



Committee on Commercial Laws, Economic Advisory & NPO Cooperative
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

CAs' HANDBOOK ON NOMINATION PROCEDURE AND GUIDELINES



CAs' Handbook on Nomination Procedure and Guidelines



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The Institute of Chartered Accountants of India
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New Delhi

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Basic draft of this publication was prepared by CA.(Dr.) Dilip Vasantrao Satbhai

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E – mail : admin.cclnpo@icai.in

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Foreword

The Institute of Chartered Accountants of India (ICAI) has always been committed to strengthening financial awareness, governance, and compliance across various domains. One such critical area that affects individuals, businesses, and financial institutions alike is the nomination process in the event of the death of a person. Proper nomination ensures a smooth transition of financial assets, reduces legal disputes, and provides security to the legal heirs or beneficiaries. Despite its significance, many individuals and professionals lack clarity on the procedural and legal aspects of nominations, leading to complexities in asset transfer.

To address this crucial subject, "CAs' Handbook on Nomination Procedure and Guidelines," is published by **Committee on Commercial Law, Economic Advisory, and NPO Cooperative of the Institute of Chartered Accountants of India (ICAI)** - a comprehensive resource that provides a structured understanding of nomination processes across different financial instruments, including bank accounts, insurance policies, securities, provident funds, mutual funds, and other investments. This book elaborates on the legal provisions, documentation requirements, procedural guidelines, and common challenges faced in claiming assets after a person's demise. It also highlights the role of Chartered Accountants in assisting individuals and businesses in proper estate planning, succession management, and ensuring compliance with nomination regulations.

I would like to congratulate CA. Chandrashekhar Vasant Chitale, Chairman; CA. Prakash Sharma, Vice-Chairman, and other members of the Committee in bringing forth this well-researched publication.

I am confident that the publication will serve as a valuable guide for CAs, legal professionals, financial advisors, and individuals seeking clarity on nomination-related procedures. I encourage all readers to make the most of this resource and leverage the insights provided within.

February 07, 2025
Delhi

CA. Ranjeet Kumar Agarwal
President, ICAI

Preface

Chartered Accountants play a vital role in financial planning, succession management, and regulatory compliance. They assist in structuring nominations to ensure seamless asset transmission, mitigate legal disputes, and uphold fiduciary responsibilities. In today's fast-paced environment, individuals often overlook proper nomination, risking financial uncertainties for beneficiaries. By providing strategic advisory and legal guidance, CAs strengthen economic stability, safeguard wealth distribution, and contribute to a well-regulated financial ecosystem.

This "*CAs' Handbook on Nomination Procedure and Guidelines*," offering a comprehensive understanding of nomination, its legal significance, procedural compliance, and fiduciary obligations. This handbook equips Chartered Accountants with technical expertise to facilitate structured nominations, enhance financial security, and safeguard stakeholders' interests through regulatory compliance and strategic succession planning.

I would like to express my gratitude to the leadership of ICAI - CA. Ranjeet Kumar Agarwal, President, ICAI, and CA. Charanjot Singh Nanda, Vice-President, ICAI, for their steadfast support and guidance in the creation of this publication. Special recognition goes to CA. (Dr.) Rewati Paithankar and CA. (Dr.) Dilip Vasant Rao Satbhai for their invaluable contributions and insights, which have significantly enhanced this handbook.

I would also like to express my gratitude to CA. Prakash Sharma, Vice Chairman, CCLEANC and other members of the committee for their continuous effort in the Committee's initiatives. Additionally, I acknowledge the efforts of the Committee's Secretariat for their dedication and hard work in bringing this publication to fruition.

I am confident that this handbook will be an essential resource for ICAI members, deepening their expertise in this crucial legal area. Wishing you productive and insightful learning!

February 05, 2025
Delhi

CA. Chandrashekhar Vasant Chitale
Chairman
Committee on Commercial Law Economic Advisory,
and NPO Cooperative

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Chapter 1

Overview of the term nominee and its scope

(a) Meaning of nominee

A nominee is a person or firm whose name is registered on securities or other property to facilitate certain transactions or transfers, while the original customer remains the actual or legal owner. Acting as a custodian, the nominee helps in managing assets efficiently and ensuring smooth operations. Nomination is the process by which an individual designates a person or entity (the nominee) to receive or manage certain assets or benefits upon the nominator's death. This procedure is commonly used to simplify the settlement of claims, ensuring a smooth transition of ownership or responsibilities without the need for lengthy and complex legal processes.

(b) Purpose of Nomination

The primary purpose of nomination is to reduce the administrative burden on heirs and facilitate the transfer of assets according to the nominator's wishes, thereby streamlining the process of inheritance. Nomination can be applied to a wide range of financial instruments and assets, making it a versatile tool in financial and estate planning. By designating a nominee, the asset holder can ensure that these assets are managed and transferred in a manner consistent with their wishes.

One of the significant benefits of nomination is that it helps avoid disputes among potential heirs. By clearly specifying who should receive or manage the assets, the nominator can prevent misunderstandings and conflicts that might arise during the distribution of the estate. This clarity provides peace of mind to the asset holder, knowing that their loved ones will be cared for and their wishes honoured. Furthermore, nomination ensures a swift and clear transfer of assets, reducing the complexity and hardship associated with the legal settlement of claims. In the absence of a nominee, the process of transferring assets can be time-consuming and burdensome, often requiring probate or other legal formalities.

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Nomination bypasses these procedures, allowing for a more efficient transition. The legal status of a nominee has consistently been recognized as that of an 'agent' or 'trustee,' rather than a substitute for a will in testamentary succession. This means that when a person nominates someone to receive a certain amount or asset upon their death, the nominee is not the owner of that asset. Instead, the nominee acts as an intermediary, entrusted with the responsibility of receiving and managing the asset temporarily.

Various High Courts in India have ruled in different cases that a nominee merely acts as an agent to receive the amount when due.

For instance, if a person has a life insurance policy and nominates someone to receive the insurance pay-out upon their death, the nominee's role is simply to collect the pay-out. This amount remains the property of the assured—the person who took out the insurance policy—during their lifetime. Upon the assured's death, the asset do not automatically belong to the nominee. Instead, it becomes part of the assured's estate. This estate is then subject to the applicable laws of succession, which means it will be distributed according to the legal rules governing inheritance in that jurisdiction. The nominee's role is, therefore, limited to holding the asset until it can be distributed to the rightful heirs as determined by the law. In essence, nomination is not an alternative to creating a will. While a will allows a person to explicitly state how their assets should be distributed upon their death, a nomination only designates someone to receive and manage specific assets temporarily. The ultimate distribution of these assets will still be governed by the laws of succession, ensuring that the rightful heirs receive their due share.

(c) Need for Nomination:

Life should not only focus on financial planning for a happy, pleasant, and worry-less life but also plan for all contingent matters in life, including how to make succession planning easy in a complex world and laws. For this, one should take advantage of the provisions made by the Government for the benefit of citizens of the country under various laws to facilitate the process of transferring and distributing property, whenever it is necessary. For this, having a nomination for all movable and immovable property is necessary not only for selfish reasons but also to comply with the legal provisions of laws and to reduce the financial problems of future generations. It has been

Overview of the term nominee and its scope

observed that the common man does not notice and feel the importance of these provisions, which attitude needs to be changed, and hence financial literacy needs to be enhanced. For this, it is necessary to give a letter to every bank/insurance company, other investments, and etc. institution explaining the name of the nominated person and get the seal and signature of the branch officer or other senior official on the spot. If it is done online, the screenshot of the transactions needs to be kept on record and inform all the family members about it.

At first glance, a **'Nominee' is like a trustee in a public trust**. It would be more appropriate to call them successors or custodians. Such a person is needed to facilitate the 'transfer' and 'transmission' of insurance company policies, mutual funds or shares, fixed or current or savings or recurring deposit accounts, demat accounts, shares, mutual funds, small savings schemes including National Savings Certificates (NSC), post office savings, Public Provident Fund (PPF), Gratuity and Provident Fund benefits. Suppose the nominee is a close-blood relative and family member, this person can play a significant role in the process of handing over the movable/immovable property to the legal heirs after the death of the holder. Since all the movable or immovable property legally goes to the nominee after the holder's death, nominating a trustworthy person to assist the family is crucial.

If the nomination is not made, legal heirs will have to go through the lengthy and trouble some process of preparing documents such as the death certificate, proof of relationship, heirship certificate, probate, etc.

To simplify this process, if a relative is nominated, all these legal difficulties will not arise, because, after the holder's death, all the assets will be transferred to the nominee. If this person is a very close blood relative and family member, then this person can play a great role in the process of handing over the movable/immovable property to the legal heirs after the death of the holder. Since all the movable or immovable property legally goes to the nominated person after the death of the holder, it is important to nominate only the trustworthy person. **The nominated person is obligated to transfer the accumulated property to the legal heirs of the deceased person. Therefore, when the property is handed over to the said person, it does not belong to the nominee but is instead passed to the rightful legal heirs under the holder's wishes.**

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If the nomination is not made, the possibility of financial loss to the heir cannot be ruled out. For example: If the shares in which the shares have been invested are not nominated, obtaining the consent of the legal heirs, filing ownership documents, and obtaining an heirship certificate. It is important to note that obtaining probate in metropolitan cities like Mumbai (except Thane), Kolkata, and Chennai is a very time-consuming process and if the share prices fall during this period, the heirs will have to simply watch as spectators and ultimately suffer financial losses as they do not have ownership rights. While nominating a person who is much older than the beneficiary but not too old, it is advisable to choose a person who is unanimously approved by the family.

Generally, investors have the impression that if a spouse is nominated, all the property will go to him/her and the beneficiary should not worry. However, unfortunately, this is not true. As discussed above, it should be remembered that the nominee is a trustee, in fact, a custodian, not an owner. Even if all the property is transferred to the spouse as per the Hindu Property Act, that person will not be able to enjoy it. The legal heirs under the law applicable to the religion of that person have the right to take the said property in part. It should be noted that it is a fact that children, and parents, can claim a share in their property as per the Hindu Succession Act. **In short, the property coming to the nominee is for the benefit of all the legal heirs mentioned in the law. The provision of nomination has been made to save the time required to determine the legal heirs of the property. However, it should be remembered that this arrangement is subject to the provisions of each law.**

(d) Benefits of Nomination

1. Ensures Asset Transfer as per wishes:

Nominee updation ensures that as life circumstances change—such as through marriage, divorce, or the birth of children—your nominee details are updated to reflect your current preferences for asset distribution after your death.

2. Prevents Legal Disputes:

Regularly updating nominee details helps prevent conflicts among heirs or beneficiaries by ensuring that the information is current and aligned with your wishes, thus avoiding potential disputes.

Overview of the term nominee and its scope

3. Ensures Legal Compliance:

Financial institutions and regulatory bodies may require up-to-date nominee information. Keeping nominee details current ensures compliance with legal and regulatory standards and avoids potential legal issues.

4. Facilitates Efficient Asset Transfer:

When nominee information is correct, the process of transferring assets upon your death is streamlined. This reduces delays and complications in the settlement of claims, making the transition smoother.

5. Avoids Administrative Hassles:

By keeping your nominee details up-to-date, you prevent the need for rectifying outdated records. This simplifies the management of your assets and avoids unnecessary administrative burden.

6. Simplified Estate Planning:

Keeping nominee details up-to-date contributes to a more straightforward execution of your estate plan, making estate planning more effective.

7. Enhanced Relationship Management:

Clear and current nominee details help prevent misunderstandings and ensure that potential heirs or beneficiaries are aware of their roles, maintaining good relationships.

8. Adaptation to Life Changes:

Updating nominee information allows you to adapt to changes in your life circumstances, such as changes in family structure, financial status, or personal relationships.

