MONEYLIFE FOUNDATION

THE RIGHT THING TO DO

CHALLENGES IN TRANSMISSION OF ASSETS TO NOMINEES & LEGAL HEIRS

Sucheta Dalal

with

Abhay Datar & **Akshay Naik**

AUGUST 2024

Supported by

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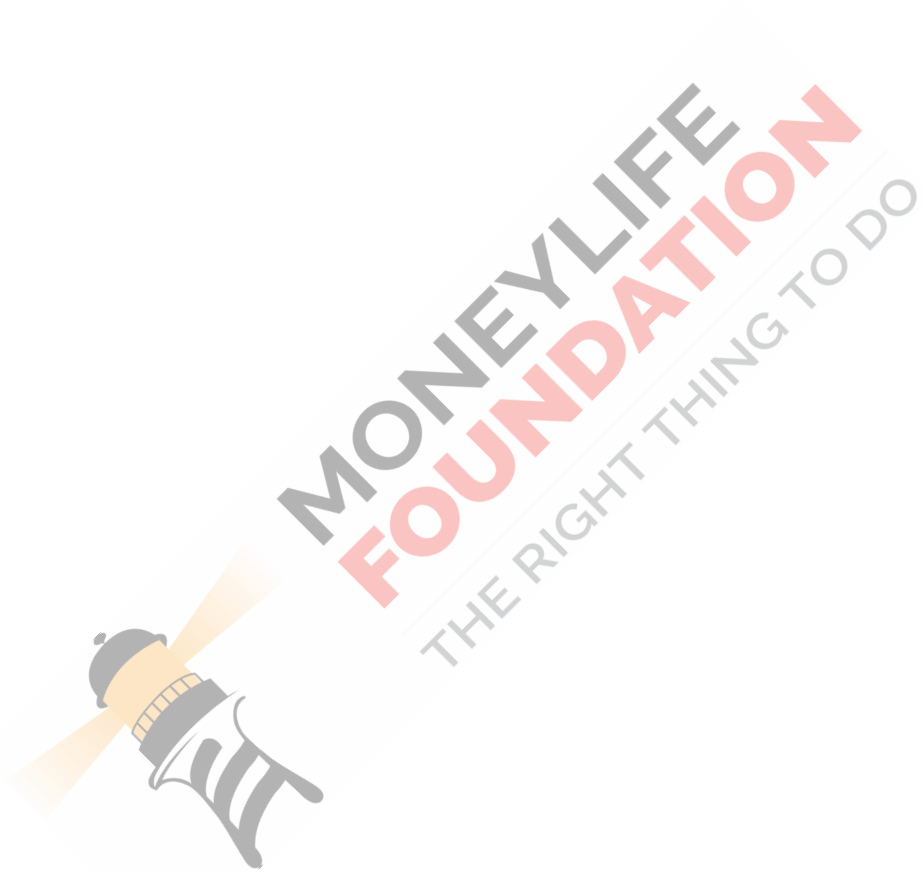

AUGUST 2024

Foreword

KV Kamath, independent director & chairman, Jio Financial Services

The report "Challenges in Transmission of Assets to Nominees and Legal Heirs" addresses a subject that is just now gaining recognition. These challenges will only increase as the country becomes prosperous and, hence, the urgency to address the issues. At the outset, I would like to compliment the Moneylife Foundation and the authors for studying this topic in such detail. The Foundation has been doing yeoman service in the field of financial literacy, awareness and the rights of consumers. This publication furthers the objectives it has been pursuing over the years.

What are the dimensions of this problem? The amounts involved are staggeringly large, as the report highlights: just under Rs2 lakh crore.

The report well articulates the problems faced by people as they handle issues relating to the transmission of financial assets following the loss of a loved one. It is well-researched, clearly outlining the processes for nomination and transmission, within the legal and regulatory framework, identifying the issues in claiming financial assets and provides approaches to resolve these.

Probably in a first for India, the report also addresses the challenges faced by families of incapacitated adults in the chapter on 'Adult Guardianship'. It also covers the delicate subject of 'Living Wills' or 'Advanced Medical Directives' comprehensively.

How do assets get stranded? While part of this could be due to disputes, a large part is due to people not documenting their savings and not informing their heirs about the details of these savings. The challenge becomes even greater for the heirs, given

that there is no centralised, searchable database. Assuming one manages to determine what is to be claimed, multiple interpretations of the required documentation can lead to a cycle that is frustrating and takes an excessively long time to resolve.

All the concerned regulators have recognised the problem and have started taking concerted action to see how the process can be made easier. This is a good start and, given the current advances in technology, a viable and robust solution could soon be put in place. However, in view of the large amount that is stranded, there is urgency in streamlining the process at the earliest.

With the breakdown of family support systems and people living longer, the issue of adult guardianship becomes increasingly important. We are at this stage, at least in our urban and semi-urban areas. There is an immediate need to address this challenge and the report rightly identifies this as an area needing attention from law-makers. Equally important is the sensitive issue of Living Wills or Advanced Medical Directives, which the report also touches upon.

The report is well-organised, based on facts and figures and written in a simple and straightforward manner that everyone can understand. It is practical and gives workable solutions. To me, this report is a primer addressing the issue of challenges we would face in the transmission of assets to nominees and legal heirs and the solution to these.

KV Kamath
3 July 2024
Mumbai

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Moneylife Foundation would like to place on record its gratitude to various experts who have generously contributed their time and ideas for this report examining the challenges faced by nominees and legal heirs while claiming financial assets of their deceased loved ones. The research for this report was undertaken as a corporate social responsibility (CSR) initiative with the support of Softcell Technologies Global Pvt Ltd.

Sucheta has written extensively on this subject for several years, made submissions to various committees and filed a public interest litigation (PIL) in the Supreme Court in this regard. The report builds on this work, backed by extensive research put together by Akshay Naik (director, projects, at Moneylife Foundation) and Abhay Datar, a retired banker, activist and honorary counsellor on consumer issues at Moneylife Foundation.

We are indebted to the following persons who, with their deep understanding of the financial sector, particularly about nominations, Wills and inheritance laws, have readily shared their feedback and inputs.

- Justice Gautam Patel, retired judge of the Bombay High Court who has handled a large number of cases involving adult guardianship or the care of incapacitated persons, was kind enough to provide crucial insights and inputs on this critical issue.
- Aakash Goel, an engineer, management graduate and chartered financial analyst, for sharing his experience and knowledge in claiming various financial assets as a nominee and heir.
- Chandramouli Mohan, retired senior manager of a public sector bank, helped with his knowledge and understanding of the regulatory policies of banking sector. We thank him for going through the report and giving us his valuable feedback.
- Advocate Joby Mathew, founder Joby Mathew & Associates, and a practising lawyer in matters of securities appellate tribunal (SAT), Securities and Exchange Board of India (SEBI) and national company law tribunal (NCLT), for sharing his inputs, feedback and suggestions on the asset transmission process and the challenges therein. He also refereed the report and gave us specific inputs on guardianship for adults.

- Vimal Punmiya, chartered accountant and an expert in matters of Wills and nominations, for sharing his inputs and knowledge on the rights of nominees, legal heirs and various aspects of a Will.

In the initial phases of researching for this report, *Moneylife* readers and Moneylife Foundation members had shared their views and experiences as nominees or legal heirs while claiming financial assets of their deceased loved ones. They are too numerous to name individually and we are thankful to each and every one of them for their inputs.

The team at Moneylife Foundation has helped with various stages of the production of this report. Ajay Vaity designed the cover page and formatted the final report and Hycliff D'Abreo helped compile the data on nomination requirements by different banks.

The report also includes work that has been previously done by us in the form of a white paper that was submitted to a Supreme Court committee, a presentation to the Kanungo committee on customer issues set up by the Reserve Bank of India and a report in connection with the PIL filed by Sucheta Dalal with the help of renowned senior advocate Prashant Bhushan.

Our thanks to Dr Nita Mukherjee for her meticulous editing, feedback and sharp eye for detail.

Sucheta Dalal and Debashis Basu
(Trustees, Moneylife Foundation)
Mumbai
August 2024

Research Parameters

Research Objectives

The objectives of the research were to seek answers to the following:

- Identify the challenges and difficulties encountered by legal heirs and nominees during the process of claiming and transmission of financial assets.
- Highlight the inconsistencies between regulatory procedures and actual processes followed by banks and other financial institutions.
- Suggest a more streamlined, uniform and compassionate approach to transmission of assets.

Research Design

- Study the nomination process for various financial assets existing in India currently.
- Critically analyse the standard operating procedures (SOPs) as prescribed by regulatory bodies for claiming financial assets.
- Research and identify problems and challenges faced by legal heirs, nominees and beneficiaries in claiming financial assets.

Research Methodology

- Collating information on SOPs for nomination of financial assets.
- Collating information on regulator-mandated SOPs and process of claiming financial assets of the deceased, as a nominee or legal heir.
- Conducting meetings and interviews with well-known consultants and experts who practise and specialise in Wills and nominations.
- Undertaking an online survey to get detailed information from nominees, legal heirs or beneficiaries.

Expected Research Output

- Identify and analyse the challenges faced by legal heirs, nominees and beneficiaries in claiming financial assets of the deceased.
- Recommend steps to streamline the process of claiming and transmitting financial assets to legal heirs, nominees or beneficiaries in India.

Key Findings

India faces a vast problem of unclaimed financial assets which have been estimated to be over Rs2 lakh crore.[1] These assets accrue from dormant bank accounts, maturity proceeds of policies idling in insurance companies, life savings of individuals locked up in provident fund accounts, mutual fund investments and dividends that have not been cashed for years.

Such unclaimed funds are periodically transferred to one of the regulator-maintained pools such as:

- RBI's Depositor Education and Awareness Fund (DEAF) for inoperative bank deposit accounts or any amount remaining unclaimed with banks for over 10 years;
- Investor Education and Protection Fund (IEPF) for dividend, matured deposits, matured debentures, application money due for refund or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares, etc, which remain unclaimed for a period of seven years or more transferred to IEPF Authority
- The Securities and Exchange Board of India (SEBI) allows asset management companies (AMCs) to invest unclaimed funds, including redemption and dividends, in the call money market, money market instruments, or a liquid scheme.[2] Claimants who make a claim within three years receive the unclaimed amount along with the earned income. If claims are made after three years, claimants receive the unclaimed amount and the income earned up to the third year, but subsequent income is directed towards investor education.
- Under provisions of Senior Citizens' Welfare Fund (SCWF) Rules, 2016 notified on 25 July 2017, insurers are required to transfer unclaimed funds of policyholders lying with them for more than 10 years to the SCWF.
- Proceeds of public provident funds (PPF), post-office savings accounts, employee provident funds (EPF), etc, are similarly transferred to the SCWF.

[1] https://www.moneylife.in/article/banks-transferred-unclaimed-deposits-worth-rs144-lakh-crore-to-dea-fund-in-5-years-received-rs5729-crore-for-refunding-to-claimant-depositors-govt/71465.html.
[2] https://www.sebi.gov.in/legal/circulars/feb-2016/circular-on-mutual-funds_31759.html (accessed on 6 August 2024).

Scope of the Problem

Precise data on the extent of unclaimed funds is not publicly available, as it is not consistently reported by the financial sector. A further discrepancy arises because funds remain unclaimed for prolonged periods before they are transferred to various government pools, after a period of seven to ten years, as applicable. Consequently, the data quoted by the government does not reflect the magnitude of the problem. It is, however, estimated that the amounts lying unclaimed would be in the region of Rs2 lakh crore. This is explained in detail in the Background chapter under the head 'problems of unclaimed assets'.

One reason for such a vast amount of unclaimed funds is the fact that many people forget about their savings or investments which usually happens because these accounts or policies were created or bought a long time ago and the buyers have either passed away without informing their heirs about the assets, or they were simply forgotten. Another important reason for such large unclaimed funds is the difficulty that heirs face in searching information about and claiming such financial assets.

