Pramod Rao

Pramod presently serves as the Group General Counsel of ICICI Bank and provides strategic oversight to the legal function for the ICICI group. Pramod is a member of Board of Directors of ICICI Securities Ltd, ICICI Prudential Trust Ltd and ICICI Trusteeship Services Ltd and even 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 as well.

Pramod has previously served as the General Counsel for Citi India cluster for over 5 years, partnered at IndusLaw and worked as the General Counsel of ICICI Bank for over 7 years, with many professional accomplishments in these roles. Pramod has a deep interest in Fintech, LawTech and start-ups: He has co-founded a LawTech enterprise, and served as a Board member for two start-ups. He also advises and mentors start-ups under the aegis of ICICI Bank's Startup Engagement Team and 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 conceptualising and adoption of online dispute resolution (ODR) by ICICI Bank and ICICI group and has engaged with policy makers, the government and the judiciary on ODR, which culminated in a 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.

Pramod is associated with IDIA – Increasing Diversity by Increasing Access – an NGO dedicated to assisting students from underprivileged backgrounds in entering premier law schools in India. He has also served as a founding member of the Governing Board of the NLSIU Alumni Association from 2015-2020. He participates in and contributes to various law and regulatory reform initiatives of the government, regulators and industry forums.

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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ARIA

Association of
Registered Investment Advisers

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More Spotlight sections to follow soon

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