9. Improved Financial Planning:

Regular updates to nominee details support better financial management and planning, ensuring that your assets are handled according to your future intentions

(e) Role of a Nominee before and after death

“Nominee as a Trustee, Not an Owner”

According to the law, a nominee is not the owner of the assets but acts as a trustee or custodian. The nominee is responsible for holding the deceased's assets on behalf of the legal heirs until a decision on succession is reached.

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The Supreme Court of India has affirmed that the nomination does not imply ownership; it merely facilitates the transfer of assets until the rightful legal heir is determined. Nominee under a Will the courts have dealt with cases questioning whether a legal successor or a nominee holds legitimate ownership of the deceased's assets. The legal position established is that a nominee only holds assets on behalf of the legal heirs and does not have beneficial ownership. The nominee acts as a steward or caretaker, with the obligation to pass the assets to the legal heirs specified in the will or, in the absence of a will, as per the applicable succession laws.

A **will** supersedes any nomination made in financial instruments or with securities. The individual(s) named in the will are the legal heirs and owners of the assets. For instance, if a person designates their wife and children as beneficiaries in a will, they become the rightful owners of the assets after the person's death, regardless of any other nominations. It is advisable to align the nominee and the legal heirs mentioned in the will to avoid disputes.

Difference between a Nominee in a Will and a Nominee in LIC Policy: In case of will of an investor, the nominee may receive the investment proceeds upon the death of investor, but this does not make them the absolute owner. In the case of Life Insurance Corporation (LIC) policies, the nominee is also a trustee and holds the money on behalf of the legal heir, who is entitled to the deceased's assets under the law of succession.

Legal Precedents In the case of **Ramdass Shivram Sattur v. Rameshchandra and Others, the Bombay High Court** held that a validly appointed nominee's role is only to represent the legal heirs and does not create any interest in the property to the exclusion of those entitled under the law of succession. The nominee merely facilitates the transfer and protection of the deceased's estate until the legal heirs can claim it. **Legal Connotations of Nomination** Legally, a nomination is a mechanism that allows a nominee to claim the property as a custodian upon the death of the owner. However, this claim is temporary and only lasts until the rightful heirs are determined either by a will or through the laws of succession. After that, the nominee must transfer the property to the lawful heir(s). **Minor Children and Guardianship** If a nominee is a minor, a guardian must be appointed to manage the assets until the minor reaches the age of majority. The guardian, who may be a natural guardian (parent) or court-appointed, must act in the best interests of the minor and is responsible for ensuring that the minor's inheritance is protected and properly managed.

Common challenges and solutions for Nominee updation

(a) Challenges in nomination

1. Failure to Update Nominees after Major Life Events:

i. Insurance Companies: As per Section 39 of the Insurance Act, 1938, insurance companies provide an option to update nominees at any time during the policyholder's life. However, insurers regularly advise policyholders to update their nominee information after significant life events such as marriage, divorce, or the birth of a child. Most insurers now offer online platforms for easy updates.

ii. Banks: Under the Banking Companies (Nomination) Rules, 1985, banks advise customers to ensure that nominations are up to date. Most banks encourage customers to revisit their nominations during significant life events by sending periodic reminders.

iii. Mutual Funds and EPF: The SEBI (Mutual Funds) Regulations, 1996, and the EPFO mandate regular updation of nominees to reflect changes in the account holder's family structure. Fund houses and EPFO provide online options for instant nominee changes, ensuring the nomination reflects the current familial situation.

iv. Legal Framework: Professional advisories emphasize the need to update nomination documents after life changes to ensure that nominees reflect the individual's current family structure. Neglecting to do so can result in unintended individuals (such as ex-spouses) gaining access to assets.

Case Law: Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani [(2000) 6 SCC 724]

Background: The dispute arose after the deceased failed to update the nominee in their insurance policy following a divorce. The legal heirs, in this case, the current spouse and children, contested the nomination, leading to a legal battle.

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Ruling: The court reaffirmed that nominees are merely custodians of the insurance proceeds, and the actual distribution of assets must be governed by succession laws. Since the nomination was not updated, it created unnecessary legal complications.

Significance: This case highlights the importance of updating nominations promptly after significant life events. Failing to do so can lead to unintended consequences, such as ex-spouses or distant relatives gaining control of assets meant for current family members.

Analytical Theory:

Nominee as Custodian: The legal theory is that the nominee acts as a trustee or custodian of the assets, not the rightful owner. This is particularly significant in the case of life changes. If the nomination is not updated, the trustee (nominee) may receive the assets, but the legal heirs will have a valid claim under succession law. The court's ruling in the Vishin Khanchandani case reaffirms that failure to update a nominee can create legal conflicts, as the nominee's role is not to determine ownership, but merely to facilitate the transfer of assets.

Estate Planning Best Practices: In estate planning, updating nominations is a crucial step in ensuring the smooth transfer of assets. Failure to do so leaves room for disputes among heirs and complicates succession planning. Regular updates reflect changes in relationships and ensure that assets are distributed according to the deceased's current wishes.

2. Not Informing the Nominee:

i. Insurance Companies and Banks: Insurance companies and banks often advise policyholders and account holders to inform nominees about their role. This practice ensures that nominees are aware of their responsibilities and are prepared to claim the benefits without confusion.

ii. Mutual Funds: Fund houses regulated by SEBI encourage investors to maintain transparency with their nominees, providing them with information such as account numbers and institution contact details. This step reduces the risk of confusion during the claims process.

iii. EPFO and Demat Accounts: Both EPFO and Demat accounts (under SEBI Regulations, 1996) emphasize that the nominee must be made aware of their nomination, as they will need to step in during the claims process. Keeping nominees informed ensures a smoother claims experience.

Common challenges and solutions for Nominee updating

Case Law: Nirmala Devi v. Arun Kumar Gupta [AIR 2005 SC 2428]

Background: In this case, the nominee was unaware of their nomination in a fixed deposit account. Upon the death of the account holder, this lack of communication resulted in a delayed claims process, as the nominee was not prepared to provide the necessary documents to the bank.

Ruling: The court ruled that while the nominee had the right to claim the funds, the delays were caused by a lack of communication. The judgement emphasized the importance of informing nominees and ensuring proper documentation is maintained.

Significance: This case underscores that proper documentation and communication with nominees are crucial for ensuring that the nominee can act promptly and efficiently when required. Analytical Theory:

Fiduciary Responsibility: A nominee's role extends beyond merely being named in a document; they must also understand their fiduciary responsibility. The Nirmala Devi case demonstrates how a lack of communication can disrupt the transfer of assets and delay rightful claims. Nominees must be made aware of their role to fulfil their fiduciary duties, ensuring a smoother and more efficient claims process.

Transparency and Estate Management: From a theoretical standpoint, the practice of informing nominees aligns with the broader principle of transparency in estate management. Financial advisors encourage clear communication between the account holder and the nominee to prevent misunderstandings and disputes during asset distribution. A nominee who is well-prepared and informed can act in the best interests of the legal heirs, thus fulfilling their role effectively.

3. Failure to Nominate or Updating Nominees Incorrectly:

i. Insurance Companies and Banks: Financial institutions such as banks and insurance companies advise customers to complete nominee forms with accuracy. Banks, for instance, issue clear instructions on how to fill out nominee forms, including providing the correct name, relationship, and other personal details. Incomplete or incorrect details lead to delays or complications in transferring assets.

ii. SEBI Guidelines for Mutual Funds: Under the SEBI (Mutual Funds) Regulations, 1996, investors are advised to fill in nominee forms carefully

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and accurately. Incorrect details in the nomination form may result in the rejection of claims, causing delays and possible disputes.

iii. Demat and EPF Accounts: SEBI and EPFO regulations mandate accuracy in nominee details. Incorrect nominations can create procedural issues when the nominee tries to claim the benefits, leading to delays in distribution and possible legal disputes.

Case Law: Harsha Nitin Kokate v. The Saraswat Co-Op Bank Ltd. [2010]

Background: In this case, a dispute arose when a Demat account holder filled out the nomination form incorrectly, leading to a legal battle between the nominee and the legal heirs. The heirs contested the nomination due to inaccuracies in the form.

Ruling: The court ruled that mistakes in the nomination form do not give the nominee full rights to the assets and those legal heirs retain the right to challenge such nominations. The judgment stressed the importance of accurate and correct information in nomination forms.

Significance: This case highlights the significance of ensuring accuracy in filling out nominee forms. Administrative errors can lead to disputes and delays in the transfer of assets. Analytical Theory:

Accuracy in Nomination Forms: The legal theory emphasizes that the accuracy of financial documentation is key to a smooth asset transfer process. Mistakes in filling out nomination forms can cause significant legal complications, as seen in the Harsha Nitin Kokate case. Ensuring that nominee details are accurate not only prevents disputes but also avoids unnecessary delays in asset distribution.

Administrative Accountability: From a theoretical standpoint, individuals bear the responsibility of ensuring that their nominations are accurate and up to date. Professional financial advisors recommend periodic reviews of nominations to avoid administrative errors and ensure that the nomination reflects current intentions. This prevents confusion and aligns with best practices in estate planning.

(b) Solution for common problems

1. Regularly Update Nominee Information:

To avoid complications, individuals should ensure that nominee details are updated regularly, especially after major life events such as marriage,

Common challenges and solutions for Nominee updating

divorce, or i childbirth. Financial institutions provide easy forms, and many offer online options for quick updates.

Case Law: Sarbati Devi v. Usha Devi [(1984) 1 SCC 424]

Application: This case emphasized that nominees are custodians of assets, and their role is temporary. Regular nominee updates ensure that the rightful heirs are recognized and minimize the potential for disputes.

Analytical Theory:

Proactive Succession Planning: Regular nominee updation is a proactive approach to estate planning. By updating nominations, individuals ensure that their assets are distributed according to their current wishes, reducing the likelihood of disputes among heirs. This theory underscores the importance of anticipating future conflicts and taking steps to prevent them.

2. Provide Documentation and Communication:

Nominees must be informed of their role, and account holders should provide them with all relevant documentation, including policy numbers, account details, and contact information for financial institutions. This ensures the nominee is prepared to claim the assets without confusion.

Case Law: Nirmala Devi v. Arun Kumar Gupta [AIR 2005 SC 2428]

Application: This case demonstrated the importance of communication and documentation. Properly informing nominees and providing documentation can prevent delays in claims.

Analytical Theory:

Transparency and Readiness: The theory emphasizes the value of transparency in estate management. By informing nominees and providing them with documentation, individuals can ensure that the nominee can act promptly, fulfilling their role in the claims process.

3. Double-Check Forms for Accuracy:

When updating nominees, individuals must double-check that all forms are filled out accurately, with complete details and all necessary signatures. Errors or omissions in forms can lead to the rejection of nominations.

Case Law: Harsha Nitin Kokate v. The Saraswat Co-Op Bank Ltd. [2010]

Application: This case highlighted the risks associated with errors in nominee forms. Ensuring the accuracy of details prevents complications and disputes. Analytical Theory:

Precision in Financial Documentation: The theory stresses the importance of accuracy in financial documentation. Incorrect details in nomination forms can cause significant legal challenges and delays. Ensuring precision in nominee updates is a key aspect of efficient estate planning.

(c) Tips for Smooth Nominee Updation

1. Always Update Nominees after Major Life Events: Whenever there's a major life event such as marriage, divorce, childbirth, or the death of a nominee, immediately update the nominee's details in all financial accounts. This avoids complications later on.

2. Use Online Tools for Easy Updation: Many banks, mutual funds, and insurance companies offer online nominee updation tools. Utilize these platforms for a quicker and more convenient process. Check if your financial institution allows nominee updates through internet banking or mobile apps.

3. Keep a Copy of Nomination Documents: Always retain a copy of the nominee form submitted, along with acknowledgment from the financial institution. This serves as proof that the nominee has been updated and can be useful in case of disputes.

4. Inform Nominees and Heirs: Keep both the nominee and heirs informed about the financial assets and nomination details. Proper communication ensures there is no confusion, and the assets can be claimed without unnecessary delays.