Many find the process of claiming financial assets as nominees or legal heirs daunting and complicated. Claiming the funds requires commitment of time, money and patience. Often, the challenges seem insurmountable and many potential claimants simply give up. These financial assets are eventually transferred to one of the many government-maintained repositories as investor education funds.

Moneylife has advocated a technology-driven approach to simplify the claims process for heirs and nominees, making it easier for them to search and retrieve their unclaimed funds.[3] Since regulatory bodies have made little effort to trace or reunite unclaimed funds with their rightful owners, the PIL, filed by Sucheta Dalal with the help of senior advocate Prashant Bhushan, sought to make information about unclaimed deposits publicly available in a centralised searchable database.[4] Our study showed that most developed countries make an effort to trace rightful owners and recognise their rights, as documented in our note on creating a 'Central Authority for Unclaimed Funds'.[5]

To better understand the hurdles and challenges faced by claimants, this report attempts to analyse the existing rules and regulations that govern nominations

[3] Note on Central Authority for Unclaimed Funds; refer to Annexure II, page 98 of this report.
[4] https://www.moneylife.in/article/sc-issues-notice-on-plea-by-sucheta-dalal-that-information-on-unclaimed-amounts-lying-in-dormant-accounts-be-made-publicly-available-on-a-centralised-platform/68045.html.
[5] Note on Central Authority for Unclaimed Funds; refer to Annexure II, page 98 of this report.

and the established framework of claiming financial assets. An effort has also been made to identify deficiencies in the process, while highlighting areas for improvement.

The Nomination Process

While the process of adding, modifying or deleting a nominee for a financial asset is more or less similar across various assets, there is still a lack of uniformity in the rules that govern nominations. A detailed analysis of the existing processes for adding nominees to various financial assets has been covered in Chapter 2 of this report. Briefly:

- Banks and RBI regulated entities (RE) allow only one nominee per investment. However, on 9th August, the finance minister has introduced an amendment to certain banking laws under which a key proposal is to increase the number of nominees allowed per bank account from one to four. It has a provision for simultaneous and successive nominations.[6]
- Insurance companies, mutual funds, PPF and other small savings schemes allow multiple or successive nominations.
- Mutual funds and depositories provide an 'opt out' form to those who do not wish to nominate anyone. Until recently, failure to nominate or opt out of nominations would have resulted in freezing of accounts. However, SEBI has withdrawn such penal action while maintaining that the 'choice of nomination' – deciding whether to nominate or opt out is mandatory.[7]
- Supreme Court rulings have clarified that a nominee can be considered only as a trustee of the assets and is not, necessarily, the final owner. However, the nomination form specified by a government notification for senior citizen savings scheme (SCSS) categorically asks about the status of the nominee – whether he/she is to be recorded as a trustee or as an owner, upon the death of the account-holder/investor. Such a declaration is unique to SCSS but would hold no meaning, in light of the clarification made by the apex court.
- Regulators have sought to reduce the growth in unclaimed deposits by making nominations mandatory by threatening to freeze accounts. Such action is legally questionable and does not take into account the complex and differing nature of relationships within each family. Moreover, it may not always be prudent or safe for the investor to disclose, identify and declare nominees in advance depending on the circumstances of each family. It is unclear how regulators can threaten to freeze and impound investment, for failure to nominate a beneficiary. Responses to the online survey conducted by Moneylife Foundation indicate that 87%

[6] https://timesofindia.indiatimes.com/business/india-business/bill-introduced-to-allow-up-to-4-nominees-in-bank-a/c/articleshow/112415825.cms

[7] https://www.sebi.gov.in/legal/circulars/jun-2024/-a-ease-of-doing-investments-non-submission-of-choice-of-nomination-_84053.html (accessed on 6 August 2024).

(1,194 individuals) have added a nominee to their assets, while 9% (124 individuals) were planning to do so and a small percentage (1%) mentioned that they do not plan on adding a nominee, despite the consequences.

Regulators Take Initiative, but Gaps Remain

One step by some regulatory bodies to address the growing problem of unclaimed funds was to make nominations mandatory. However, the absence of established guidelines makes the claim process unnecessarily complicated for nominees and heirs. SEBI has been proactive in establishing SOPs, but other regulatory bodies, specifically RBI, have failed to frame SOPs for the claims process, leading to confusion and delays.

By and large, the rules and regulations framed by regulators are based on provisions of the Indian Succession Act, 1925. They seem to assume that transmission of assets is possible in 15 to 30 days, once all the legal requirements are met. However, the experience on the ground appears to be vastly different. Chapter 3 has a detailed analysis of the claims process for nominees across various financial assets.

- **Reserve Bank of India (RBI):** RBI has issued a circular to guide banks and REs on "settlement of claims in respect of deceased depositors."[8] It provides instructions on settling claims in different situations (with or without nomination, single or joint account, etc), but has avoided specific SOPs. Instead, banks and REs are free to adopt their own SOPs, based on the model guidelines issued by the Indian Banks' Association (IBA). Feedback received through our online survey indicates that officials in banks often misinterpret the guidelines, demand unnecessary documents and impose conditions which delay the process beyond the mandated 15-day settlement period.

  On 17 August 2023, RBI launched a portal called the 'Unclaimed Deposits – Gateway to Access inforMation (UDGAM)' with an aim to allow potential claimants to search for unclaimed funds across various banks. As on March 23 2024, UDGAM had on-boarded 30 banks on to its platform, covering data on 90% of unclaimed deposits (in terms of value). However, feedback and data on its effectiveness have been scarce.

- **Securities & Exchange Board of India (SEBI):** In the same period, SEBI issued detailed SOPs on how market intermediaries such as brokers, registrar and

[8] Settlement of claims in respect of deceased depositors – Simplification of Procedure (RBI/2005-06/48.RPCD.CO.RF. BC.No.12/07.38.01/2005-06). https://www.rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=68 (accessed on 12 December 2023).

transfer agents (RTA), depository participants (DPs) and depositories should handle the transmission process. In October 2023, it also announced a centralised mechanism for reporting the demise of an investor through know-your-customer (KYC) registration agencies (KRAs).[9]

SEBI's master directions[10] also provide a list of acceptable documents in support of a claim and prescribe formats of the application form, affidavit, indemnity letter and 'no objection certificate' (NOC) which may be required during the claim request. Despite all this, legal heirs may find it difficult to transfer shares to their names, if the shares have not been dematerialised by the deceased.

- **Other Regulatory Bodies:** With the exception of SEBI and the Insurance Regulatory and Development Authority of India (IRDAI), no regulatory body has set out specific guidelines or SOPs to be followed by officials when processing a claim from a nominee or legal heir. More importantly, there is no clear list of acceptable documents in support of the claim which is the root cause of complications and delays.

  A good example is the IEPF set up by the ministry of corporate affairs (MCA). Although it claims to have a well-defined, online process to claim shares and corporate benefits, in practice, it is extremely harrowing and cumbersome. Investors often end up paying anywhere between 10%-50% of the claim value to agents who have figured out how to deal with the process. The IEPF website however urges investors to to approach agents for making claims.

Challenges Faced by Nominees and Heirs

Chapter 4 deals with specific difficulties encountered by claimants as nominees or heirs. The lack of mandated process/ SOPs, in many cases, has meant that claimants face bureaucratic red tape in the form of:

- demand for unnecessary documents in support of the claim;
- demand for repeated submission of forms to fulfil demands from various departments;
- demand for the physical presence of all heirs in order to process a claim;
- lack of knowledge on prescribed guidelines leading to a claim being delayed and processed on a trial and error basis;

[9] https://www.sebi.gov.in/legal/circulars/oct-2023/centralized-mechanism-for-reporting-the-demise-of-an-investor-through-kras_77534.html (accessed on 12 December 2023).

[10] Simplification of procedure and standardisation of formats of documents for transmission of securities - Refer to Annexure V of this report on page 124.

- lack of understanding about the legal requirements such as a probate, succession certificate or a legal heirship certificate.

Adult Guardianship

As India's population ages and many senior citizens face their last years alone, or in nuclear families, we have come across a critical legal gap with regard the managing the finances, living expenses and cost of care for incapacitated adults. These are people who have adequate savings, but are simply not in a position to direct the use of their own money for their care and living expenses.

Imagine a scenario where a person goes into a coma, or is mentally incapacitated due to dementia. Unless there is time to plan ahead and appoint a legal guardian, their family and care-givers will not be able to access their savings and assets, to pay for nursing, assisted living facilities, medicines and living expenses. The existing laws do not address such situations. The Mental Healthcare Act (2017) does not empower designated representatives to manage the property of the affected individual. Similarly, the Guardians and Wards Act (1890) is restricted to minors, leaving a legal void for families of incapacitated adults.

Consequently, there are scores of cases where potential legal guardians (usually the wife, children or other relatives) have approached various high courts for redress. The courts have usually adopted a humanitarian approach and granted guardianship. While it is usually the spouse, siblings or children, there have been cases where the court set up a committee of guardians. In one case, the Bombay High Court had to appoint a legal guardian for a lawyer.

But this redress is available only where someone connected with the incapacitated person had the resources and interest in approaching a court. What happens when a person is alone, has no close relatives and is perhaps staying in an institution or retirement home? *Ad-hoc* interventions under the authority of courts are not the solution. The Kerala High Court went as far as to list the terms of adult guardianship, including reporting requirements, to ensure protection of the affected person. Such guidelines need to be given legal sanctity to ensure consistency and standardisation in approach, as well as to avoid delays. They also need to recognise that the state owes a duty to such citizens.

Dispute Resolution Mechanisms

Most regulators do not have a clear dispute resolution process. SEBI is an exception, because it has an online dispute resolution (ODR) mechanism to resolve disputes at the RTA level; however, there are issues with the SOPs and guidelines defining this

mechanism. One problem is in that SEBI-appointed lawyers have no capital market expertise or knowledge as arbitrators. Consequently, their involvement in disputes between parties and the RTA is often counterproductive; sometimes exacerbating rather than resolving, issues. While the principle of incorporating alternative dispute resolution (ADR) mechanisms is sound, the question remains whether ODR is a viable option, given its current state under SEBI.

Moneylife Foundation's online survey found many other hurdles that claimants have to overcome to claim financial assets of their deceased loved ones. A total of 1,377 respondents participated in the survey, out which 795 identified themselves as having had personal experience of claiming assets as a nominee or heir. Other responses were disqualified for lacking such experience. The findings of the survey have been discussed in detail in Chapter 7 of this report. In summary:

- Difficulties with the claims process were highlighted by 56% of respondents (753 individuals) while only a few (5% or 42 individuals) were able to settle their claim within 15 days. Various factors determine the claim settlement period – complexity of a claim, processing officer's knowledge of the process, documentation to support the claim and awareness of the claimant regarding the claims process.
- Many claimants were either aware of the claims process or an advocate or an equally qualified person was assisting them and, hence, able to identify lapses or errors committed by the processing officer and escalate it if required.
- Besides, legal requirements such as a probate, succession certificate or legal heirship certificate adds to cost and delays as it takes anywhere between six months to a few years to obtain them from a competent court.

Feedback received from the online survey confirms that the claims process for various financial assets is neither simple nor smooth, with claimants having to succumb to the demands of the processing officer or being caught up in lengthy delays for obtaining probates and succession certificates.

Recommendations

India's growing problem of unclaimed financial assets emphasises the need for a more efficient and claimant-friendly process for nominees and heirs. Below are our recommendations designed to streamline the process, while reducing the friction and hassles of nominees, beneficiaries and heirs.