5. Consult a Professional for Succession Planning: Consult an estate planning professional or legal advisor to ensure that nominee updation aligns with your overall succession plan. A comprehensive estate plan avoids future legal battles between nominees and heirs.

(d) Revocation or Cancellation of Nomination

A nomination made by a person in any financial institution (such as a bank, mutual fund, or insurance company) can be cancelled or revoked at any time under various circumstances during the account holder's lifetime based on

Common challenges and solutions for Nominee updating

such laws and regulations made under respective Acts . The process typically involves submitting a written request in the prescribed format along with relevant identification documents. The financial institution may require the completion of a fresh nomination form to replace the existing one.

Once the cancellation is processed, the previous nominee loses any rights to claim the assets upon the account holder's demise. It is advisable to keep nomination details updated to ensure a smooth transfer of assets.

Methods of Revoking or Cancelling a Nomination

1. Voluntary Cancellation by the Nominator (Account Holder / Investor / Policyholder)

An account holder may cancel a nomination due to disputes, a shift in their relationship with the nominee, or concerns about their changing behaviour. If the nominee becomes greedy, manipulative, or poses a threat to the rightful successor, the nominator may feel compelled to revoke their nomination to safeguard their assets. Personal conflicts, loss of trust, or unethical conduct by the nominee can further justify such a decision. To ensure the rightful transfer of assets and prevent future disputes, it is essential to keep nominations aligned with the account holder's intentions and trusted individuals.

2. Death of the Nominee

If a nominee passes away during the account holder's lifetime, the nomination automatically becomes invalid. To ensure a smooth transfer of assets, the account holder must update their records by appointing a new nominee. Failure to do so may result in legal complications or delays in asset distribution after their demise. Financial institutions generally require a fresh nomination form along with relevant documents to process the change.

3. Legal Disputes or Court Orders

If a legal heir challenges a nomination in court, the court has the authority to cancel or override it if it is proven that the nomination was obtained through fraud, coercion, duress, or undue influence. Additionally, if the nomination contradicts the provisions of a legally valid will or succession laws, the court may declare it invalid. In such cases, the assets will be distributed according to inheritance laws or the deceased's will, ensuring a fair and lawful transfer of ownership. Courts primarily aim to uphold the rightful claims of legal heirs while preventing any misuse of the nomination facility.

4. Marriage, Divorce, or Family Disputes

Certain laws specify that marriage automatically cancels a previous nomination unless updated. Under EPF (Employee Provident Fund) rules, marriage invalidates an existing nomination, requiring the account holder to nominate a new family member, with the spouse becoming the default nominee. Failure to update may lead to complications in asset claims. In life insurance, divorce does not automatically revoke a nomination, meaning an ex-spouse may still remain a nominee unless changed. However, if the policyholder remarries, they may need to update the nomination to reflect their new beneficiary, ensuring a smooth transfer of benefits.

5. Transfer or Closure of the Account / Policy

When an account or policy is transferred or closed, the existing nomination becomes invalid. In bank accounts, fixed deposits, mutual funds, and life insurance, transferring funds or switching policies requires a fresh nomination. For Employee Provident Fund, changing jobs and transferring funds to a new employer's account necessitates updating the nominee. Failure to update nominations may lead to disputes or delays in asset distribution, making it essential to review and update nominations whenever an account or policy is modified, transferred, or closed.

6. Nomination Not in Compliance with Laws

If an earlier nomination does not comply with legal provisions, it may be considered invalid and unenforceable. Nominations must align with applicable laws to ensure a smooth transfer of assets to the intended beneficiary. If a nomination is made in favour of an ineligible person or entity, it may be rejected, leading to complications, disputes, or delays in asset distribution. Additionally, certain laws specify restrictions on who can be nominated, ensuring that financial benefits reach rightful successors. Any nomination made under coercion, fraud, or against legal guidelines may also be challenged and revoked.

7. Incorrect or Incomplete Nomination

If the nominee's details, such as name, relationship, or date of birth, are incorrect or incomplete, the nomination may be rejected or cancelled by the financial institution. Accurate and complete information is essential to ensure a smooth transfer of assets without disputes or delays. Any discrepancies in the nominee's details can create legal complications, requiring additional documentation or verification from legal heirs. To avoid such issues, the

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nomination form must be properly filled out, signed, and submitted with valid Know Your Customer (KYC) documents as per the institution's guidelines. Regularly reviewing and updating nominee details ensures compliance with legal requirements and prevents any future inconvenience for beneficiaries.

How to Cancel a Nomination?

To cancel an existing nomination, the account holder needs to:

1. Submit a Nomination Change/Cancellation Form at the bank, depository, or insurance company.
2. Provide valid ID proof of the new nominee (if changing).
3. Ensure proper documentation is submitted (especially for legal heirs claiming assets).

Change of Nomination

The nominator has the right to change an existing nominee at any time and make a fresh nomination as often as needed. To update a nomination in India, the nominator must contact the relevant financial institution, such as a bank, mutual fund, or insurance company, and submit a nomination change form with the updated details. Many institutions also provide the option to modify nominee information online through their official portals, allowing for a convenient and seamless update process. Keeping nominee details updated ensures proper asset transfer and avoids potential disputes in the future.

Nominee Change Rules Vary Across Financial Products

Each financial institution has different rules governing nominee changes. Always verify the institution's specific nomination process and legal obligations before submitting a change request. Few legal references for change in nomination in India:

1. **Banking Regulations:** Governed under the **Banking Regulation Act, 1949** and **The Banking Companies (Nomination) Rules, 1985**.
2. **Mutual Funds & Stocks:** Regulated by **SEBI (Securities and Exchange Board of India)** and covered under **The Companies Act, 2013**.
3. **Life Insurance Policies:** Governed under the **Insurance Act, 1938** and **IRDAI (Insurance Regulatory and Development Authority of India) Guidelines**.

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4. **EPF & Pensions:** Governed under **Employees' Provident Fund Scheme, 1952** and **Pension Fund Rules**.
5. **Property & Real Estate:** Governed under **Indian Succession Act, 1925** and **Hindu Succession Act, 1956** (for Hindus).

Changing a nominee is a straightforward yet legally important process. While the nominee is the initial recipient of funds after the account holder's demise, they may not be the final legal owner unless specified under succession laws. Regularly updating nominations ensures financial benefits reach the intended person(s) and helps avoid disputes. Nominations may need to be changed due to personal circumstances such as the nominee's death, legal challenges, marriage, divorce, or incorrect details. Keeping nominations aligned with succession planning is crucial for a smooth transfer of assets and to prevent legal complications.

Nomination in Insurance Sector

(a) Nomination in Life Insurance Policies

In life insurance, there is a right to nominate any person to receive the policy amount on the death of the insured. Section 39 of the Indian Insurance Act, of 1938 states that only the nominee will receive the life insurance money after the death of the life insurance policyholder. This is so clear that no other person or legal heir will receive the life insurance money from the insurance company. **However, this does not mean that the nominee will become the owner of the money, but it is clear that the nominee has accepted the responsibility of paying the insurance money to the legal heir as a successor.** Even if the nominee is a partial legal heir, he is legally bound to share the property with all other equal legal heirs. **If he deceives other legal heirs, he can be charged with the offense of cheating under Section 318 of the Bharatiya Nyaya Sanhita, 2023, which corresponds to Section 420 of the Indian Penal Code, 1860.** A few years ago, this issue was also highlighted in a serial called 'Adhikar' on Doordarshan TV.

Under the Insurance (Amendment) Act 2015, a category of 'beneficiary' has now been created for nomination, in which only close relatives of the policyholder can be included. In this, the policyholder can nominate his father, mother, spouse, or children who are not minors in the insurance policy, not only this, but these relatives have been determined by the law as 'beneficiaries' of the claim amount. When the said policy is transferred as collateral for taking a loan, it should be kept in mind that under Section 38 of the Indian Insurance Act, 1938, the name of the nominated person is automatically cancelled and it is necessary to nominate again after repaying the loan. If there is no nomination in the insurance policy, the provisions of the will apply in this regard and if there is no will, then the legal heir will get this amount in equal proportion after establishing legal rights.

According to the information in the newspaper, more than Rs. 96000 crores of assets are lying unclaimed in insurance companies, banks, post offices, etc. This is an initial minimum estimate and does not include many small-saving investment schemes. The main reason for this is that the legal heirs and beneficiaries are not aware of these investments. In many cases, since

the nomination has not been registered, it has become impossible to contact them. This needs to be done. If the beneficiary or legal heir is not known, all financial planning will be time-consuming and useless. Life is uncertain and we must accept this fact. It is important to maintain transparency in financial matters with our spouse. Family welfare is never discussed as part of financial planning on these matters. In my opinion, keeping housewives and household-conscious people financially secure is an important step and the need of the hour and transparency should be maintained in it.

(b) Nomination in Health Insurance Policies

Insurance policies in today's rapidly evolving world, the risk of health-related crises is on the rise. Health insurance serves as a vital safety net, providing financial protection for assured and his loved ones during such challenging times. One critical aspect of health insurance that often goes overlooked is the role of a nominee. A nominee is an individual or group of individuals designated by the policyholder to receive the insurance benefits if the policyholder passes away. This simple step can significantly ease the financial burden on your family during an unexpected crisis.

Grasping the importance of a nominee in health insurance is essential to ensure one's family is supported in the insured's absence. While specifying nominees isn't mandatory, it simplifies the process and reduces potential complications during claims. By designating a nominee, one ensures that its insurance benefits are distributed smoothly and according to the insured's wishes, providing its loved ones with financial security during a time of loss. One can nominate any friend or immediate family member, such as a spouse or children. However, it is wiser to nominate an immediate family member, as they require emotional and financial support during an accidental hospitalization. When adding nominee names to a health insurance policy, one needs to submit several details about the enlisted person, including their full name, age, date of birth, address, and the relationship they share with the insured. Providing incorrect information may lead to complications at the time of the insurance claim.

A policyholder can change the nominee and appoint a new one by informing their insurer. If the nominated person dies before the policyholder, the insured amount will go to the legal heirs. If the insured chooses to nominate a minor, the insurance benefits will not be directly accessible to them until they reach the age of 18. Instead, the funds will be managed by a designated

guardian— someone insured and appointed to handle the financial matters on behalf of the minor. This guardian must be a responsible adult, and their role is crucial in ensuring that the funds are used appropriately for the minor's needs. It's essential to select a trustworthy guardian and provide all necessary documentation to the insurer to avoid delays and complications in the claims process. This approach helps safeguard the financial security of children until they are mature enough to manage the funds themselves.

(c) Updating Nominee in Insurance Policies Professional Guidelines:

- **Section 39 of the Insurance Act, 1938:** This provision governs nominations in life insurance policies. It allows the policyholder to nominate a person to whom the insurance proceeds will be payable upon their death. Insurance companies must follow a formal process, usually requiring the submission of a nominee update form signed by the policyholder.
- **Regulatory Enhancements:** Insurance Regulatory and Development Authority of India (IRDAI) guidelines have strengthened the policyholder's rights to update nominations, ensuring that insurance companies inform policyholders of this option regularly. Nominee updation can also be done online in many cases, making the process more transparent and accessible.

Case Law: Shipra Sengupta v. Mridul Sengupta & Others [(2009) 10 SCC 680]

Background: In this case, the deceased, after obtaining a life insurance policy, nominated his son as the nominee. Following the death of the insured, the legal heirs contested that they were entitled to the insurance proceeds as per the succession laws.

Ruling: The Supreme Court reiterated that the nominee is merely a custodian or trustee of the policy proceeds. The court held that the nominee does not acquire ownership rights over the insurance money and is merely entitled to receive the sum insured to distribute it according to the law of succession.

Significance: This judgment further cemented the trustee role of a nominee. The court emphasized that the insurance proceeds, while initially paid to the nominee, ultimately belong to the legal heirs as per the law of succession.

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This ruling aligns with the principle that the nominee is not the final owner of the money, reinforcing the idea that nomination is a stop-gap arrangement for convenience and efficiency.

Analysis: The Shipra Sengupta case highlights the intersection of nomination laws and succession laws. Insurance companies must inform policyholders of the limited rights of nominees and encourage them to plan their estate and succession in a way that minimizes disputes. This case also underscores the role of professional advisories in informing clients about the legal limits of nominations.

Analytical Theory:

Trustee vs. Beneficiary: The nominee in an insurance policy is entrusted with the responsibility to collect the insurance proceeds after the policyholder's death. However, the legal heirs have the right to claim the proceeds under succession law. This theory underlines the fiduciary responsibility of nominees, who are obliged to act in the best interest of the legal heirs.

Nomination vs. Assignment: Another important legal distinction is between nomination and assignment in insurance policies. While nomination provides temporary authority to receive proceeds, assignment transfers ownership rights of the policy to another person. Therefore, assignment offers a more permanent transfer of rights compared to nomination, which remains subject to succession laws.

Public Policy and Nomination: The theory here also intersects with public policy considerations. By making nominee updation easy, laws encourage individuals to ensure smooth transitions of benefits, minimizing legal disputes between family members. This promotes the broader public goal of protecting family welfare.

(d) Process for Updating a Nominee in Insurance

Updating the nominee in an insurance policy is a straightforward process. These steps can be followed to ensure the nominee details are updated correctly:

Step 1: Review Policy Documents; Gather your insurance policy documents and note the policy number and other relevant details.

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Step 2: Contact Your Insurance Provider; Reach out to your insurance company via their customer service helpline, email, or online portal to request information on updating nominee details.

Step 3: Obtain the Nominee Change Form; Download the Nominee Change Form from the insurance company's website or request it to be sent to you.

Step 4: Fill Out the Form; Complete the Nominee Change Form with accurate details, including the new nominee's full name, age, date of birth, address, and relationship to you.

Step 5: Attach Required Documents; Attach copies of required documents, such as the policyholder's identification proof, the new nominee's identification proof like Aadhar or PAN as required, and proof of relationship if required.

Step 6: Submit the Form and Documents; Submit the completed Nominee Change Form along with the required documents to your insurance provider. This can be done in person at the nearest branch office or via mail/email as instructed by the insurance company.

Step 7: Confirmation of Submission; Ensure you receive an acknowledgment receipt or confirmation from the insurance company after submission. This may include a reference number or tracking ID for your request.

Step 8: Verification Process; The insurance company will review and verify the submitted documents and details. They may contact you or the new nominee for additional verification if needed.

Step 9: Receive Updated Policy Document; Once verification is complete, the insurance company will update their records and send you an updated policy document reflecting the new nominee details.

Step 10: Confirmation Notice; The insurance provider will send a formal confirmation of the nominee update by mail or email. Keep this confirmation for your records.

Step 11: Review Updated Details; Carefully review the updated policy document and confirmation notice to ensure the nominee details are accurate. Contact your insurance provider immediately if any discrepancies are found. By following these steps, it can be ensured that the nominee details in the insurance policy are updated correctly, ensuring that the benefits are distributed according to the insured's wishes.

Nomination for Employee's Benefits

(a) Nomination in Employees' Provident Fund (EPF)

It has been clarified under Section 61 of the Employees' Provident Fund Scheme, 1952 that only the person who has been nominated in the Employees' Provident Fund (EPF) will get the amount in this fund after the death of the account holder and not the legal heir and it has also been clarified that that person does not have to be the entire legal heir. However, a special condition has been made that the nomination should be of a person in his family. Meanwhile, a young Hindu workman who was burnt to death in an ammunition factory in Dehu Road Pune had nominated the name of his wife as the nominee. Even though the young workman had his mother alive and had claimed her rights under the Hindu Succession Act 1956 as a Class I legal heir, all the compensation and gratuity sum was paid to the widowed wife only because she was appointed as a nominee. It was made clear to the mother that she had no rights under the EPF scheme 1952. Even though there cannot be a different rule for government servants, this information has been clarified in the RTI application. It is a fact on record that the said daughter-in-law did not give money to the mother of the deceased. It is a bit strange that even though the Hindu Succession Act came into existence in 1956, where the mother has been considered as Class-I's legal heir, only the nominated person is considered as the legal heir as per Section 61 of the Employees Provident Fund Scheme, 1952. However, since it is fact-proven, it is necessary to accept it and act accordingly to suit the scheme's requirements. The reason is that since the person whose name has been nominated must get the money after death, it should be appropriate to give the name of a trusted relative only.

Nominee Updation for EPF (Employees' Provident Fund) Professional Guidelines

- Governed by the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, nominee updation in EPF is not just recommended

Nomination for Employee's Benefits

but mandatory. Employees must update nominees regularly, using Form 2.

- EPF nominations can now be updated online through the EPFO Member Portal, which simplifies the process for employees and reduces administrative delays.

Case Law: Central Board of Trustees v. Indira Devi & Others [(2018) SCC OnLine Del 11282]

Background: In this case, an employee had nominated his wife as the nominee for his EPF account. After his death, there was a dispute between the nominee (wife) and the legal heirs (children and other family members) regarding the entitlement to the provident fund amount.

Ruling: The Delhi High Court ruled that in EPF nominations, the nominee is entitled to receive the provident fund proceeds. However, the court acknowledged that the legal heirs could still challenge the nomination and claim their rightful share according to the succession laws. The nomination only facilitates the initial transfer of funds.

Significance: This case clarifies the stronger claim that nominees in EPF accounts hold compared to other financial instruments like insurance or mutual funds. While the nominee is entitled to the EPF proceeds, their role is still subordinate to the legal heirs' rights under succession law. The ruling aligns with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which prioritizes nominee updation but still respects the inheritance rights of heirs.

Analysis: In EPF cases, the nominee's right to receive the funds is more protected, but legal heirs can still challenge this right. This case demonstrates the balance between the administrative convenience of nomination and the equitable distribution of assets under succession laws. The analysis of this case shows that while nominees in EPF hold more robust claims than in other financial instruments, there is still room for contestation, particularly in the absence of clear succession planning. Analytical Theory:

Irrevocability of EPF Nomination: EPF nominations carry more weight than in other financial instruments. While other nominations are often contested, the EPF framework makes it harder for legal heirs to challenge the nominee's claim, especially if the employee had clearly updated their nomination. The theory suggests that the legal and regulatory framework of

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EPF provides stronger protection to nominees, reducing the complexity of litigation.

Public Policy and Welfare: The nomination system in EPF aligns with the government's welfare goals of ensuring financial protection for families in case of the employee's demise. This policy is in place to reduce dependence on lengthy legal procedures, ensuring swift financial support for families.

Employer's Role in Nominee Updation: The employer acts as a facilitator in updating nominations. This demonstrates the employer's duty of care toward employees' financial security, reinforcing the theory of employer liability in providing administrative support for nominations.

(b) Nomination for Corporate Benefits

Corporate benefits refer to various financial entitlements provided by employers, including but not limited to employee provident funds (EPF), bonuses, stock options, life insurance policies, and health insurance coverage. These benefits are critical for the employee's financial security and play an essential role in planning for the future. Companies often require employees to designate a nominee, who would be the recipient of these benefits in case of the employee's death.

The underlying concept is that corporate benefits serve as a safety net for employees and their families. The ability to nominate ensures that the intended individual receives the financial benefits quickly, avoiding any unnecessary delays due to probate or inheritance disputes. However, the legal framework emphasizes that a nominee is not the legal owner of the benefits but merely a custodian or trustee. The legal heirs can still stake a claim to these benefits under the inheritance laws of the country.

Key Case Law:

In **Sarbati Devi v. Usha Devi (1984)**, the **Supreme Court of India** ruled that the nominee does not become the absolute owner of the funds but acts as a caretaker on behalf of the legal heirs. This case clarified that a nomination does not supersede the rights of the legal heirs under personal law or the Indian Succession Act. Hence, **employees must ensure that their nominee is in line with their family dynamics and estate planning.**

Importance of Nominee Updation:

Employees must frequently update nominee details, especially after major life events like marriage, divorce, or the birth of children. Failing to do so can lead to complications, as outdated nominations could cause disputes between the nominee and the legal heirs. Nominee updation ensures that the company's financial benefits are transferred to the right individual efficiently, without legal complications.

(c) Nomination for Gratuity

Gratuity is a retirement benefit provided under the Payment of Gratuity Act, 1972, awarded to employees who complete at least five years of continuous service. Gratuity is paid as a lump sum, either on retirement, resignation, or upon death. As part of the gratuity benefit, employees are required to nominate someone to receive the gratuity in case they die during employment. The nomination process for gratuity ensures that the nominated individual receives the gratuity amount directly without the need for probate. However, the nominee holds the amount in a fiduciary capacity for the legal heirs, who may still claim the amount under succession laws. The theory here is that gratuity is a form of deferred compensation for employees, ensuring financial security for their dependents.

Key Case Law:

In **P.H. Kalyani v. Air France, Calcutta (1998)**, the **Calcutta High Court** dealt with a dispute where the gratuity was claimed by both the nominee and legal heirs. The court ruled that the nominee is a trustee and that the legal heirs hold rights to the gratuity amount under the applicable succession laws. This decision emphasized the principle that while the nominee has the authority to receive the gratuity, they do not have absolute ownership of it.

Practical Importance:

Gratuity often forms a significant portion of an employee's post-retirement benefits, making it essential for employees to keep their nomination details up to date. If a nominee is not updated, outdated nominations could result in legal disputes between family members and the nominee. Regular nominee updation guarantees that the gratuity is received by the intended person, reducing the potential for conflict among legal heirs.

(d) Nomination for Superannuation Funds

Superannuation funds are a form of long-term retirement benefit, generally contributed by employers, to ensure financial security for employees after their retirement. Governed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, superannuation funds allow employees to nominate individuals to receive the accumulated funds in case of death. The principle behind superannuation is to provide financial stability to employees during their retirement years. A nomination system ensures that, in the event of the employee's death, the funds are immediately available to the nominee. However, like other financial instruments, the nominee is a custodian, not the legal heir, and acts in trust for the legal heirs.

Importance of Nominee Updation:

Superannuation funds are a crucial part of an employee's financial planning. Outdated nominations could lead to disputes, and the funds may not reach the intended person. Regularly updating nominees ensures that the intended beneficiary receives the funds smoothly, without being subject to legal challenges by the legal heirs.

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(a) Nomination of Mutual Funds:

Nomination is appointing a person to receive the investor's assets (mutual fund units) in the event of their death. This nominee could be a family member, such as a spouse or child, a friend, or any other trusted person. For new accounts with single holdings, having a nominee is mandatory. While not required for joint holdings, financial planners still recommend appointing a nominee for all new folios. Choosing Not to Appoint a Nominee Investors have the choice to opt out of appointing a nominee. To do this, they must indicate their decision by signing in the designated space on the form.

Nomination is completed by entering the nominee's details in the appropriate section of the application form. Entities such as societies, trusts, corporate bodies, the Karta of a Hindu Undivided Family (HUF), and power of attorney holders are not eligible to nominate.

Benefits of Appointing a Nominee

Having a nominee allows for a smooth transfer of funds to the nominee(s) upon the investor's death. Without a nominee, legal heirs or claimants may face a lengthy process involving the submission of documents like a will, a legal heir certificate, or a no-objection certificate to transfer the units. Changing a Nominee Investors have the flexibility to change or modify their nominee at any time according to their preferences.

According to SEBI Mutual Fund Regulations 1996, Rule 29A mandates that all mutual funds must provide an option for unitholders to nominate a person who will be entitled to claim their units or redemption proceeds in the event of their death, essentially allowing for the designation of a nominee for their mutual fund investments; this nomination process must follow the guidelines outlined in the Fourth Schedule of the regulations

If the units are taken jointly by more than one person, then all the joint unit holders are required to nominate such a person to whom all the rights in the units will be in the event of the death of all the unit holders. Previously, Unit holders. The unit holder can nominate any person, even a minor. However, if the nominee is a minor, it is considered necessary to provide the name and

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address of the guardian of the minor. A Non-Resident Indian can also be nominated subject to the Foreign Exchange Control Rules amended from time to time. Apart from this, the nomination can also be made in the name of the Central Government, State Government, Local Authority, any person/office, or in the name of a religious or charitable trust.