1. **List of Acceptable Documents in Support of Claims:** A list of approved and acceptable documents in support of a claim should be published and made readily available to claimants. SEBI has recently mandated this in its circular on streamlining and easing the process of settling claims; it is important that other regulatory bodies not only follow SEBI's lead but also ensure that their rules match those of the market regulator.[11] Banks should share the prescribed application form and provide a complete list of documents required at the time a claimant applies for transmission of funds. This will help avoid delays caused and reduce friction in the claims process.

2. **Standard Operating Procedures:** Adopting detailed SOPs and standard formats would ensure consistency and efficiency across the system. RBI should design and circulate SOPs for banks and other RBI-regulated entities, to reduce harassment of legal heirs. In the absence of clear directions, banks and other REs have been making their own rules which have caused great inconvenience to nominees and heirs.[12] Moneylife Foundation had made a representation to this effect to RBI's committee on customer services headed by former deputy governor BP Kanungo in March 2023.[13] The Kanungo Committee, which submitted its report in July 2023, took note of this issue and recommended that IBA 'may' update its model operating procedure (MOP), in line with regulation, for hassle-free settlement of claims in accounts of the deceased account-holders, in various scenarios. There is no further development on the matter.

3. **Simplified Nominations:** The nomination process, in some cases, requires submission of a photograph and signature of the nominee. This imposes a

[11] Simplification of procedure and standardisation of formats of documents for transmission of securities - Refer to Annexure V of this report on page 124.
[12] Chapter 4 of this report: Challenges in Claiming Financial Assets on page 56.
[13] https://www.mlfoundation.in/memorandum/concerns-raised-with-rbis-committee-for-review-of-customer-service-standards/183.html.

needless burden on investors and is not practical, if the nominee lives in another state or country. The identity of the nominee can be established through a simple address, or identification such as PAN or the central KYC systems, where details of the account-holder and nominee may already be stored on record.[14] In any case, the nomination process should not cast a needless burden on the nominator. At best, regulators must make people aware of the consequences of opting out of nomination; that the concerned assets would remain unclaimed if they die intestate and create difficulties for their legal heirs to claim the assets.[15]

4. **Allow Investors to Opt-out of Nominations:** At present, banks, mutual funds and depositories offer investors the option to submit a separate 'opt-out' form in case they do not want to mention a nominee. This option should be made available for all other assets as well.

5. **Allow Investors to Add Nominees Security-wise:** In the case of demat accounts, an account-holder has the option to add a nominee or to opt-out of the process by filling a separate form. Such a nomination is applicable to the entire shareholding in that particular demat account. If the investor wants to have another nominee for some of the shares, s/he is asked to open a second or third account. Some investors have four or five demat accounts merely because they want their shareholding distributed among their children. A more practical solution would be to provide investors with an option to add nominees security-wise within their demat accounts.

6. **Online Nominations for Joint Accounts:** At present, any change in nominee on joint accounts requires a physical process. It is time that a secure online process was devised, by ensuring the consent, approval and confirmation of each of the joint-holders through a one-time password (OTP) to their respective registered email IDs or phone numbers.[16]

7. **Permit Conversion of Individual Demat Accounts into Joint Accounts:** At present, investors cannot convert their individual demat account into a joint account. For instance, if a young investor may want to add his/her spouse as a joint-holder on getting married, at present, it requires them to create a new account. The process should be simplified by allowing the addition of a joint-holder through a simple form and KYC process.

[14] Chapter 2 of this report: Overview of Nomination Process for Various Financial Assets in India page 35.
[15] *Ibid.*
[16] *Ibid.*

8. **Centralised Repository of Birth/Death:** SEBI has already announced a centralised mechanism for reporting the demise of an investor through KYC registration agencies (KRAs).[17] This idea needs to be expanded by creating a central birth and death reporting agency which would act as an online repository for uploading and verifying information. Each municipality or *panchayat* should be made responsible to create, maintain and update information on birth and deaths to this central repository, with a copy of the death certificate made available and accessible online. This will be a big step in ensuring speed and eliminating the need for heirs (once authenticated) to submit multiple death certificates to different agencies and will allow each agency to confirm and cross-verify information for transmission of assets. Such a central repository could perhaps be placed under the central authority responsible for unclaimed assets.[18]

9. **Alternative Dispute Resolution (ADR) or Online Dispute Resolution (ODR) Mechanisms:** Creating ADR/ODR system, with an unbiased claim adjudicating officer or mediator, would be a good way to resolve legal issues in a timely manner, once robust SOPs and guidelines are in place. The current SOPs and guidelines established by SEBI for ODR at the RTA needs refinement as they are crucial for speedy resolution of disputes. This involves appointing the right people with knowledge of transmission issues. Once an efficient ADR/ODR system is in place, it could potentially be adopted and implemented by all regulatory bodies and made applicable for all investment assets.

10. **Comprehensive Financial Snapshot:** Banks offer multiple services (trading and depository accounts, mutual funds, insurance and credit cards) linked to a single unique customer identity number (UCIN). Ideally, where a Will has been read and all claimants/nominees are aware of the assets to which they can lay a claim, banks should provide the nominees / heirs with a complete snapshot of the deceased person's financial dealings, with a particular financial intermediary. This may be a bank, which also offers insurance, investments and demat services; or an RTA who has knowledge of multiple demat accounts held by an investor; or depositories who have details of bond holdings and government securities. It will allow the claimant to have a clear idea of all the financial assets of the deceased, ensuring that they are eventually claimed in a timely manner, instead of being deemed as 'dormant' or 'unclaimed' assets. Such information ought to

[17] https://www.sebi.gov.in/legal/circulars/oct-2023/centralized-mechanism-for-reporting-the-demise-of-an-investor-through-kras_77534.html (accessed on 12 December 2023).
[18] Chapter 3 of this report: Understanding the Legal & Regulatory Framework for Claiming Financial Assets, page 53.

be disclosed with discretion and some checks, since it can be misused in case of disputes and disagreements between nominees or heirs.

11. **Centralised Database for Unclaimed Assets:** A centralised database that stores and allows for search and claim of unclaimed financial assets, in line with the systems established in other developed countries such as United States of America, United Kingdom and Canada, is desperately required in India.[19] Such a system, with established SOPs and grievance redress mechanisms, has the potential to reduce the burden of unclaimed financial assets, by simplifying the search as well as the claim process.

    A white paper prepared by Sucheta Dalal, trustee of Moneylife Foundation, was submitted to the Supreme Court-appointed committee[20] investigating the Adani group's stocks volatility. The committee had endorsed her suggestion to create a central authority and had recommended creation of a 'Central Unclaimed Property Authority' (CUPA).[21] This recommendation needs to be given serious consideration.

12. **Grievance Redress for Unclaimed Assets under Central Authority:** Once a centralised authority and database has been set up for unclaimed assets, it will need to be supplemented with an efficient grievance redress mechanism that addresses failures at each step of the process for the nominee/heir or claimant. For instance, a delinquent or corrupt death registry administrator, who delays or withholds intimation of death or makes typing errors in names or entry of identification information, can cause enormous hassles and harassment for the claimant. It would be imperative to deal with such cases quickly and efficiently. For this, a grievance mechanism needs to be in place at each step of the process, redressing any friction in a time-bound manner.

13. **Adult Guardianship:** As a first stage, we need the government to recognise the need to plan for situations where a larger number of adults, with adequate life savings, are unable to make financial decisions to pay for their own care, life expenses and medication/hospitalisation. This is a complicated issue with no easy solutions, since it involves the appointment of appropriate guardian who will work in the interest of the incapacitated person. The choice of guardian, consequences of granting the guardian access to a person's assets,

[19] Refer to discussion on page 28 of this report.
[20] Report of the Expert Committee constituted by the Supreme Court of India; 6 May 2023 https://www.thehindubusinessline.com/news/66869727-Report-of-the-SC-appointed-Expert-Committee-on-Adani-Hindeburg-row.pdf (accessed on 12 October 2023).
[21] Annexure II – Note on Central Authority for Unclaimed Funds; page 98.

supervising/ensuring the correct use of those funds and compensating the guardian for their effort are only some of the issues that will come up. This will require a separate statute and legal framework with detailed guidelines to ensure that legal guardians can be appointed quickly with adequate checks & balances to ensure a workable process. This will be a growing challenge as India's demography transitions to a higher percentage of senior citizens living either in nuclear families or alone.[22]

14. **Living Wills or Advance Medical Directive:** While not directly related to the issue of nomination, the high cost of medical intervention and maintaining life-support systems, have made Living Will an important issue these days. India has only a vague system in place for registering, recording and implementing the advance medical directions stipulated in a Living Will. Apart from being an emotional issue, the question of keeping a person alive through life support systems often has serious economic consequences for a family. We need to ensure legal clarity, at least in cases where a person has made his/her wishes very clear through a Living Will and advance medical directions, in order to eliminate any moral dilemma or stigma attached to the process.[23]

15. **Public Awareness Campaigns:** It is essential to launch awareness campaigns to explain the difference between a nominee and a legal heir, and the general process of claiming financial assets of deceased relatives. This would benefit claimants and also make the claims process smoother with fewer complaints or grievances.

[22] Refer to discussion in Chapter 5 of this report: Legal Hurdles for Families of Incapacitated Adults
[23] Refer to discussion in Chapter 6 of this report: Living Will or Advanced Medical Directive

2. Background

Death is inevitable, but not always predictable. At times, our readiness to confront this inevitable event is woefully inadequate and the repercussions of our lack of preparedness are felt most acutely by those left behind – our successors. As they grapple with the emotional turmoil of loss, they are also burdened with the responsibility of performing necessary rituals and managing the deceased's affairs.

More importantly, a death in the family can have a severe financial impact. When the deceased is the sole earner, the family may find itself grappling with a sudden loss of income and financial hardship. On the other hand, if the deceased had accumulated substantial wealth, successors may struggle to locate or access assets.

Planning for a succession and distribution of one's assets is not a simple task. It requires meticulous record-keeping, communication and documentation, while being aware of the legal, financial and emotional implications on loved ones. Unfortunately, many people neglect this aspect of their lives, either because they are too busy, too afraid or too ignorant of the consequences. This is particularly true in India, where preparing a Will is often viewed as a bad omen akin to signing one's death warrant.

People often assume that their family members will know what to do with their assets and liabilities, wishes and preferences, memories and stories. They hope that their family members will honour their legacy and carry it forward. But this is not always the case.

The reality is that many families face difficulties and disputes after the death of a loved one. In the absence of a Will, they may not have access to information or resources needed to settle the estate, pay taxes and distribute the inheritance. Successors may find themselves sifting through private papers and files in an attempt to piece together a comprehensive picture of the deceased's financial status. They may even end up fighting each other, resulting in lengthy court battles.

The problem narrows down to two possibilities – where the deceased has left a Will, clarifying how the assets are to be distributed or when a person has died intestate (without a Will).

While a Will along with nomination provides some relief to successors, they may still be required to complete additional legal procedures to get access to their inheritance. In some cases, the Will would have to be probated by a competent judicial court. In India, an overburdened judicial system complicates the process with prolonged delays. If uncontested, obtaining a probate can take around eight to ten months and payment of a high fee. If a Will is contested, it may take as many as five years to obtain a probate.

In case of an intestate death (where there is no Will), a simple nomination made by the deceased for various categories of assets will not be sufficient for final inheritance. From a legal perspective, nominees only hold the assets in trust until they are distributed to the legal heirs. Successors, or nominees, will have to apply for a succession certificate from a competent court to prove their legal heirship, or acquire a letter of administration to provide them with the authority to act an as administrator of the estate. India's notoriously slow judicial processes mean that succession certificates can take anywhere from six months to five years, depending on whether the process is contested by interested parties at the time of the testamentary hearing.

Court delays notwithstanding, there is a lack of clarity in procedures for claiming assets of the deceased. Our study of transmission of financial assets (bank accounts, deposits, lockers, dividends, shares, insurance etc) reveals that a lack of SOPs has made the claims process convoluted and lacking in uniformity across financial assets.