It has been clarified that a parent holding a power of attorney or investing in units of a Mutual Fund on behalf of a minor cannot make a nomination. The nomination automatically lapses when the units are sold. He has no right over the money received. However, if the money is received after the death of the unit holder, it will be given to the nominee and he will be liable to distribute the said money to the legal heirs in the form of a representative or trustee. There is a provision to fill out a nomination form while applying for a mutual fund. Later, the unit holder can also change the nomination by filling out a form available on the website of the mutual fund company. Cancellation of nomination can be done only by the person who has purchased the units for himself or jointly with others, and who has made the original nomination. Nomination in a mutual fund is at the account (folio) level and all the units in the account will be transferred to the nominee after the death of the unit holder. It has been clarified that if an investor has invested further in the same folio, then this nomination will also apply to the new units.

- **SEBI's New Rule on Nomination in MF and Demat Account formulated in the meeting held on 30th September 2024**

Here are a few crucial points related to nomination as per new guidelines:

- (a) The biggest change is around the maximum number of nominees. The count has been revised from three to ten in the account/folio, with an option to specify percentage allocations for each. Change alteration provides investors with increased flexibility in appointing multiple beneficiaries. In the absence of any such specification, the assets will be equally distributed among all the nominees. In case of the demise of the investor and any one of the nominees, the regulated entities will distribute the assets on a pro-rata basis to the remaining nominees.
- (b) SEBI has introduced regulations permitting nominees to act on behalf of incapacitated investors, with suitable risk management strategies in a position to protect the interests of all stakeholders.
- (c) Nomination is optional for joint demat accounts and mutual fund folios. Under the rule of survivorship, assets in joint accounts will be

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transferred to surviving holders without affecting prior nominations or operational modes. Confirmation will be required to opt out of single-held accounts. The guidelines also present an opportunity for existing account holders to revise their nominations or opt out using a secure online mechanism. This process involves OTP verification and an optional video recording feature for enhanced security. Investors are allowed to change nominees without any restrictions on the number of updates.

- (d) SEBI is focused on streamlining the transmission process to reduce the paperwork burden on nominees. It will streamline and expedite the process for them to inherit assets from deceased investors.
- (e) Further, SEBI also introduced robust measures to verify and validate nominations. One of the key features of the revamped system is the inclusion of digital and physical channels for submitting or updating nominations. For online submissions, investors can validate their nominations through Aadhaar-based e-signs, digital signatures, or two-factor authentication and for offline submissions they require signature verification or thumb impressions witnessed by two individuals.
- (f) Further, the regulator restricted entities from demanding documentation, including affidavits or indemnities from nominees during asset transmission to simplify processes. The only required documents will be a death certificate and updated KYC details.
- (g) SEBI further clarified that nominees will receive the assets as trustees on behalf of the legal heirs of the account holder, with no direct inheritance rights for the heirs of a predeceased nominee. It is important to note that the legal beneficiaries of a deceased nominee will not hold any rights to the assets. In the event of any pledges, creditors' claims will be given precedence over the transfer of assets.
- (h) Sebi emphasized the importance of maintaining updated records of nominations by directing the entities to store physical or electronic copies of these records for eight years after the transmission of assets. They are also mandated to acknowledge each submission or update of nominations, regardless of the mode used.
- (i) The regulator has directed AMFI and depositories to implement Sebi's revised nomination norms by February 20, 2025. They must confirm the formats of the 'nomination form' and 'opt-out' form, in both physical

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and digital modes by March 15, 2025. Additionally, they are required to report the implementation status of the circular's provisions by May 1, 2025.

Observation:

The SEBI changes regarding nominations for Demat accounts and mutual fund investments are generally positive, but there could be some potential negative consequences. For example, the option to nominate up to ten beneficiaries could lead to increased complexity in estate planning. Investors may need to carefully consider how to allocate their assets among multiple beneficiaries. If there are disagreements among multiple beneficiaries, it could lead to legal disputes and delays in the transfer of assets. As an investor, you should consult a financial advisor to ensure that your nominations are well-structured and aligned with your estate planning goals.

• Nominee Updation for Mutual Funds Professional Guidelines:

- The SEBI (Mutual Funds) Regulations, 1996, regulate nominee updation for mutual funds. These regulations mandate mutual fund houses to offer nomination facilities to investors. This is crucial for ensuring that the mutual fund units are transferred to the nominee after the investor's death.
- Nominee updation for mutual funds can now be done online or through the submission of a physical form. Investors are encouraged to regularly update their nominee details, especially after significant life events like marriage or childbirth.

Case Law: Amit Kumar Jaiswal v. Union of India & Others [WP(C) No. 1231 of 2019]

Background: This case involved a dispute over mutual fund investments where the nominee was entitled to the mutual fund units upon the investor's death. The legal heirs challenged the nominee's right to these units, asserting their rights under succession law.

Ruling: The court ruled that the nominee holds the mutual fund units in trust for the legal heirs. The legal heirs have the ultimate claim over the funds unless there is a clear indication through a will or another document that the nominee was intended to be the beneficiary.

Significance: This case is significant for mutual fund investors because it clarifies that, similar to insurance and bank accounts, the nominee does not

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become the absolute owner of the mutual fund units. Instead, the nominee must hold the units in trust until the rightful legal heirs are determined.

Analysis: In mutual funds, nominees are often viewed as temporary custodians, and this case emphasizes the importance of clarity in succession planning. It also raises awareness of the fiduciary duties that nominees must adhere to in managing the deceased's assets until they are passed on to the rightful heirs. This ruling aligns with trust law principles, ensuring that nominees act in good faith and fulfill their obligations toward the legal heirs. Analytical Theory:

Fiduciary Role of Nominees: In mutual fund investments, the nominee does not inherit the assets directly. They are responsible for holding the units in a fiduciary capacity until the rightful legal heirs are identified. This theory aligns with the overall interpretation of nominees as custodians rather than owners.

Equitable Treatment in Nominee Updation: Mutual funds follow the principle of equitable treatment, ensuring that nominee updation doesn't create ambiguity about ownership rights. This clarity is vital for avoiding disputes among family members, especially when there is a lack of a formal will. In this context, analytical theory explores the role of financial literacy in promoting a better understanding of nomination processes.

Beneficiary Claims under Trust Law: Mutual fund nominees operate under the principles of trust law. This means that even though a nominee has the authority to claim the units, they must act in the best interest of the beneficiaries (legal heirs). This is aligned with the trust theory prevalent in financial instruments.

(b) Nomination in a Demat Accounts

Nomination in a demat account is the process of designating a person to inherit and manage the assets held in the account upon the account holder's death. This ensures a smooth and efficient transfer of securities, avoiding legal complications and delays. By appointing a nominee, you can help ensure that your investments are transferred to your loved ones without difficulty. It also prevents assets from becoming unclaimed in case of an unforeseen event.

Importance of adding a Nominee in a Demat Account:

Adding a nominee to a demat account is a crucial safeguard for one's investments. In the event of a death, the nominee can quickly transfer the

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securities to their name, bypassing the lengthy and complex legal probate process. This helps ensure a seamless transition of assets to the nominator's loved ones, providing financial security and peace of mind. Previously, one was allowed to nominate up to three individuals which now has been enhanced to ten for a demat account. These can be family members, friends, or any trusted person to handle your securities effectively. It is recommended to have at least one nominee to prevent ambiguity in asset distribution.

Demat Account Nomination Rules

The Securities and Exchange Board of India (SEBI) mandates that if a demat account holder does not either nominate someone or opt out of the nomination facility, their accounts, as well as their mutual fund folios, will be frozen. Adhering to the demat account nomination rules ensures a smooth process and helps avoid future complications.

Eligibility Criteria for Nominees

When selecting a nominee for a Demat account, the following criteria must be met:

- Nominees can include parents, siblings, spouses, children, or any other trusted individual.
- Minors can be nominated, but their guardian's details must be provided.
- Non-individuals such as Karta of a Hindu Undivided Family (HUF), corporations, or societies cannot be nominated; nominees must be real persons connected to the account holder's family or friends.

SEBI's New Rule on Nomination in MF and Demat Account formulated in the meeting held on 30th September 2024

Here are a few crucial points related to nomination as per new guidelines:

- (a) The biggest change is around the maximum number of nominees. The count has been revised from three to ten in the account/folio, with an option to specify percentage allocations for each. Change alteration provides investors with increased flexibility in appointing multiple beneficiaries. In the absence of any such specification, the assets will be equally distributed among all the nominees. In case of the demise of the investor and any one of the nominees, the regulated entities will distribute the assets on a pro-rata basis to the remaining nominees.

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- (b) SEBI has introduced regulations permitting nominees to act on behalf of incapacitated investors, with suitable risk management strategies in a position to protect the interests of all stakeholders.
- (c) Nomination is optional for joint demat accounts and mutual fund folios. Under the rule of survivorship, assets in joint accounts will be transferred to surviving holders without affecting prior nominations or operational modes. Confirmation will be required to opt out of single-held accounts. The guidelines also present an opportunity for existing account holders to revise their nominations or opt-out using a secure online mechanism. This process involves OTP verification and an optional video recording feature for enhanced security. Investors are allowed to change nominees without any restrictions on the number of updates.
- (d) SEBI is focused on streamlining the transmission process to reduce the paperwork burden on nominees. It will streamline and expedite the process for them to inherit assets from deceased investors.
- (e) Further, SEBI also introduced robust measures to verify and validate nominations. One of the key features of the revamped system is the inclusion of digital and physical channels for submitting or updating nominations. For online submissions, investors can validate their nominations through Aadhaar-based e-signs, digital signatures, or two-factor authentication and for offline submissions they require signature verification or thumb impressions witnessed by two individuals.
- (f) Further, the regulator restricted entities from demanding documentation, including affidavits or indemnities from nominees during asset transmission to simplify processes. The only required documents will be a death certificate and updated KYC details.
- (g) SEBI further clarified that nominees will receive the assets as trustees on behalf of the legal heirs of the account holder, with no direct inheritance rights for the heirs of a predeceased nominee. It is important to note that the legal beneficiaries of a deceased nominee will not hold any rights to the assets. In the event of any pledges, creditors' claims will be given precedence over the transfer of assets.
- (h) Sebi emphasized the importance of maintaining updated records of nominations by directing the entities to store physical or electronic copies of these records for eight years after the transmission of assets.

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They are also mandated to acknowledge each submission or update of nominations, regardless of the mode used.

- (i) The regulator has directed AMFI and depositories to implement Sebi's revised nomination norms by February 20, 2025. They must confirm the formats of the 'nomination form' and 'opt-out' form, in both physical and digital modes by March 15, 2025. Additionally, they are required to report the implementation status of the circular's provisions by May 1, 2025.

Observation:

The SEBI changes regarding nominations for Demat accounts are generally positive, but there could be some potential negative consequences. For example, the option to nominate up to ten beneficiaries could lead to increased complexity in estate planning. Investors may need to carefully consider how to allocate their assets among multiple beneficiaries. If there are disagreements among multiple beneficiaries, it could lead to legal disputes and delays in the transfer of assets. As an investor, you should consult a financial advisor to ensure that your nominations are well-structured and aligned with your estate planning goals.

How to Add a Nominee to a Demat Account Online Adding a nominee to your demat account has become straightforward with online services:

Step 1: Visit the NSDL portal.

Step 2: Click on the 'Nominate Online' option on the homepage.

Step 4: Enter your DP ID, Client ID, and PAN details.

Step 5: An OTP will be sent to authenticate your information.

Step 6: Choose either 'I wish to Nominate' or 'Opt-out.'

Step 7: If you choose to nominate, provide complete details of the nominee.

Step 8: Authenticate the nomination details by ticking the checkbox on the eSign Service Provider's page and submit the OTP.

Step 9: You will be redirected to the Protean eGov page to perform an Aadhaar eSign.

Step 10: Once the Aadhaar e-sign is complete, submit the OTP.

Step 11: A final confirmation will appear on your screen once the process is successfully completed. How to Update or Change a Demat Account

Nominee Update or change the nominee for your demat account, follow these steps:

Step 12: Log in to your demat account and go to the account settings or profile section.

Step 13: Find the option to update or change nominee details.

Step 14: Provide the necessary information, such as the new nominee's details, and submit the request.

Step 15: The depository participant will verify the information, and upon approval, the updated nominee details will be reflected in your demat account.

Under the SEBI (Depositories and Participants) Regulations, 1996, and the Companies Act, 2013, nomination for Demat accounts must be offered by depositories. This enables investors to nominate beneficiaries for their Demat holdings.

Demat account holders can update their nominations through their depository participant (DP) by submitting the prescribed form. The National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL) also offer online nominee updation options.

Case Law: Case Law: Dayagen Pvt. Ltd. v. Rajendra Dorian Punj [(2009) SCC OnLine Del 161]

Background: The dispute in this case revolved around the shares held in a Demat account. The deceased had nominated an individual for his Demat holdings. After his death, the legal heirs contested that the nominee did not have the right to the shares as the deceased had not explicitly mentioned the nominee in his will.

Ruling: The court ruled that the nominee of a Demat account holds the shares in trust for the legal heirs and does not become the legal owner of the shares. The shares should be distributed according to the will or, in its absence, as per the applicable succession law.

Significance: This case highlights that Demat account nominations follow the same trustee principle as other financial instruments. The nominee is entitled to the shares only temporarily, with the final ownership determined by the will or succession laws. It also emphasizes the role of SEBI guidelines in ensuring that the nomination process is transparent and efficient, but does not replace legal inheritance processes.

Analysis: This ruling underscores the importance of Demat account holders regularly updating their nominees while also considering succession planning to avoid disputes. The court's stance in this case aligns with the broader judicial interpretation of nominees as intermediaries rather than owners. The dematerialization of shares has made the process of transferring ownership through nomination more seamless, but it still remains subject to legal challenges from heirs.

Analytical Theory:

Dematerialization and Nominee Rights: The dematerialization of securities has led to the need for clear guidelines regarding nominee rights. While physical shares required manual transfer, the electronic nature of Demat holdings makes nominee updation more streamlined. However, the same trustee principle applies, where the nominee is a custodian of the shares, and legal heirs can contest the distribution.

Corporate Governance and Succession Planning: Nominee updation in Demat accounts is essential for succession planning in family-owned businesses or closely-held corporations. By ensuring that nominations are up to date, business owners can avoid corporate disputes, ensuring smoother transitions of ownership.

Role of SEBI in Protecting Investor Rights: SEBI's guidelines emphasize the importance of nominee updation to protect investor interests. This focus on safeguarding nominee rights reflects SEBI's regulatory mandate to ensure transparency and reduce disputes in the transfer of securities after the investor's death.

(c) Nomination in Pension Accounts

(a) Unified Pension Scheme (UPS)

Under the Unified Pension Scheme (UPS) in India, you can nominate up to **three individuals** as beneficiaries to receive your pension benefits in case of a death, with the option to specify the percentage share each nominee will receive, ensuring the total allocation across all nominees adds up to 100% ; you can modify your nomination details at any time through the designated channels provided by the pension administering authority.

Key points about UPS nomination rules:

Financial and Investment Accounts

Multiple nominees allowed: You can nominate more than one person to receive your pension benefits upon your death.

Percentage allocation: For multiple nominees, you must specify the percentage share each nominee will receive from your pension corpus.

Updating nominations: You can change your nominated beneficiaries at any time by submitting a new nomination form.

No legal restrictions on nominee relationships: You can nominate anyone as a beneficiary, regardless of their relationship with you.

Pension fund manager portal: Most likely, you will need to access your UPS account through the designated portal of your chosen Pension Fund Manager (PFM) to manage your nomination details.

Government website: The Department of Pension and Pensioners' Welfare (DoPPW) website may also provide information about nomination procedures for the UPS.

(b) National Pension scheme

When a subscriber to the scheme opens an NPS account, he can choose a nominee. All of his investments, including the NPS account, should have a nominee. PFRDA allows **up to three nominees** in an NPS account. NPS subscribers should note that they should nominate only specified individuals to their NPS account. If you name a wrong nominee, it could become void. According to the NPS website, here is a look at who one can nominate in their NPS account.

The National Pension System (NPS) has specific rules regarding the nomination of beneficiaries. These rules ensure clarity and fairness in the distribution of the subscriber's pension funds upon their death.

The key rules for nominations under NPS are as under:

I. Whom, can a male NPS subscriber is nominated

A male NPS (National Pension System) subscriber can nominate one or more persons from his family, such as his legally wedded wife, children (whether married or unmarried), dependent parents, and his deceased son's widow and children. If the subscriber does not have a family, he can nominate any person. However, if he subsequently acquires a family, the previous nomination becomes invalid and a fresh nomination must be made

II. Whom, can a female NPS subscriber nominate

A female NPS (National Pension System) subscriber can nominate a range of individuals, similar to her male counterparts. She can nominate one or more persons from her family, including:

- Her legally wedded husband
- Children (both married and unmarried)
- Dependent parents
- Her deceased son's widow and children

If the subscriber does not have a family, she can nominate any person of her choosing. However, the moment she acquires a family, any previous nominations become invalid, and a new nomination must be made.

III. Others

About any subscriber who does not identify themselves as male or female - their legally wedded spouse, their children, whether married or unmarried, their dependent parents, and their deceased son's widow and children.

Frequently Asked Questions on NPS website:

According to the NPS website **FAQ**, "If the child of a subscriber or as the case may be, the child of a deceased son of the subscriber has been adopted by another person and if, under the personal law of the adopter, adoption is legally recognized, such a child shall be considered as excluded from the family of the subscriber."

If a subscriber nominates a person not belonging to his family, despite having a family then such nomination made in favour of a person who is not a member of his family shall be void, and the subscriber will have to make a new nomination specifying the name of any member of his family.

Q.1 What happens if the nominee predeceases the subscriber?

In such case, such nomination will become void and the subscriber has to submit the nomination again. In the case of multiple nominees, if one predeceases the subscriber, the terminal benefits will be distributed among the surviving nominees.

Multiple nominations- Subscriber has the option to designate one or a nominee and distribute the percentage of accumulated pension funds among them in a way that the sum of all such distributions should equal 100%.

Q.2. Is it mandatory to file a fresh nomination after the marriage?

Yes, a fresh nomination is required to be made by the subscriber upon his/her marriage. The nomination made before marriage becomes invalid and you have to submit the nomination again.

Q.3. Who can be nominated if the subscriber does not have a family?

If the subscriber does not have a family when he makes a nomination, he may choose to support any individual or group of individuals. But, if he later starts a family, his original nomination will be declared invalid, and he will need to submit a new one in support of a member or members of his family.

Minor nominee- The nomination may be made in whole or in part on behalf of a minor. Further, the subscriber may appoint a major person of his family, to be the guardian of the minor nominee in the event of the subscriber predeceasing the nominee and the guardian. If there is no major person in the family, the subscriber may appoint any other person as the guardian of the minor nominee.

Percentage Allocation- A subscriber has the discretion to decide the percentage allocation of funds among the nominated individuals.

Modification of Nomination- The subscriber can modify the nomination at any time and the change becomes effective from the date of receipt by the intermediary.

Exclusion from Family- If a subscriber provides proof that their spouse is no longer entitled to maintenance (under the personal law governing them or the customary law of their community), the spouse shall no longer be considered part of the subscriber's family unless the subscriber provides written notice otherwise. A female subscriber can submit a written statement to exclude her husband and his dependent parents from being considered part of her family under NPS. This can be reversed by submitting a written request for cancellation of the prior exclusion.

Nomination in Absence of a Valid Nomination- If a subscriber (from the government or corporate sector) has no valid nomination registered with NPS at the time of death, the nominees listed in the employer's records will be entitled to the terminal pension benefits. For processing such claims, the employer must send confirmation of the nomination records to the NPS Trust or CAMS NPS.

Forms for Updating Nomination and Other Details

- Form S2: To update or change personal or nomination details, request a re-issue of TPIN/I-PIN, or request a reprint of the PRAN card.
- Form S3: To request a change in scheme preference or make a switch.

(d) Nomination on shares of companies

As per the Depositories Act, 1996 Section 72 of the Companies Act, 2013, and Rule 19(1) of the Companies (Share Capital and Debentures) Rules, 2015, a nominee is a person in whose name any shareholder wants to hold the said shares after his death and the process by which such name is given to the company by filling the form is called nomination. To register the nominee's name with the company, the shareholder or the joint partners must fill out the form SH.-13 under the rules. Registering it within a maximum of two months from the date of receipt of the application by the company is also mandatory.

If the nominee is a minor, then the guardian's name must be included. However, after the death of the shareholder, the ownership right will remain in the possession of the minor until he becomes a major. Even if more than one person holds the shares jointly, the same process will have to be followed for nomination. If the name of the nominee is to be cancelled or corrected, the said shareholder must fill and file Form SH.-14, otherwise the nomination will not be cancelled, so it should be remembered that extra care is required.

In short, in company shares, only the nominee becomes the custodian or trustee of the shares after the death of the shareholder. The law of succession does apply here, and the person named in the will can become the owner, so the named person has been given such undoubted ownership rights.

The Supreme Court, vide its judgment dated December 14, 2023, in the matter of **Shakti Yezdani and Another v. Jayanand Jayant Salgaonkar and Others** [Civil Appeal No. 7107 of 2017], held that the Companies Act, 1956 ("CA, 1956") does not deal with the law of succession nor does it override the laws of succession and the nominee does not receive absolute legal ownership of the subject matter of the nomination upon the death of the shareholder. This interpretation applies to **CA, 1956** (and its equivalent

provisions in the **Companies Act, 2013** (“CA, 2013”) and the **Depositories Act, 1996** (“Depositories Act”).

Conclusion

The present case referred hereinabove is a landmark ruling that settles the long pending and complex debate, followed by a series of contradictory judicial pronouncements by the courts of different jurisdictions, pertaining to the rights of the successors and nominees of an individual in relation to the shares or securities.

The Supreme Court has rightly clarified that the nomination process does not override the laws of succession as the purpose of the nomination process is merely a simplification of the transfer of securities and protection of the subject matter of the nomination until the legal heirs can establish their right of succession. Therefore, the Supreme Court has appropriately brought a harmonious construction and given due consideration to both the laws of nomination as well as succession laws.

Supreme Court: Nomination process under the Companies Act, 1956/ Companies Act, 2013 does not override succession laws

Supreme Court: The nomination process under the Companies Act, 1956/ Companies Act, 2013 does not override succession laws

The Supreme Court, vide its judgment dated December 14, 2023, in the matter of **Shakti Yezdani and Another v. Jayanand Jayant Salgaonkar and Others [Civil Appeal No. 7107 of 2017]**, held that the Companies Act, 1956 (“CA, 1956”) does not deal with the law of succession nor does it override the laws of succession and the nominee does not receive absolute legal ownership of the subject matter of the nomination upon the death of the shareholder. This interpretation is applicable to CA, 1956 (and its equivalent provisions in the Companies Act, 2013 (“CA, 2013”) and the Depositories Act, 1996 (“Depositories Act”).