In spite of a Will/nomination, a successor often navigates endless red tape to complete legal formalities. For instance, banks have divergent rules – not only between one bank and another, but even at different branches of the same bank. This is due to the strange reluctance of RBI and Indian Banks' Association (IBA) to issue SOPs. Consequently, individual managers make up their own rules depending on their business targets and risk aversion which delay transfer of assets and harass legal nominees.

Moneylife Foundation had made a representation regarding this issue and other customer service-related matters to RBI's committee on customer services headed by former deputy governor BP Kanungo.[24] Concerns raised with the committee included: the need for uniform SOPs to avoid discrepancies and to ensure fair practices regarding transmission of assets to nominees and legal heirs; need to

[24] https://www.mlfoundation.in/memorandum/concerns-raised-with-rbis-committee-for-review-of-customer-service-standards/183.html.

improve the process for recovering unclaimed assets by making information more accessible to rightful owners.

The committee's report, released on 24 April 2023, came up with a crisp set of recommendations[25] and also accepted many of our suggestions. The committee suggested that IBA be asked to update the model operating procedure (MOP) for hassle-free settlement of claims of deceased account-holders. This suggestion is yet to be implemented.

Complicated procedures, endless demand for documents and inordinate delays have often forced heirs to give up claims when the amounts involved are modest; this is especially true of heirs living abroad. Such financial assets in the deceased person's account turn dormant and are eventually categorised as unclaimed funds which are transferred to various government-operated pools of money.

The Problem of Unclaimed Assets

The magnitude of this problem becomes evident from the vast sums of unclaimed financial assets scattered across the financial sector. The latest data reported in the RBI annual report for 2023-24 shows that banks transferred Rs78,213 crore to DEAF at the end of March 2024, a jump of 26% over the previous year, despite a drive to locate rightful owners.

The value of funds lying unclaimed and headed towards a transfer to DEAF is significantly larger. A Right to Information (RTI) application was filed by businessman and activist Aakash Goel in August 2023 with the department of financial services (DFS) of the Union finance ministry for information on the amount of money lying in 'inoperative' bank accounts with India's 12 public sector banks (PSBs) (private banks are not subject to RTI) as of 31 March 2022.

Accounts are deemed 'inoperative' if they have not been operated for two years. The money is transferred to RBI's DEAF only after 10 years, so it remains with the bank for eight years before the transfer. Compilation of responses from 10 PSBs revealed that the amount in inoperative accounts was Rs1,03,230 crore as of 31 March 2023. The list did not include Indian Overseas Bank and the behemoth State Bank of India (which said it does not compile data for inoperative accounts). RBI data shows that 25mn (million) accounts become inoperative each year in PSBs alone.[26]

[25] https://www.moneylife.in/article/kanungo-committee-has-practical-suggestions-for-bank-customers-it-is-up-to-us-to-ensure-they-are-enforced/71091.html.
[26] https://www.moneylife.in/article/over-rs1-lakh-crore-lying-in-inoperative-bank-accounts-on-way-to-becoming-unclaimed-funds/72968.html.

It is the same with transfers to the IEPF. In an answer to a Lok Sabha unstarred question No.1731 for 30.07.23, unclaimed funds pending with IEPF were put at Rs5,714 crore.[27] (This value may not include value of shares transferred). Data compiled by the website recoversy.com, which helps people recover unclaimed funds, puts the value of unclaimed share as high as Rs68,800 crore. The value of unclaimed shares would fluctuate in line with their stock prices and cannot be precise.

Responding to unstarred question 3512 of 8.8.2022, the finance ministry revealed that a total of Rs1,723 crore was transferred to SCWF from 2017 to 2022[28] by insurance companies. However, a report in the *Sunday Guardian* newspaper in 2022, put the unclaimed funds at Rs27,000 crore.[29] An article in *The Mint* quotes insurance repository CAMSRep's estimate of unclaimed insurance amounts at Rs20,000 crore-Rs22,000 crore, covering around seven million policies.[30]

Official data on unclaimed funds with post-offices and public provident funds is similarly dated. The last available information puts it at just under Rs10,000 crore in 2019.[31] According to bankbazar.com, EPFO has as much as Rs27,000 crore in inactive provident fund accounts and has now set up a helpline to guide people on claiming their money using their PAN and UAN.[32]

An RTI application filed by Aakash Goel in 2022 revealed a staggering amount of unclaimed in inoperative accounts with the EPFO. The amounts unclaimed were: Rs40,865.14 crore at the end of FY2015-16; Rs45,093.41 crore at the end of FY2016-17; Rs54,657.87 crore at the end of FY2017-18; Rs1,638.37 crore at the end of FY2018-19; and Rs2,827.29 crore at the end of FY2019-20.

The large amounts observed in FY15-16, FY16-17 and FY17-18 are probably due to the rule which defined 'inoperative' accounts as those that were inactive or transaction-less for a period of three consecutive years. Mr Goel believes that an amendment in the definition of 'inoperative' accounts explains the dip noticed in FY18-19 and FY19-20. During this period, 'inoperative' accounts were labelled as

[27] https://sansad.in/getFile/loksabhaquestions/annex/1712/AU1731.pdf?source=pqals (accessed on 5 August 2024).
[28] https://sansad.in/getFile/loksabhaquestions/annex/179/AU3512.pdf?source=pqals (accessed on 5 August 2024).
[29] https://sundayguardianlive.com/news/rs-25000-cr-worth-unclaimed-money-lying-insurance-firms (accessed on 6 August 2024).
[30] https://www.livemint.com/money/personal-finance/unclaimed-assets-worth-crores-the-hidden-fortune-that-could-be-yours-11689182412097.html (accessed on 5 August 2024).
[31] https://sansad.in/getFile/loksabhaquestions/annex/16/AU3637.pdf?source=pqals (accessed on 6 August 2024).
[32] https://www.bankbazaar.com/saving-schemes/unclaimed-epf-account.html (accessed on 5 August 2024).

such only after retirement, and not for inactive or transaction-less period of three consecutive years.

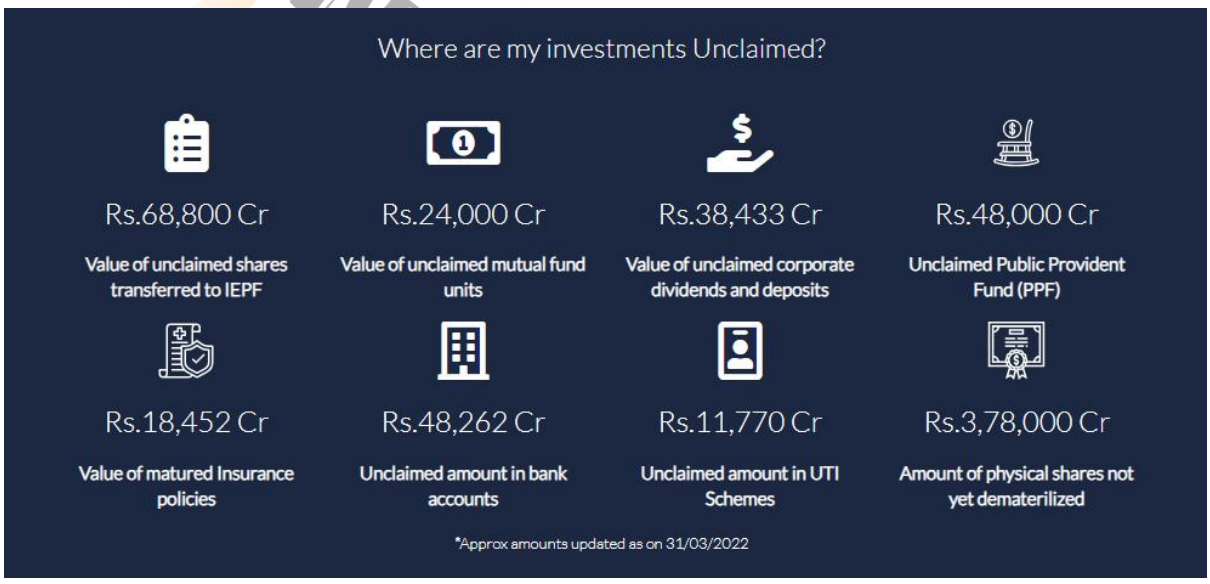
Information Sought	Reply
By virtue of notification of the Department of Economic Affairs dated 18th March 2016, the Senior Citizen Welfare Fund was established. By virtue of notification dated 11th April 2017, money on net basis were to be transferred to Consolidated Fund of India with institution wise - scheme wise details maintained with O/o CCA, Ministry of Finance. Please tell- a. Money unclaimed/inoperative with EPF, total as well as scheme-wise, at the end of FY15-16, FY16-17, FY17-18, FY18-19, FY19-20 and FY20-21.	The balance lying in the inoperative account is as follows:

Year	(Amount in Rs. Crores) Balance as of 31st March
2015-16	40,865.14
2016-17	45,093.41
2017-18	54,657.87
2018-19	1,638.37
2019-20	2,827.29

Source: RTI Response - Balance lying in inoperative/unclaimed accounts with EPF at the end of each FY

Similarly, data on unclaimed mutual funds, insurance, public provident fund, post-office and various insurance schemes is not available on their respective websites. Some information is available from questions asked in Parliament but it provides no clues on how this information was gathered.

Again, the website recoversy.com has a compilation of data without providing sources. We were told that it is has been approximately calculated and sourced from their own database.[33] (see below)



[33] https://recoversy.in (accessed on 20 December 2023).

Many nominees or legal heirs remain unaware of the unclaimed deposits lying in government funds operated by regulatory authorities and a fair number of them are also overwhelmed by the process of claiming such assets.

Until recently, no serious effort was made by the government or regulatory bodies to reunite these unclaimed funds to their rightful owners. While regulators readily use technology to track loan defaulters, the same effort is lacking in finding beneficiaries of unclaimed funds. *Moneylife* has, therefore, continued to advocate the use of data and technology to simplify the claims process for heirs and nominees, to make it easier for them to search and retrieve their unclaimed funds.[34]

To this end, in August 2022, Sucheta Dalal had filed a petition, in the Supreme Court, with the help of renowned senior advocate Prashant Bhushan, seeking to make information about unclaimed deposits publicly available in a centralised searchable database.[35] The petition, which is pending before the court, argued that large amounts of unclaimed money were being systemically transferred to government funds, with little effort being made to return them to their rightful owners.

The petition also argued that information regarding unclaimed funds was not readily available on a single platform. India has five different entities which are repositories of unclaimed assets belonging to ordinary citizens. Until this petition was filed, there was no attempt to contact the owners, nor was there an effort to create a robust and searchable database to allow rightful owners or heirs to track the funds and file claims. At the time when the petition was filed, only IEPF had a comprehensive website, but the claims effort therein remains cumbersome and full of glitches.

The IEPF authority (IEPFA) pools unclaimed shares, bonds as well as dividends, interest, bonus and other benefits offered by listed companies into a fund which is managed by IEPFA, if these remain unclaimed for seven years. It has an online recovery mechanism that is so cumbersome and full of friction that most investors require the help of specialised agencies, such as IEPF Claim, Share Samadhan, Recoversy, or other agents to claim what is legitimately theirs. The fees charged for such intermediation range from 20% to 50% of the value of money locked up in IEPF.

[34] https://www.moneylife.in/article/shouldnt-regulators-be-accountable-for-returning-rs82000-crore-of-unclaimed-money-to-savers/64694.html.
[35] https://www.moneylife.in/article/sc-issues-notice-on-plea-by-sucheta-dalal-that-information-on-unclaimed-amounts-lying-in-dormant-accounts-be-made-publicly-available-on-a-centralised-platform/68045.html.

Since then, other regulators such as the IRDAI[36] and EPFO[37] have simplified procedures to make it easier to trace and access unclaimed funds.

The procedure for claiming funds from inoperative/dormant accounts differs across financial assets and requires separate proof/averments by legal heirs of deceased persons. The transfer of funds is complicated by needless demands from bank officials, who make their own rules for processing claims in the absence of clear SOPs; this leads to delays and distress.

Collaborating with iSPIRT Foundation, *Moneylife* had prepared a detailed note on the feasibility of an online system which could improve the process of transferring unclaimed financial assets to rightful owners.[38] This note was sent to all financial regulators. It argued that government databases, with PAN linked to bank accounts, Aadhaar and other KYC databases, are common to all regulators, with an easy on-boarding process. Hence, the creation of a central database by plugging in, or accessing information from multiple sources, can easily be done in a manner that legal heirs, beneficiaries or owners of forgotten assets can obtain a snapshot of all savings – whether it is bank accounts, public and employee provident funds, insurance, mutual funds, company deposits and bonds, based on PAN.

It was suggested that the primary objective of such a central authority would be to contact rightful owners of unclaimed assets and put in place a simple process with adequate checks & balances for them to claim their inheritance. Such an authority would also be responsible for framing SOPs, verification of claims and grievance redress.

In early 2023, the Supreme Court-appointed committee which investigated the Adani group stock volatility took note of the suggestions and endorsed the proposal to set up a 'Central Unclaimed Property Authority' (CUPA) to reunite unclaimed financial assets with rightful owners.[39] It said that, "in order to be effective, a statutory central authority, backed by the appropriate legislation, must be empowered to track the rightful owner, resolve grievances and deal with security and privacy concerns."

[36] https://economictimes.indiatimes.com/wealth/insure/irdai-issues-new-circular-to-help-speedy-disbursal-of-unclaimed-insurance-money/articleshow/107812366.cms.
[37] https://www.bankbazaar.com/saving-schemes/unclaimed-epf-account.html (accessed on 5 August 2024).
[38] Annexure II – Note on Central Authority for Unclaimed Funds; page 98.
[39] https://www.moneylife.in/article/sc-committee-on-adani-endorses-creation-of-central-unclaimed-unclaimed-property-authority-suggested-by-moneylife-foundation/70839.html.

The committee also recognised that only "when the databases are interoperable and integrated that the system would be effective. This will involve legal mandates and organisational structure, with holistic IT-based automated processes." It also stressed the importance of establishing SOPs as there is a clear disparity in the existing processes even within the same class of financial institutions. For instance, in a bank, managers of different branches may sometimes add their own rules and demand sureties, indemnities, etc, while processing a claim, as has been documented in the subsequent chapters of this report.

Inspiration for CUPA has been drawn from models in other countries where unclaimed assets are efficiently handled.[40] While some countries maintain a central database for unclaimed assets, others have managed to efficiently make the information available through multiple authorised agencies.

For instance, in USA, a network of federal and state resources helps people track down unclaimed funds. There is a central website and also separate efforts by individual states to aid people in searching and claiming assets that may belong to them. In UK, unclaimed funds are transferred to a government scheme but owners are always able to file a claim for them. If such funds remain unclaimed, they are utilised for social causes supported by the government. In Canada, there is a legal obligation to locate and contact owners before transferring unclaimed funds to government schemes. Owners or legal heirs can claim such funds simply through an online system. (Additional details on each of these systems can be found in Annexure II of this report).

India needs to follow the example of developed countries and create a central database of unclaimed financial assets which could take the form of CUPA. There is also a need to develop clear SOPs for filing and verifying claims online along with a robust online grievance redress system.

Perhaps a direct result of *Moneylife's* advocacy efforts was RBI's '100 days, 100 pays'[41] campaign and the launch of a centralised portal (UDGAM - Unclaimed Deposits – Gateway to Access inforMation)[42] to search unclaimed deposits lying with regulated banks and file claims. At the time of writing this report, the portal had on-boarded 30 banks and there was no feedback available on the success of the

[40] https://www.moneylife.in/article/use-global-practices-to-reunite-unclaimed-financial-assets-with-their-rightful-owners/68347.html.
[41] https://www.moneylife.in/article/unclaimed-deposits-rbi-launches-100-days-100-pays-campaign-for-returning-money/70751.html.
[42] https://www.moneylife.in/article/rbi-launches-udgam-centralised-web-portal-for-searching-unclaimed-deposits-across-banks/71720.html.

portal. Furthermore, this portal only addresses unclaimed funds in bank accounts, while there is no clarity on the process for claiming other financial assets. EPFO and IRDAI have also streamlined process for reclaiming funds, so has the IEPF.

While these efforts are welcome, the findings of this report show that a lot more needs to be done. The chapters that follow will attempt to explain the nomination process, the existing legal framework for claiming assets and the difficulties faced by claimants.

3. Overview of Nomination Process for Various Financial Assets in India

Nominations help streamline the asset transfer process in accordance with the account-holder's intentions and investment in all financial products provide such an option. A nomination ensures that in the event of the account-holder's demise, the assets are transferred to a nominee, in trust, until legal processes for distribution of assets among legal heirs is completed.

In all cases, a nominee acts as a custodian or trustee of the assets until the distribution of assets is legally determined. This distinction becomes significant when the deceased has legal heirs, other than the nominee, or when an individual wishes to distribute assets differently from what he or she had envisaged while naming a nominee for a specific asset. Unless specified in a Will, or if there are no other heirs, the nominee may not be entitled to own the assets.

A common misconception is that a nomination supersedes legal inheritance laws. Legal heirs, defined under the Hindu Succession Act, 1956 (or other relevant personal laws depending on one's religion), have a legitimate claim to the deceased person's assets. Legal heirs include the spouse and children, but may also devolve on parents and other close relatives in certain circumstances. All legal heirs have an equal right to the assets of the deceased and nomination does not supersede this right. If there are conflicting claims, legal heirs recognised by law will prevail as the rightful owners of the concerned assets. If there is no proper nomination, transferring the assets can become a time-consuming and tiresome legal process.

The Need for a Will

A Will is a legal document that allows a mentally sound individual to decide the distribution of his or her self-earned assets after death. In doing so, a person may want to make a larger or smaller bequest of his or her self-earned assets to various heirs, or disinherit an heir who would otherwise have a claim under inheritance and succession laws. The making of a Will also ensures the appointment of an executor to complete the legal formalities associated with the distribution of assets including an application for a probate, when applicable.

By combining nomination with a well-crafted Will, individuals can ensure that their assets are smoothly and efficiently distributed in accordance with their wishes.

For those residing or owning property in the former British Presidency towns – Mumbai, Chennai and Kolkata – a Will needs to be probated by a competent judicial authority. A probate is essentially a legal certificate that confirms the validity of a Will.

While a probate is not mandatory in most parts of India, it is often insisted upon by various authorities (usually RTAs) to authenticate the right of a claimant and to avoid any disputes in the future. Acquiring a probate can take up to eight to ten months, if uncontested, and several years, if it is contested. The heirs will also incur high legal fees as well as court fees depending on the location – in Mumbai, court fees are as high as Rs75,000; in Kolkata, it is capped at Rs50,000; and, in Chennai, it is Rs25,000.

The Nomination Process

The nomination process involves filling out a simple form providing the name, address and relationship of the nominee with the investor. In some cases, the investor can nominate one or more individuals as nominees and the percentage of distribution of the assets among them can also be specified. The nomination can be changed or cancelled at any time by submitting a new form. Here are a few key differences in the nomination process followed by various financial regulators:

- **Bank Accounts:** RBI regulations for bank accounts and deposits allow only one person to be appointed as a nominee. However, some jointly-operated locker accounts may allow for up to two nominees. Account opening forms for banks usually provide for nomination, but it is not mandatory. Any change in nomination requires the submission of a specific application. Most bank websites and apps allow nomination to be done and changed online, but there is no uniformity in the process, especially when it comes to joint accounts.

- **Insurance:** While buying insurance cover, nomination is relevant only in case of life insurance policies or where specific financial benefits are to accrue on the death of a policyholder. A policyholder usually names close family members as designated nominees. Each policyholder can name as many as

three nominees and also specify the percentage of pay-out for each. As with other financial instruments, a minor can be a nominee but needs a guardian to be named as well.

- **Shares, Mutual Funds and Bonds:** SEBI has issued detailed guidelines for implementation of the nomination process. It has made nomination mandatory for single holders of demat account and the process had to be completed by 30 June 2024. Nomination is made mandatory for shares, mutual funds and bonds. An account-holder can nominate a maximum of three nominees (and decide the percentage of value allotted to each nominee), unlike with bank deposits.

  After mandatory dematerialisation of shares, every person needs to open an account with a depository participant (DPs) and the shares are held in electronic form in an individual's demat account. Settlement of shares is routed through depositories, who regulate DPs and also prescribe the nomination forms. India has two depositories – NSDL and CDSL. Investors can add, modify or delete nominees through an online process. At the time of writing this report, SEBI had published a consultation paper[43] proposing to revise nomination facilities with an aim to reduce unclaimed assets and streamline the succession process. This consultation paper proposes that:

  i. Nominations should be made, modified or cancelled using either a digital certificate, or Aadhaar-based e-sign, or with physical signatures of the investors or through dual authentication;
  ii. At the time of nomination, the investor should provide personal identifiers (name of either parent or government-issued ID) and contact details of the nominees. This is to help identify and contact the nominee on death of the investor;
  iii. Multiple nominees would be permitted, going as high as 999 nominees. Although, such a high number of nominees may not be practical and would only prolong resolution when there are disputes.

- **Small Savings Schemes:** Popularly known as postal savings schemes, these schemes contain savings, recurring deposits, term deposits, MIS – monthly income schemes, SCSS – Senior Citizens Savings Scheme, NSC – National Savings Certificate, KVP – Kisan Vikas Patra, PPF – Public Provident Fund, Sukanya Samruddhi Accounts, etc.

[43] https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-to-revise-and-revamp-nomination-facilities-in-the-indian-securities-market_81023.html (accessed on 28 February 2024).

These are monitored by department of economic affairs in the Union finance ministry. The nomination facility allows for up to three nominees, and minors can be nominated by specifying a legal guardian. However, nomination is not permitted for accounts that are opened on behalf of minors.

- **Government Bonds and Treasury Bills:** These secured financial instruments were opened for investment by retail investors in February 2021. A special portal known as RBI Retail Direct, monitored by RBI, was set up to facilitate retail invest in government securities (G-Sec), state development loans (SDL), government treasury bills (T-Bills) and sovereign gold bonds (SGBs). Such investment is either through an auction (primary market) or secondary market purchase. The entire process is online and nomination is mandatory for all such assets. One can nominate up to two persons and any subsequent change in nomination can also be made online.

- **Employees' Provident Fund (EPF):** Nomination to be done online through the EPF portal, or the nearest office of the EPFO. Sub-section 3 of Section 61 of EPF Scheme, 1952, only permits a family member to be a nominee, if the person has a family. A person with no family can nominate any person; however; the nomination would become invalid, if the investor subsequently acquires a family (gets married or adopts a child) and a fresh nomination will have to be made in such a case. This provision is unique to EPF and is not to be found in case of other financial assets.

- **Real Estate:** The transfer of immovable property is governed by the Transfer of Property Act, 1882, and the registration of properties is governed by the Registration Act, 1908. Neither of these laws provides for nomination of immovable property and it is usually not a part of any sale deed either.

  A nomination facility is available for properties purchased under the Cooperative Societies Act; however, properties that do not fulfil the concept of common ownership and interest with respect to land and space are out of the purview of nomination.

  Nomination facilitates transfer of property on the demise of a property owner and by allowing immediate control over the property, but does not confer ownership rights to such a nominee. Inheritance continues to be dictated by the law of succession applicable to the property owner or in accordance with a valid Will. Here too, a nominee holds the property in trust and the right of the

nominee to claim ownership or to occupy it can be challenged at any time by legal heirs or successors.