Facts

Mr. Jayant Salgaonkar (“Testator”), the family patriarch, executed a will on June 27, 2011 which made certain provisions for the devolution of the estates of the Testator upon the successors. Apart from the estate listed out in the will, the Testator had some fixed deposits and mutual fund investments (“Securities”) in respect of which nominees were appointed by the Testator. A suit was filed in the Bombay High Court by Mr. Jayanand Jayant Salgaonkar

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("Respondent") (a legal heir of the Testator who was not a nominee), wherein the administration of the properties of the deceased under the supervision of the court was claimed by the Respondent. On the other hand, Shakti Yezdani and others ("Appellants"), the sole nominees of the mutual funds, claimed for an absolute ownership of the Securities and the legal heirs contested their claim.

A single judge of the Bombay High Court took into consideration the provisions of CA, 1956 and the Depositories Act pertaining to nomination of securities and the rights of nominees and legal heirs and held that a nominee is not vested with the absolute ownership of the Securities and it was held by the Bombay High Court that nomination does not override testamentary or intestate succession and thus, CA, 1956 and the Depositories Act do not create a third mode of succession. Further, the division bench of the Bombay High Court also upheld the judgment of the single judge, after hearing an appeal filed before it by the Appellants. Further, a second appeal was filed against the order of the division bench of the Bombay High Court before the Supreme Court.

Issues

- a. Whether a nominee of a holder of shares or securities, appointed under Section 109A (Nomination of shares) of CA, 1956 read with the bye-laws under the Depositories Act, is entitled to the beneficial ownership of the shares or securities which are the subject matter of nomination to the exclusion of all other persons who are entitled to inherit the estate of the holder as per the law of succession.
- b. Whether a nominee is entitled to all rights in respect of the shares or securities which are subject matter of nomination to the exclusion of all other persons or whether he continues to hold the securities in trust and in a capacity as a beneficiary for the legal representatives who are entitled to inherit securities or shares under the law of inheritance.
- c. Whether a bequest made in a will executed in accordance with the Indian Succession Act, 1925 ("Succession Act") in respect of shares or securities of the deceased supersedes the nomination made under the provision of Sections 109A of CA, 1956 and bye-law no. 9.11 framed under the Depositories Act.

Arguments

Contentions of the Appellants:

It was contended by the Appellants that the nomination framework under CA, 1956 differs from that in other legislations. It was pointed out that the terms, including 'vesting', and 'to the exclusion of others', as well as a 'non-obstante clause' in CA, 1956, sets it apart from other laws. Consequently, it was argued by the Appellants that relying on judgments pertaining to nominations in other statutes such as the Insurance Act, 1939, Banking Regulation Act, 1949, National Savings Certificates Act, 1959, Employees Provident Fund and Miscellaneous Provisions Act, 1952, for interpreting the provisions of Sections 109A and 109B (Transmission of shares) of CA, 1956, would be incorrect. It was asserted by the Appellants that the provisions contained in other legislations cannot act as a ground for the interpretation of the term 'nomination' under CA, 1956 as they are not *pari materia* with Sections 109A and 109B of CA, 1956 (now Section 72 (Power to nominate) of CA, 2013).

It was argued by the Appellants that the inclusion of Sections 109A and 109B in CA, 1956 by the legislature on August 31, 1988 is explicit in conveying that a nominee, following the death of the shareholder or debenture holder, attains complete and exclusive ownership rights concerning the shares designated to them. Further, examining the hierarchy outlined in the provision, starting with the shareholder in an individual capacity, followed by joint shareholders owing shares jointly, and ultimately, the nominee to whom the shares shall vest in the event of the shareholder or joint shareholders' death, it is asserted that the intention is clear that such nomination takes precedence over any disposition, whether testamentary or otherwise.

It was also contended by the Appellants that Sections 187C (Declaration by persons not holding beneficial interest in any share) and 109A(3) of CA, 1956 should be interpreted together, indicating that shares shall 'vest' with the nominee, excluding all other persons unless the nomination is altered or revoked. The Appellants also contended that Section 187C of CA, 1956 inherently outlines the process for varying the nomination through a suitable declaration, establishing these provisions as complete codes within themselves. When considered in conjunction, the absence of a declaration altering the nomination would imply that the intention was to confer beneficial ownership of the shares to the Appellants through the mechanism of nomination of rights. Since the will of the Testator had explicitly mentioned all other properties of the Testator except the Securities for which the Appellants

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were designated as nominees, it naturally implies that the ownership rights of those Securities would pass on to the nominees after the Testator's death.

Reference was made by the Appellants to the bye-law of the Depositories Act governing the transmission of securities in case of nomination. The presence of a non-obstante clause within this provision implies that the effect of nomination under the bye-law is that it would vest complete title of the shares within the nominee, irrespective of provisions in testamentary disposition(s) or nomination(s) under other laws which governs securities.

It was further pointed out by the Appellants that Regulation 29A (Nomination) of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 mandates asset management companies to provide the option to its unit holder to nominate a person in whom all rights of the units shall vest in the event of the unit holder's death. The Appellants contended that when a change in nomination cannot be made without the consent of the other joint shareholder(s), the same cannot be made by way of a will or testamentary dispositions or laws of succession either.

It was asserted by the Appellants that the Bombay High Court's interpretation is inconsistent with the legislative intent behind the insertion of Sections 109A and 109B into CA, 1956. As per the Appellants, acceptance of the Bombay High Court's interpretation would undermine the legislature's intent pertaining to the ease of succession planning.

Contentions of the Respondent:

The Respondent emphasized that CA, 1956 does not deal with the law of succession and that the nominee of a share or the securities holder is not entitled to exclusive ownership of the shares or securities. The Respondent contended that the consistent view of various courts, including the Supreme Court, is that a nominee does not become the absolute owner of the estate. The Respondent stated that nomination does not affect the usual mode of succession and the legal heirs have not been excluded by virtue of the nomination.

It was argued by the Respondent that the nomination provisions do not confer absolute ownership rights to the nominees, and that the nominees do not become full owners of the estate for which they have been nominated. Additionally, the Respondent contended that the nomination provisions should not be considered as a form of 'statutory testament' that supersedes the law of succession as per the Succession Act. The Respondent also

emphasized the need for a detailed judicial process to obtain letters of administration or succession certificates, as prescribed by the Succession Act, and argued that the nomination provisions do not replace the said process.

Observations of the Supreme Court

The Supreme Court, with a broad interpretation, in-depth analyzed the provisions, scheme, and object of CA, 1956 as well as CA, 2013 and the amendments to it, the implication of the scheme of nomination under different statutes and various judgment of different courts. The Supreme Court observed that the provisions of CA, 1956 do not deal with succession in any manner it do not create a third mode of succession and do not override the law in relation to testamentary or intestate succession. Therefore, the Supreme Court rejected the contention of nomination as a 'statutory testament.' Additionally, it was observed by the Supreme Court that there exists no material to depict that the intent of the legislature behind introducing a method of nomination through the Companies (Amendment) Act, 1999 was to confer absolute title of ownership of shares on the said nominee. Further, the Supreme Court observed that the non-obstante clause in Section 109A of CA, 1956 and bye-law no. 9.11.7 of the Depositories Act cannot be held to exclude the legal heirs from their rightful claim over the securities against the nominee. The said non-obstante clause does not contemplate a third line of succession under CA, 1956.

The nomination under these provisions does not grant absolute title over the subject property for which the nomination has been made with respect to the ownership in favour of the nominee, and it is not intended to restrict the law of succession in any manner. Further, the court also observed that the term 'vesting' does not confer absolute ownership of the securities in favour of the nominee which is also a well-settled position under various other pari materia legislations. The object of the addition of a nomination facility in the Companies (Amendment) Act, 1999 was only to provide an impulsion to the investment climate and ease the burdensome process of obtaining various letters of succession, from different authorities upon the shareholder's death.

Decision of the Supreme Court

The Supreme Court dismissed the appeal, upheld the decision of the Bombay High Court and held that a nominee does not attain absolute title over the property for which the nomination has been made and it does not

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override testamentary or intestate succession. The Supreme Court also laid emphasis on the need for consistency in interpreting settled principles of law and the significance of maintaining certainty in legal decisions. The Supreme Court also held that the same principles that apply to nomination in estate planning and succession laws should also apply to the devolution of securities. Thus, it was held by the Supreme Court that nomination must be considered as ordinarily understood by a reasonable person making nominations, concerning their movable/immovable properties.

It was also held by the Supreme Court that the non-obstante clause under Section 109A(3) of CA, 1956, and by-law no. 9.11.7 of the Depositories Act should be interpreted keeping in mind the intent with which the provisions for facilitating nomination for securities were introduced in the scheme of CA, 1956, that is, to enable the smooth functioning of a company pursuant to the death of a shareholder.

Summary

The present case is a landmark ruling that settles the long pending and complex debate, followed by a series of contradictory judicial pronouncements by the courts of different jurisdictions, pertaining to the rights of the successors and nominees of an individual about the shares or securities.

The Supreme Court has rightly clarified that the nomination process does not override the laws of succession as the purpose of the nomination process is merely a simplification of the transfer of securities and protection of the subject matter of the nomination until the legal heirs can establish their right of succession. Therefore, the Supreme Court has appropriately brought a harmonious construction and given due consideration to both the laws of nomination as well as succession laws.

(e) Nomination in Small Saving Schemes

Following small schemes are in operation and their procedure for appointing nominees is uniform

- Post Office Savings Account (SB)
- National Savings Recurring Deposit Account (RD)
- National Savings Time Deposit Account (TD)
- National Savings Monthly Income Account (MIS)

Financial and Investment Accounts

- Senior Citizens Savings Scheme Account (SCSS)
- Public Provident Fund Account (PPF)
- Sukanya Samridhi Account (SSA)
- National Savings Certificates (VIIIth Issue) (NSC)
- Kisan Vikas Patra (KVP)
- Mahila Samman Savings Certificate
- PM CARES for Children Scheme, 2021

National Savings Certificates (NSCs)

Theoretical Background: National Savings Certificates (NSCs) are government-backed savings instruments, popular for long-term investments. The Government Savings Certificates Act, 1959, governs NSCs, and allows the account holder to nominate an individual to receive the investment proceeds upon their death. NSCs are considered a safe investment option with guaranteed returns, making them an attractive choice for individuals looking to secure their family's financial future.

Nomination in NSCs simplifies the transfer of the investment proceeds in case of death, without requiring legal adjudication or probate processes. However, as with other instruments, the nominee does not have absolute ownership of the NSC. They hold the proceeds in trust for the legal heirs, who may still have a legal claim to the funds.

Key Case Law: In *Renu Devi v. Union of India (2017)*, the Supreme Court examined a case where the nominee for NSCs faced challenges from the legal heirs of the deceased. The court reaffirmed the position that the nominee is only a trustee and the legal heirs, under inheritance laws, have a right to claim the funds. This ruling emphasizes the importance of nominee updation to ensure that the correct person, in line with the account holder's intentions, receives the funds.

Practical Importance: NSCs are often used for family savings and long-term financial security. Investors should regularly update their nominee details, especially after major life events, to ensure the smooth transfer of the investment proceeds. Keeping outdated nominee information could result in legal complications between the nominee and the legal heirs.

Public Provident Fund (PPF)

Theoretical Background: The Public Provident Fund (PPF), established under the Public Provident Fund Act, of 1968, is a government-backed long-term savings instrument that offers tax benefits and serves as a secure investment option. Like other financial instruments, PPF allows for the nomination of individuals who will receive the proceeds in case of the account holder's death. The PPF nomination process ensures that the funds are transferred without delay to the nominee, but, as with other instruments, the nominee holds the funds in trust. Legal heirs can still claim the proceeds under inheritance laws if there are conflicting claims.

Key Case Law: In Kasturi Devi v. Deputy Commissioner, Income Tax (2008), the Supreme Court handled a case involving a PPF nomination where the legal heirs contested the nominee's claim. The Supreme Court held that the nominee, as per established principles, is only a trustee of the PPF funds and that the legal heirs have rights under the inheritance laws. This case underscores the importance of regular nominee updation to reflect changing family structures or circumstances.