A person can file a nomination at any time by following the prescribed process under the Cooperative Societies Act.

Some Points To Consider

It is prudent to have a nominee for all financial assets including joint accounts, and to keep the nomination updated, especially in line with any change in personal circumstances (marriage, death, divorce, estrangement etc) in order to facilitate smoother transmission of assets. It must also be noted that nomination tends to get cancelled with a financial asset is assigned or pledged to a lender; it needs to be restored once the loan is repaid and the pledge revoked. The decision on whether or not to have a nominee is very personal and based on the specific circumstances of every individual. In a circular issued on 30 April 2024 SEBI has revoked an ill-conceived mandate issued in May 2023 making nomination mandatory for joint demat and mutual fund accounts under threat of freezing the accounts and proceeds.

Deficiencies & Suggestions for Improvement

- So far, banks allow only one nominee whereas insurance, mutual funds, PPF and other small savings schemes allow for multiple or successive nominations. RBI Retail Direct allows only up to two nominees – there is a need for uniformity in rules across financial assets.
- SCSS has a nomination form which asks for the status of the nominee – whether they are to be recorded as a trustee or as an owner, upon the death of the account-holder. From a legal standpoint, various Supreme Court rulings have made it clear that a nominee can only be considered as a trustee with no legal claim on the assets. Therefore, asking for such a distinction on the nomination form becomes redundant.
- The process of nomination, in many cases, requires submission of a photograph and signature of the nominee. This is not practical and imposes a needless burden on a person making a bequest of assets. The identification of nominee can easily be addressed through an identification number (PAN or passport) or central KYC systems.
- For joint accounts, registration or change in the nominee should be allowed online, wherein consent of the joint-holder can be obtained through an email from their registered email ID and/or verification with a one-time password (OTP) sent to the registered phone number.

About Legal Heirs

A legal heir, as opposed to a nominee, is an individual who has the right and entitlement to succeed to the wealth and property of the deceased individual, under a Will or the personal succession law applicable.

While legal heirs have a higher legal standing than nominees, they are required to satisfy a competent court of the validity of their claim by obtaining a succession, or legal heir-ship certificate.[44] It may take anywhere from six months to five years for a succession certificate to be issued by a competent authority depending on whether the division of assets is disputed or not.

[44] https://www.moneylife.in/article/how-to-obtain-a-legal-heir-certificate/63045.html.

4. Understanding the Legal & Regulatory Framework for Claiming Financial Assets

Regulatory bodies have specified a few basic guidelines to be followed for transmission of financial assets to nominees or legal heirs. We have analysed established processes for select asset classes.

1. Bank Deposits

These are perhaps the most commonly held financial asset in India. However, RBI has no clear SOPs for banks other regulated entities for dealing with claims by nominees or heirs of depositors. In June 2005, RBI released a circular relating to settlement of such claims which mandates that claims made by nominees or heirs be assessed and should be settled within a period of 15 days, with minimal hassle to the claimant.[45] The circular does not provide SOPs for settlement of claims, thus allowing banks to formulate their own procedures, based on model guidelines which were to be drafted by IBA.

Considering the hardships and delays faced by claimants and legal heirs, the RBI-constituted committee on procedures and performance audit on public services (CPPAPS) had suggested that comprehensive guidelines may be issued for the purpose. IBA was asked to draft a comprehensive MOP which could be used by banks for settlement of claims of deceased depositors. Accordingly, such an MOP was approved and circulated by IBA and RBI for adoption by banks and other regulated entities in 2014.[46]

While these guidelines have been adopted by banks and other RBI-regulated entities, hardships faced by customers and legal heirs continue. Officials often misinterpret guidelines and demand unnecessary documents in support of claims leading to unnecessary delays. This will be discussed in detail in the next chapter.

The transmission process for bank deposits and content of bank lockers starts with establishing that the claimant is a nominee or legal heir, it may differ slightly

[45] Settlement of Claims in Respect of Deceased Depositors – Simplification of Procedure, RBI/2004-05/490 DBOD.No.Leg.BC.95 /09.07.005/2004-05, June 9, 2005. https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=2284&Mode=0 (Accessed on 21 November 2023).
[46] https://www.iba.org.in/customercare/mop-settlement-of-claims.html (Accessed on 21 November 2023).

depending on whether the concerned account is singly or jointly held and the mode of operation chosen by account-holders.

Key aspects of the MOP guidelines issued by IBA are summarised in the table below.

Table 1: Overview of Transfer of Bank Deposits to Nominees or Heirs

	Assets Transmitted in Favour of	
	Nomination on Record	**No Nomination Recorded**
Death of individual account-holder	Nominee	Legal heirs (as per succession certificate / probate / letters of administration)
Death of one of the joint account-holders where the account is held on 'either or survivor', 'anyone or survivor', 'latter or survivor', 'former or survivor' basis	Surviving joint-holder(s)	Surviving joint-holder(s)
Death of all the joint account-holders	Nominee	Legal heirs (as per succession certificate / probate / letters of administration)

An independent look at 24 banks by Moneylife Foundation reveals that they broadly follow the MOP and there is a certain level of uniformity in the processes.[47] For instance, all 24 banks surveyed (nine PSBs, 11 private sector banks, two foreign banks and two small finance banks) have the same document requirements for claimants:

- Application form;
- Proof of death (death certificate);
- Identity proof for claimant (Aadhaar, election card, passport, PAN card, etc);
- Consent letter of all legal heirs (if applicable);
- Affidavit from claimant;
- Letter of indemnity from nominees or legal heirs (if claim is above the set threshold);
- Succession certificate (in the absence of a nominee or second account-holder; or if the claim is above the set threshold);
- Letter of administration (if applicable);

[47] Refer to table in Annexure I of this report.

- Probate from a court (if applicable and where there is a dispute among legal heirs).

When the claim made is below the threshold limit set by the bank, it is settled after ascertaining proof of death of the depositor, proof of identification / authority of legal heirs and a letter of indemnity or affidavit executed by the legal heirs. For claims above the threshold limit, banks ask for an additional letter of indemnity that is executed jointly by all legal heirs along with two sureties of substantial worth and a declaration on oath by all the legal heirs which has been duly notarised.

Our survey revealed that threshold limits set by banks differ -- the lowest is Rs10,000 (by Equitas Small Finance Bank) and the highest is Rs40 lakh (by Bank of India).[48] Further, all banks offer to settle claims in 15 days, if documentation is in order. In most cases, the process is completely offline and claimants are required to visit the local branch with the appropriate documents to complete the process.

Mode of Operation

Whenever more than one person opens a bank account, they have to advise the bank about the 'manner' in which account-holders will be allowed to operate the account. This 'mode of operation' plays a crucial role after the death of a depositor.

- Either or Survivor (E or S): This mode of operation allows any one of the account-holders to operate the account and, on the demise of one, the survivor becomes the owner of the account and can operate it alone.
- Former or Survivor (F or S): This is a joint account but the right of operation is restricted to the first account-holder. The second holder only gets operation rights after the demise of the first holder.
- Anyone or Survivor (A or S): This mode is permitted when there are more than two account-holders, allowing anyone of the account-holders to operate the account singly.

Clause 5.8.6.1 of the RBI master circular[49] on customer services in banks, lays down the procedure for repayment of deposits, *"If the operating instruction is 'Either or Survivor' and one of the depositors expires before the maturity, no pre-payment of the fixed/term deposit may be allowed without the concurrence of the legal heirs of the deceased joint-holder. This, however, would not stand in the way of making payment to the survivor*

[48] *Ibid.*

[49] DBR No. Leg.BC.21/09.07.006/ 2015-16 dated 1 July 2015. https://www.rbi.org.in//scripts/BS_CircularIndexDisplay.aspx?Id=9862 (Accessed on 18 November 2023).

on maturity." This is also applicable to other mode of operations such as 'former or survivor'.

Premature withdrawal by the surviving holder is allowed only if a joint mandate has been signed by all the depositors or account-holders. RBI's master circular directs banks to incorporate a mandate to this effect in account opening forms in order to avoid future inconvenience and help a surviving account-holder get access to funds in the account. A customer can give such a mandate anytime during the tenure of the deposit, if it was not done at the time of opening an account.

A nominee's rights come into the picture, for joint accounts, only after the demise of all account-holders.

With regard to settlement of claims, RBI guidelines are clear that the bank's liability is discharged, if it has observed due diligence in identifying the survivor / nominee and if there is no order from any court restraining the bank from making a payment from the deceased person's account. The guidelines also specify that if a nominee is not mentioned, banks can transfer funds to the legitimate legal heirs on completing the laid down procedure. All claims are to be settled within 15 days of the receipt of all documents as required, without any discrepancy.

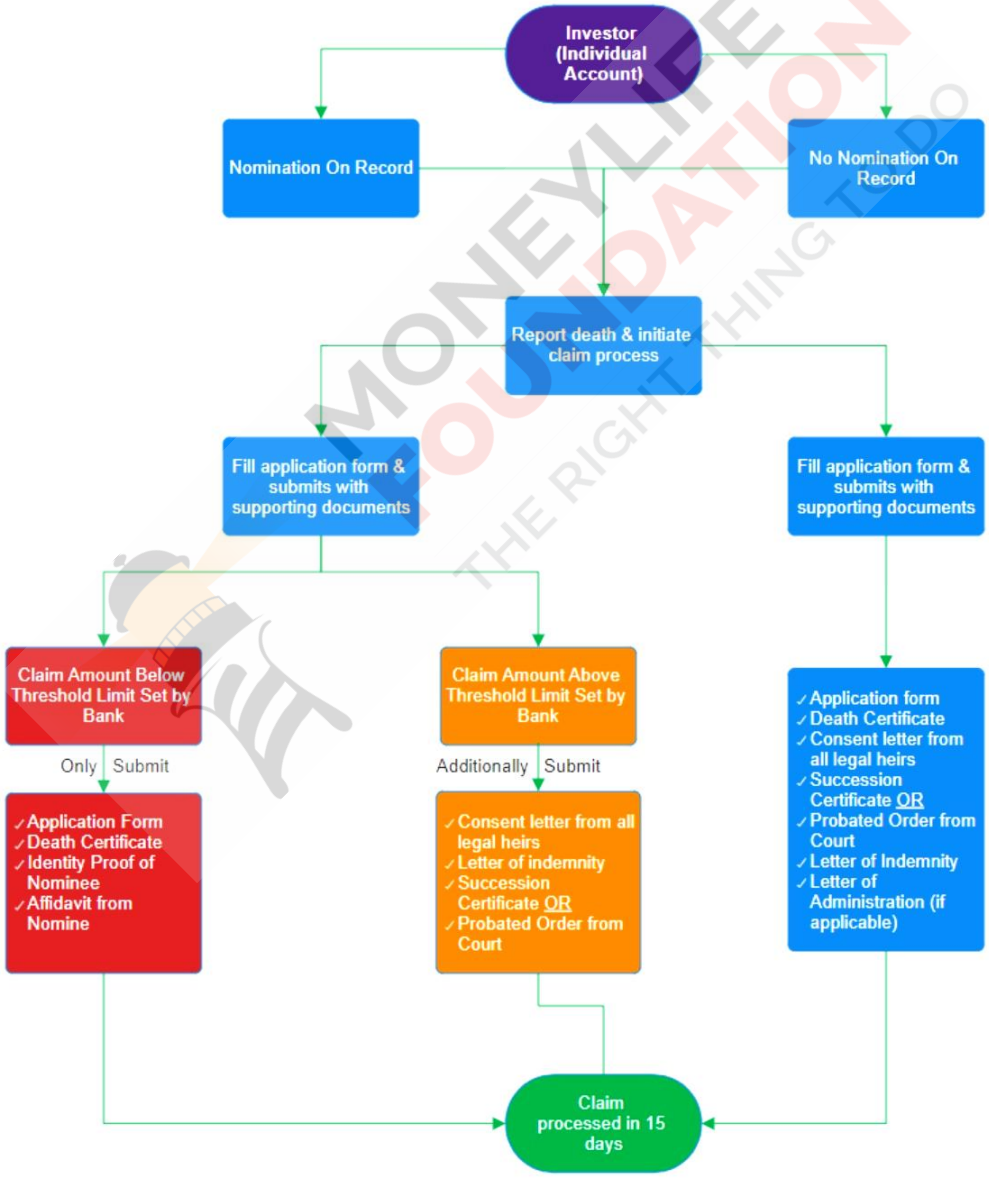
When a nominee is mentioned, clause 2 (A) 2.2 of the notification advises banks not to insist on production of documents like succession certificate, probate, etc, irrespective of the amount lying in the account of the deceased depositor.

Clause 2 (B) 2.3 deals with accounts without survivor / nomination. Here, too, RBI asks banks to ascertain the risk and settle claims up to a limit without calling for various documents, other than a letter of indemnity. It is clear that RBI has left it to banks to decide the limit to which they will allow easy settlement of claims and formulate a policy to that effect. It stops short of issuing SOPs that specify standard documents that should be obtained from legal heirs in lieu of succession certificate, probate, etc.

There may be situations where some money is due to be credited into the account of the deceased holder. Clause 4 of the RBI notification allow banks to credit a deceased person's account in such cases after obtaining authorisation from the survivor or nominee; however, the funds cannot be withdrawn until the claims procedure is completed. Alternatively, the survivor or nominee can ask the bank to return the funds to the remitter saying 'account-holder deceased'.

In case of missing persons, the RBI master circular directs banks to go by the Indian Evidence Act which says that presumption of death can be raised only after a lapse of seven years from the date of reporting a person missing. It will now be guided by the new criminal laws and criminal procedure code which came into effect on 1 July 2024.

A brief overview of the claims process for bank deposits in the case of an individual account-holder has been graphically represented below. The below-displayed process would differ for joint account-holders, wherein the surviving account-holder would retain ownership of the account after death of the other account-holder. In case both joint account-holders are deceased, the below-displayed process would be applicable.



2. Shares, Mutual Funds and Bonds

Trading and investment in shares is mandatorily in dematerialised form through a demat account held with an authorised DP. Bonds and units of mutual funds can also be held in demat form, although they are available in physical form as well. The transfer for such assets is generally referred to as 'transmission'.

A SEBI circular dated 18 May 2022 has issued a simplified procedure and standard format of documents for transmission of securities.[50] This circular, addressed to RTAs, recognised stock exchanges (SEs), listed companies, central depositories and all depository participants (DPs), has been issued under 'Listing Obligations and Disclosure Requirements' (LODR) regulations.

Clause 6 of this circular has designed specific formats for submission of documents taking into account various possibilities. In brief, it covers the case of - a single holder with nomination; single holder without nomination; when a copy of Will is submitted; when a copy of legal heirship or its admissible equivalent is submitted; value of securities held in physical mode; value of securities held in demat mode; transmission of securities to the surviving joint-holders, etc.

Table 2: Overview of Securities Transmission to Nominees or Heirs

	Securities or Demat Account Transmitted in Favour of	
	Nomination on Record	**No Nomination Recorded**
Death of individual account-holder	Nominee	Legal heirs (as per succession certificate / probate / letters of administration)
Death of one of the joint account-holders	Surviving joint-holder(s)	Surviving joint-holder(s)
Death of all the joint account-holders	Nominee	Legal heirs (as per succession certificate / probate / letters of administration)

For transmission of securities, SEBI's operational guidelines stipulate that RTA / issuer companies should ask for:

[50] Simplification of procedure and standardisation of formats of documents for transmission of securities pursuant to amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, (2015) (SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65). https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-transmission-of-securities-pursuant-to-amendments-to-the-securities-and-exchange-board-of-india-listing-obligations-and-dis-_59123.html (Accessed on 18 November 2023).

- Transmission request form;
- Affidavit made on non-judicial stamp paper to the effect of identification and claim of legal ownership to the securities;
- Indemnity bond made on appropriate non-judicial stamp paper of appropriate value;
- 'No objection certificate' (NOC) from all legal heirs who do not object to such transmission.

Additionally, SEBI has issued a mandate on the list of supporting documents[51] that are accepted for transmission. For instance, in cases where the copy of a Will has been submitted by the claimant, it has to be accompanied with a notarised indemnity bond. This is also applicable in cases where a legal heir-ship certificate or its equivalent is submitted by the claimant, in addition to an NOC from all non-claimants (remaining legal heirs). Such a certificate needs to be in the prescribed format and should state that all remaining heirs have relinquished their rights to the claim, duly attested by a notary public or by a gazetted officer.

The same SEBI circular provides a sample claim form and formats for the affidavit, indemnity bond and the NOC, as part of its annexures, as summarised below.

Annexure	Subject	Purpose
A	Ready-reckoner listing the documents required for transmission of securities	Demise of the sole holder.
B	Operational Guidelines	For processing investor's service request for the transmission of securities.
C	Format of the form to be filed by nominee/claimant/legal heir	For requesting transmission of securities.
D	Format of affidavit to be notarised on non-judicial stamp paper of appropriate value. (Value of stamp paper is state-specific) This is for transmission of securities that are held	To be given by all legal heirs or legal heirs named in succession certificate/ probate

[51] *Ibid.*

	in single name without any nomination	of Will/ Will/ letter of administration /legal heirship certificate/court decree.
E	Bond of indemnity. This also is for transmission of securities that are held in single name without any nomination	To be furnished jointly by all legal heir(s) including the claimant(s).
F	Format of NOC for transmission of securities that are held in single name without any nomination	To be obtained from other legal heir(s) for transmission of securities in favour of the claimant(s).
G	Format of letter of confirmation	To be given by RTA to the claimant, once the securities are successfully transferred in his / her / their name/s.

Reporting Demise of Investor

With effect from 1 January 2024, SEBI has put in place a centralised mechanism for reporting and verification through KYC registration agency in case of the demise of an investor to smoothen the transmission process.[52]

Once the nominee, heir or legal representative of an investor intimates the demise of an investor to the concerned intermediary, he/she is required to obtain the death certificate along with the PAN from the notifier and complete the due diligence process of -

i. Verifying death certificate (to be completed by the next working day of its receipt), either through the online portal of the issuing government authority of an offline OSV (original seen and verified) process.
ii. Recording and retaining a self-certified copy of proof of identity, relationship with the deceased investor and contact details of the notifier.

[52] Centralised mechanism for reporting the demise of an investor through KRAs. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/0000000163 (3 October 2023). https://www.sebi.gov.in/legal/circulars/oct-2023/centralized-mechanism-for-reporting-the-demise-of-an-investor-through-kras_77534.html (Acccessed on 18 November 2023).

If the intermediary, after being intimated about the demise of the investor, cannot obtain a death certificate from the notifier, it is required to carry out the following process:

i. Intimate the investor or nominee (using all the contact details available in its records) that the KYC status of the investor has been flagged as 'On Hold' and require them to furnish the death certificate of the concerned investor;
ii. On receipt of the death certificate, the intermediary would complete the due diligence process of verifying it.

Once the death certificate has been verified, the intermediary will --

i. submit a 'KYC modification request' to the KRA that 'information of the death of investor is received; death certificate verified' and upload the relevant documents
ii. block all debit transactions in the account / folios of the deceased investor. In case the deceased investor's account is held jointly, the specified mode of operation should be adhered to and account operation should continue in 'either or survivor' or 'anyone or survivor' mode, as decided at the time of opening the account.

On receiving a 'KYC modification' request the KRA has to do the following:

i. independently validate and verify the modification request by the next working day;
ii. on validation of the death certificate, update the KYC record as 'Blocked Permanently' in the system and intimate this updation to all linked intermediaries;
iii. if errors or issues are found with the modification request, it will consult the concerned intermediary and share details of its observations and accordingly update the KYC status to 'Modification Rejected and Clear i.e. Validated' or 'Blocked Permanently', as the case may be, by the next working day.

Once the KRA notified the intermediary that the deceased person's account has been 'Blocked Permanently', it is required to:

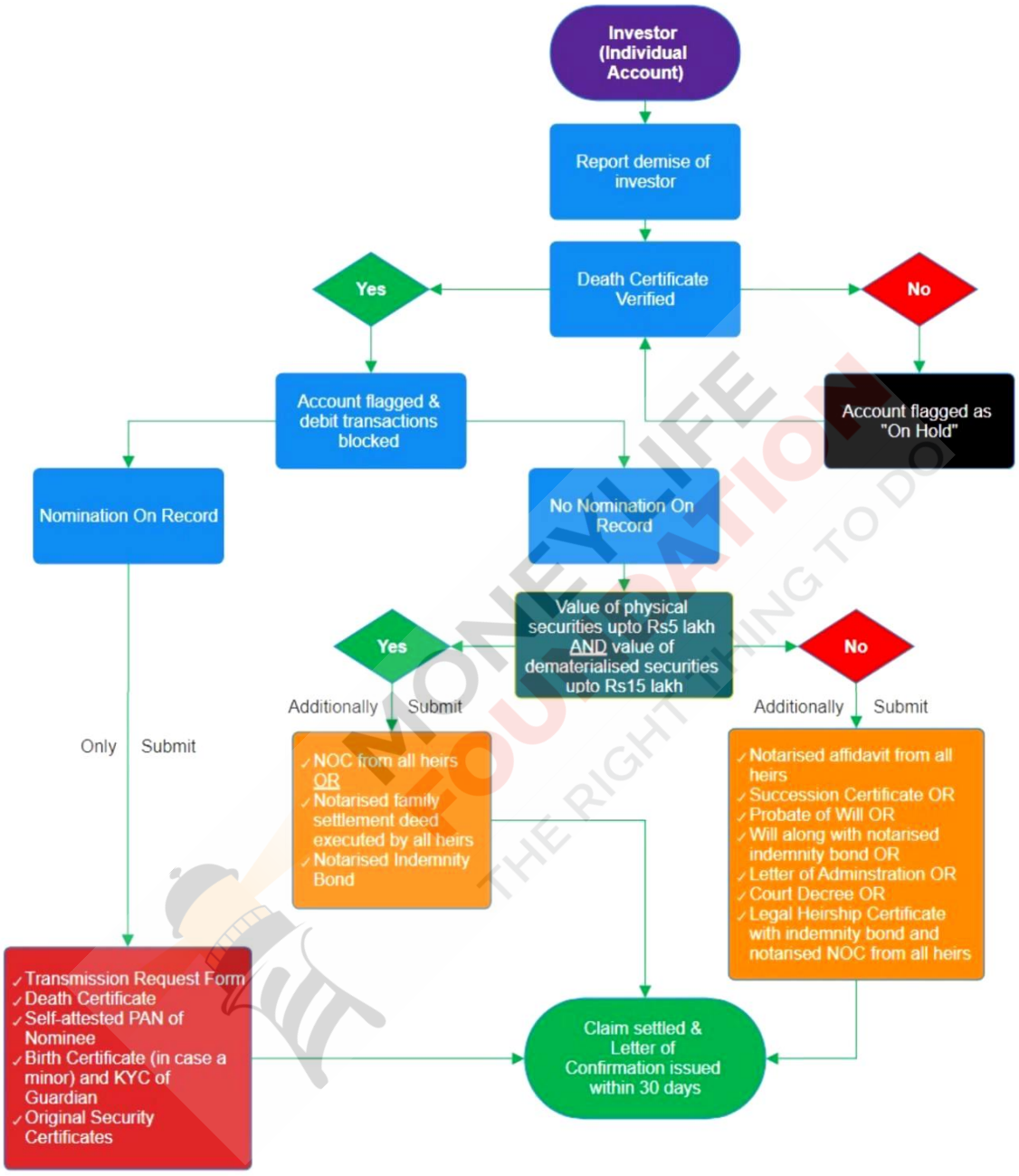
i. immediately block all debit transactions in the account / folios of the deceased investor;
ii. intimate the notifier or nominee (within a period of five days) about the procedure for transmission, provide the transmission request form and list of documents required for the transmission.