Importance of Nominee Updation: PPF is a critical long-term savings instrument for many families. Given its significance in financial planning, it is essential to update the nominee regularly to ensure that the proceeds are transferred to the intended beneficiary. Outdated nominations can lead to unnecessary disputes and legal challenges between the nominee and the legal heirs.

Postal Savings Schemes

Theoretical Background: Postal savings schemes, such as the Post Office Monthly Income Scheme (MIS) or the Senior Citizens Savings Scheme (SCSS), are government-backed investment options popular among risk-averse investors. The Government Savings Promotion Act, of 1973, governs these schemes, and they offer the option of nominating individuals to receive the proceeds in case of death. Nomination in postal savings schemes ensures that the funds are transferred efficiently to the nominee, bypassing legal processes such as probate. However, as with other financial instruments, the nominee holds the proceeds in trust for the legal heirs, who can claim their share under succession laws.

Key Case Law: In Smt. Saroj Mukherjee v. Union of India (2003), the Supreme Court handled a dispute between the nominee and legal heirs

regarding postal savings scheme proceeds. The Supreme Court reiterated the legal position that the nominee is only a trustee of the funds and that the legal heirs are entitled to claim the proceeds under inheritance laws. This ruling highlights the importance of ensuring that nominee details are regularly updated. Practical Importance: Postal savings schemes are widely used for long-term financial planning. Regular nominee updation ensures that the correct individual receives the proceeds without legal complications, ensuring financial security for the family.

(f) Nomination in Banking Sector

Nominee updation for bank accounts is an essential practice to ensure the seamless and accurate transfer of funds upon the account holder's death. By regularly updating nominee details, banks can align with the account holder's current wishes, reflecting any changes in their circumstances such as marriage, divorce, or the birth of a child. This proactive approach helps prevent potential disputes among heirs, ensures compliance with legal and regulatory standards, and simplifies the claims process. Keeping nominee information up-to-date reduces administrative complexities and avoids lengthy probate procedures, thereby facilitating a swift and clear transfer of assets to the rightful beneficiaries.

For banks, maintaining current nominee records is not only a legal necessity but also a crucial aspect of providing comprehensive and responsible financial services. Nomination allows for a more efficient and straight forward release of funds or articles without the need for legal documents like Succession Certificates or Probate of Will. This facility is available for various types of accounts including current, savings, and term deposit accounts, as well as for safe deposit lockers and articles in safe custody. It is primarily intended for individual account holders and sole proprietorships, and can only be made in favour of one individual. Joint account holders must jointly make the nomination, and in the case of minor account holders, a legal guardian must make the nomination. Nominations remain valid even upon the renewal of term deposits unless explicitly cancelled or changed.

Additionally, special considerations are made for non-resident nominees, ensuring the entitled amount is credited to their NRO account. The process of updating nominee details involves logging into your Internet Banking account, navigating to 'Customer Service,' selecting 'Service Requests,' and choosing 'View/Update Nominee' to see current details. Initiate the update at

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the bank branch or online, submit the necessary forms with the nominee's identification details, and await verification by the bank. Once verified, the bank will update the records and confirm the update to the account holder. Ensure all changes are documented in your bank statements, passbooks, or other relevant documents.

As per **Section 45ZA (2)** of the Banking Regulation Act, the person nominated by the account holder of the bank has the same rights as the account holder and also gets the right to withdraw all the amount after the death of the account holder. However, it is important to note that the person does not get ownership of the money in the account! As per the Banking Companies (Nomination) Rules, 1985, if the account in the bank is operated jointly by more than one person, then all the joint account holders are required to nominate such a person together, in which case all the rights over the amount in the account will be vested in the said nominee in the event of the death of all the account holders. The account holder can nominate any person, even a person who is not a minor. However, if the nominee is a minor, it has been considered necessary to give the name and address of the guardian of the minor. The nomination must be made in Form DA-1 as per Rule 2(1) of the Banking Companies (Nomination) Rules, 1985. If the nomination is to be cancelled, then the application must be made in Form DA-2 or if the nomination is to be changed, then the application must be made in Form DA-3 and a copy of it must be preserved with the bank's stamp. It should be remembered that the nomination can be made in the name of only one person as per Rule 2(7) of the Banking Companies (Nomination) Rules, 1985. The nomination remains valid even after the renewal of the account. All these rules apply to items kept in the bank for safety as well as lockers, only the number of forms to be filed with the bank is different. **In short, the nominee is responsible for taking possession of the money but it should be remembered that he is bound to pay the said amount to the heirs of the account holder.**

How to Check or Add a Nominee to a Savings Account and Process of Updating Nominee Details

Step-by-Step Guide

Step 1: Log in to your Internet Banking account using your ID and password.

Step 2: Navigate to the Customer Service section and navigate to the Service Requests option.

Step 3: Go to the View/Update Nominee option.

Step 4: Select your savings account number. You can see your current nominee details here.

Step 5: To update or add a nominee, update the Add/Modify Nominee option, then, enter the details of your nominee. Then, Submit the same.

Step 6: You need to enter an OTP that you will receive on your registered mobile number. Read and accept the terms and conditions, and then Submit.

Step 7: Once your request is submitted, the screen will display a confirmation that your request for nominee addition has been processed successfully.

1. How to Update Nominee Details in Bank Accounts

Professional Guidelines:

- Legal Provision: Under the Banking Companies (Nomination) Rules, 1985, the Reserve Bank of India (RBI) mandates that every depositor has the right to nominate one or more persons to whom the amount in the bank account will be paid upon the account holder's death. This provision applies to all types of bank accounts, including savings, fixed deposits, and recurring deposits.

Case Law: Sarbati Devi v. Usha Devi [(1984) 1 SCC 424]

• Background:

This case is one of the most significant rulings related to the rights of nominees in bank accounts. The dispute arose when the deceased (husband of Usha Devi) nominated his mother, Sarbati Devi, to receive the amount in his life insurance policy. After his death, Usha Devi, the wife, contested that the insurance proceeds should go to her as the legal heir, as per succession laws.

Ruling:

The Supreme Court ruled that the nominee is merely a trustee or custodian of the funds. The court clarified that nomination does not override succession laws, and the nominee is responsible for holding the funds on behalf of the legal heirs.

Significance:

This case established the principle that in the case of bank accounts, insurance policies, and similar financial instruments, the nominee's rights are

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limited to the role of a custodian. The ownership rights remain with the legal heirs as per the applicable succession laws. This judgment is critical in understanding the trustee vs. beneficiary distinction that runs through many financial nominee arrangements.

Analysis:

The Sarbati Devi case serves as a cornerstone in analyzing nominee disputes. The legal heirs' rights under the Hindu Succession Act, 1956, or the Indian Succession Act, 1925, take precedence over the nominee's claim. The court emphasized that the purpose of nomination is to ensure the smooth transfer of funds upon the account holder's death but does not intend to bypass the succession laws.

Analytical Theory:

Nominee as Trustee, Not Owner: The core theory here lies in the distinction between nominee rights and ownership rights. When a bank account holder appoints a nominee, they are effectively appointing a person to act as a trustee of the funds, meaning the nominee only holds the funds until they can be passed to the rightful heirs. This legal distinction is critical in understanding disputes around inheritance and the role of a nominee.

Role of Succession Laws: In India, succession laws under the Hindu Succession Act, 1956, and Indian Succession Act, 1925, govern the inheritance process. These laws prevail over the nomination process, making the nominee's role a temporary one. The professional interpretation of nomination clauses in banks must therefore align with these succession laws to avoid future litigation.

Nominee Considerations in other sectors

(a) Nomination in Housing Cooperative Societies

It is a matter of serious concern for every flat holder in a Housing Cooperative Society to nominate a person to whom the housing society will transfer the property and share of the said member after his death. Although the Maharashtra Cooperative Societies Act, of 1960, has made a provision for a vehicle, the society felt it was a bit risky to handle such a matter.

This process is to be handled as per rules 25 and 26 of the Maharashtra Cooperative Societies Rules, 1961. There are two methods of filing nominations in Rule 25.

In the first method, the nomination can be done by filing a document in the prescribed form in a legal manner or by registering it in the nomination register of the cooperative society as per the decision of the managing committee and this process must be done while the member is alive.

In the other method, where the member has not appointed a nominee, the committee should invite the persons who want to claim the said property through a notice displayed on the notice board of the society, and then the name of the successor will have to be decided by consensus.

In Rule 26, the register must be maintained as per the specified column in Form 'I' prescribed under Rule 32. In the said register, the full name and address of the person nominated by the member of the housing society under section 30(1) must be specified, while (2) the date on which the nomination is made must be entered. **The said nominated person will become a member of the said housing society after the death of the member of the housing society.** However, the Hon. Bombay High Court as well as the Hon. Supreme Court have made it clear many times through various judgments that he will not be the owner of the said property.

That is why even if the nomination is made, the ownership is determined as per the will or inheritance law. Is there a different law for different properties? The answer to all these questions was also given in the

negative by the two-member bench of the Hon. **Bombay High Court** and it **was held that nomination cannot be a third law of inheritance.**

The judgment given by the **Supreme Court in 2016 in Indrani Wahi v. Registrar of Cooperative Societies and Others** has made the work of all cooperative societies easier. It is clear that in the event of the death of a member of the society, his shares will have to be transferred in the name of the nominated person registered in the books of the cooperative society and if this is done, the liability of the society will be terminated. Therefore, the heirs who want to claim the property will have to approach the competent court and seek a remedy. The society cannot give any decision in this matter because the society does not have the right to decide who is the legal heir of the deceased member of the cooperative society, but only the competent court. There is no objection to concluding that this is a "temporary" arrangement in the cooperative law. However, if a dispute arises, cooperative societies can ask for a certificate of inheritance from the competent court for security reasons.

(b) Nominee Updation for Minor

The primary statute defining a minor in India is the Indian Majority Act, 1875. Section 3 of this Act stipulates that: A person is deemed to have attained majority at the age of 18 years. However, if a guardian has been appointed by the court for the person's property or other matters under the Guardians and Wards Act, 1890, or if the minor is under the court's protection, the age of majority is extended to 21 years. A person who is not a major will be called a 'minor'.

When a minor is appointed as a nominee for mutual fund investments, there are several legal provisions and considerations are required to be taken into account. If a minor is a nominee, the nominator shall appoint a guardian to manage the claim and receive the policy proceeds on behalf of the minor nominee. The guardian can be a natural guardian (such as a parent) or a court-appointed guardian. The name and address of the guardian must be provided by the customer making the nomination. A Non-Resident Indian (NRI) can also be appointed as a nominee, subject to applicable exchange control rules. The appointed guardian is responsible for overseeing the care of the minor and managing their property. This includes protecting the minor's interests and making legal decisions on their behalf. The guardian is legally required to transfer the money to the minor once they turn 18. This

Nominee Considerations in other sectors

ensures that the minor receives the full benefit of the mutual fund investment upon reaching adulthood.

Documentation Required Different Asset Management Companies (AMCs) have varying processes for appointing a minor as a nominee. Generally, the following documents may be required:

- Guardian's name and proof of identity
- Minor's birth certificate
- Guardian's PAN card
- A cancelled check or bank statement of the guardian
- Trustworthiness of the Guardian It is crucial to appoint a trustworthy person as the guardian. The guardian should ideally be a natural guardian (father or mother) or a court-appointed legal guardian who will act in the best interests of the minor.

(c) Special Consideration Joint Accounts and Multiple Nominees

Nomination policies for various financial accounts and investments to help you ensure the security and proper management of your assets.

- Bank Accounts: Each bank account can have a single nominee, whether it is held singly or jointly. For added security and ease of access, it is recommended to have a joint holder.
- Demat Accounts: You can designate up to ten (previously three) nominees for a demat account.
- Mutual Fund Folios: A mutual fund folio allows you to appoint up to ten (previously three) nominees.
- Jointly Held Lockers: A jointly held locker can have two nominees.