In case the deceased investor had a joint account, the intermediary is required to intimate the surviving joint account-holder accordingly, while flagging transaction requests as 'On Hold'.

In case, there is a transaction request received by any intermediary in the account which has been flagged as 'On Hold', it will only allow the transaction after conducting additional due diligence as appropriate, including a video call with the investor or 'in-person verification' (IPV) which serves to establish that the investor is alive.

If the information about the demise of the investor is proven to be incorrect, the intermediary will submit a 'KYC modification request' in the KRA system as, 'intimation of death of investor is false' and also upload a report of its additional due diligence to the KRA. This process has been mandated by SEBI to be completed on the same day, to avoid any inconvenience to the investor.

A brief overview of the securities transmission process as established by SEBI, in the case of an individual account-holder has been graphically represented below. The below-displayed process would differ slightly for joint account-holders.



3. Insurance

(This section attempts to explain the provisions of Sections 38 and 39 of the Insurance Act, 1938 in simple terms. For more appropriate interpretation, please refer to the Act and the terms and conditions of the concerned policy.)

The insurance sector is governed by the Insurance Act, 1938 and instructions issued by the regulator, IRDAI, to various insurance companies are based on this Act.[53]

When a policyholder dies before the policy matures or after maturity but before the proceeds are paid out, the amount owed is paid to the nominees listed in the policy document, on submission of a death claim form and supporting documents. Typically, the claim intimation should contain information such as the date, place and cause of death; the insurance agent has the duty to help the family/nominee to communicate or coordinate with the insurance company, to fulfil the claim formalities. The insurance company will ask for supporting documents such as claim form, death certificate, policy document, legal evidence of title (if no nominee), etc.

The framework of how insurance claims are paid out to nominees of the policyholder after demise is based on the nomination rules. Section 39 of the Act makes it clear that policy proceeds must be paid to the nominee on the death of the policyholder. The nominee's name has to be clearly mentioned in the policy and it can only be changed or cancelled by further endorsement by the policyholder or a Will. The insurer will not be liable, if the payment is made to a *bona fide* nominee as per the policy record.

Any change in the nominee, whether addition or deletion, has to be acknowledged by the insurer in writing. Further, the nomination is automatically cancelled when the policy is transferred or assigned under Section 38 of the Act (discussed below). For instance, if there is a loan against the policy, the nominee's rights are affected to the extent of loan payable. Similarly, if the transferee/assignee has given the policyholder a loan against the security of a policy, the nomination is automatically revived when the policy is reassigned or re-transferred to the policyholder on payment of the loan.

If the policyholder as well as the nominee dies before maturity of a policy, the Act proceeds would be paid to legal heirs or holders of a succession certificate.

[53] The Insurance Act, 1938. https://www.indiacode.nic.in/bitstream/123456789/2304/1/a1938-04.pdf (Accessed on 20 November 2023).

Section 38 of the Insurance Act, 1938[54]

This section deals with the assignment and transfer of insurance policies and imposes certain restrictions on the nominees or legal heirs while lodging claim after the death of the policyholder.

Insurance policies can be assigned/transferred as security for a loan. This action confers certain rights on the person/entity in whose favour the policy is assigned or transferred. For example, insurance for a property loan is assigned to a bank/lender giving it the right to recover the outstanding amount from the settled claim if there is a payment problem.

An insurance policy can be transferred or assigned by simple endorsement on the face of the policy or by a separate instrument, signed by the policyholder or a duly authorised person. It must be attested by a witness and supported by terms and conditions for such transfer or assignment. The Act also empowers the insurer to accept or decline such endorsement, if it has reason to believe that the transfer or assignment is not *bona fide* or is not in the interest of the policyholder or not in public interest.

The liability of the insurer is limited to the amount secured by partial assignment or transfer. The policyholder is not entitled to further assign or transfer the policy for the residual amount payable under the same policy. For instance, assume the value of a policy is Rs10 lakh and the policyholder avails a loan of Rs5 lakh by assigning the policy. In the event of death or an unfortunate event, the insurer is liable to only pay Rs5 lakh.

Typically, insurers incorporate the 'assignment' rules in the insurance policy itself. Actual interpretation of the rules may differ from case-to-case and on the prevailing conditions.

4. Small Savings Schemes

The department of economic affairs (DEA) under the Union finance ministry is the controlling authority of various small savings schemes (SSS) in India. The National Savings Institute (NSI)[55] functions as the front office and public relations unit of the DEA. Its objective, *inter alia*, is to coordinate with post-offices and banks for attending to investors' queries. It also handles legal issues and attends court cases on behalf of the department, and provides online and offline redress of public

[54] *Ibid.*

[55] https://nsiindia.gov.in/ (Accessed on 18 November 2023).

complaints and grievances. These schemes are monitored by the Government Savings Banks Act, 1873, which stands amended from time to time.[56]

Section 4A lays down rules for payment on death of depositor. While the rules applicable are generally the same, sub-section 8 provides for payment in absence of nomination or Will. It says that if the required probate or succession documents are not produced within three months of the death of the depositor, the authorised officer of the government savings bank may pay the amount to any person, appearing to him to be entitled to receive the money or to administer the estate of the deceased in accordance with such procedure as may be prescribed.

Section 5 of the Act underlines discharge of payment if made to the rightful owner within the provisions of this Act. Sub-sections 1 and 2 protect the rights of the executor and the creditor, respectively, for any lawful dues. Section 6 empowers the authorised officer to obtain security for proper administration of money paid to a person.

If the depositor turns incapacitated for any reason including insanity, as per Section 12, the authorised officer may pay, from time-to-time, a certain sum of money to the guardian or legally authorised person.

5. Government Bonds, Treasury Bills, etc

These financial instruments are monitored by the Government Securities Act, 2006.[57] Section 7 pertains to recognition of title to the security of the deceased single holder or joint-holders. This Section refers to the provisions of the Indian Succession Act, 1925. It takes cognisance of lawful title (towards creditors, etc) to the securities. Recognition of the title of the claimant also depends on a certain minimum and maximum amount as may be prescribed by the government from time to time.

Section 8 sets down rights of the survivor/s, joint-holder/s or several payees, subject to certain provisions under Section 45 of the Indian Contract Act, 1872. As per Section 8 (a), if the securities are held by two or more persons jointly, and either or any of them dies, the title to the securities vests in the survivor/s of those persons. As per Section 8 (b), when a security is payable to two or more persons severally, and if either or any of them dies, they shall be payable to the survivor/s of those persons or representative of the deceased or to any one of them.

[56] https://www.indiapost.gov.in/VAS/DOP_PDFFiles/Savings%20Bank/Government%20Savings%20Bank%20Act%201873.pdf (Accessed on 18 November 2023).
[57] https://dea.gov.in/sites/default/files/GovernmentSecuritiesAct2006.pdf (Accessed on 18 November 2023).

Section 9 defines the transfer and payment procedure after death of the holder/s. It almost goes along the same line with provisions under other Acts or regulations discussed herein-above.

6. Employees' Provident Fund (EPF)

Section 70 of the Employees' Provident Fund Scheme, 1952, has laid down rules regarding claim after the death of the EPF member.[58] As per Section 70 (i) the amount standing to the credit in the fund of the member, or that part thereof (i.e., specified percentage in case of more than one nominee) to which the nomination relates, shall become payable to the nominees.

Section 70 (ii) states that, if nomination is not made, the whole amount will become equally payable to the members of the family of the deceased EPF member. If, however, nomination is made only to a part of the amount lying to the credit in the fund of the deceased member, then the balance amount, not related to any nomination will become equally payable to the members of the family of the deceased EPF member. There are, however, certain provisions which are a little complicated in nature and need to be interpreted in proper manner, depending on the situation.

If no nomination or Will is present, the amount will be payable to a person who is legally entitled to receive the same, as made clear by Section 70 (iii).

Section 72 chalks out the guidelines for payment of provident fund (PF). The regulations therein empower the PF commissioner to make a payment to the claimant after satisfying his title, if the amount to the credit of the fund is less than Rs10,000. In case of a dispute about the amount payable, the PF commissioner is authorised to make a prompt payment of the balance, undisputed amount to the rightful owners.

At the time of writing the report, EPFO was set to introduce new rules which would ease the transfer of PF when individuals change jobs. Applicable from 1 April 2024, the new rules stipulate that the old PF balance for an individual will automatically get transferred to the new employer, eliminating the need for account-holders to manually request PF transfers. Earlier, despite having a universal account number (UAN), individuals were forced to undergo the hassle of requesting PF transfers.

[58] The Employees' Provident Funds Scheme, 1952. https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFScheme.pdf (Accessed on 20 November 2023).

While this change eases the problems faced by an individual member, the claims process for nominees needs to be reworked as well. As all members have a UAN, nominees who submit an easily verifiable government-issued death certificate, should be paid automatically, without having to undergo further verification through submission of additional documents.

7. Real Estate

As discussed in the previous chapter of this report, properties that are governed by the Cooperative Societies Act have a provision for the owner to add a nominee by following a prescribed procedure. Nominees, in this case, are only caretakers or trustees of the property and can only claim ownership after it is conclusively proven that they are also the legal heirs or that there are no legal heirs alive or that they have given up their right in favour of the nominee.

Under the rules prescribed by the Cooperative Societies Act, the concerned cooperative housing society (CHS) should transfer the share or interest of the deceased member to a person nominated as per the Act. If no such person is nominated, then the managing committee of the CHS should transfer it to a person 'who may appear' to the committee as the heir or legal representative of the deceased.

Therefore, on the death of a member, the CHS would transfer the share or interest of the deceased member to a person nominated in accordance with the rules. The purpose of nomination is to make clear the person whom the CHS has to deal with on the death of a member. It does not create any interest in favour of the nominee, to the exclusion of those who are legally entitled to the estate of the deceased member. Under no circumstances would the nominee become the absolute owner of the property. He or she is only empowered to hold the property 'in trust' for the real owners, for the purpose of dealings with the CHS.

Where a member of a CHS has not made any nomination, the CHS will, on the member's death, by a public notice exhibited at the office of the CHS, invite claims or objections for the proposed transfer of shares or interest of the deceased, within the time specified in the notice. After taking into consideration the claim or objections received or otherwise, and after making such inquiries as the committee considers proper in the prevailing circumstances, it will decide who, in its opinion, is the heir or the legal representative of the deceased member and proceed accordingly.

While the specific rules may differ on the basis of the Cooperative Society Acts adopted by each state in India, the basic principle for transfer to the property would be the same. Accordingly, a nominee would have to submit the following documents:

- Membership application form as prescribed, along with the entrance fee as applicable;
- An undertaking or indemnity letter;
- Copy of the nomination form filed by the deceased member;
- Death certificate of the deceased member;
- Share certificate of the deceased member.

Additionally, all outstanding dues of the deceased member would have to be cleared by the nominee at the time of submitting a membership application form.

In case there is no nomination and, further, if there appears to be a dispute or disagreement among the relatives of the deceased, the CHS should demand a succession certificate from the relatives. In case there is no dispute and a clear legal heir can be ascertained by the CHS, the heir will have to submit the following documents:

- Membership application form as prescribed, along with the entrance fee as applicable;
- An indemnity letter and an undertaking;
- Death certificate of the deceased member;
- Share certificate of the deceased member;
- The CHS will display on its notice board and also send a copy of the notice to every member in the CHS. It will also publish the notice in two local newspapers having wide publicity, one in a local language and the other in English. Any claim from the public has to come within a period of 15 days from the day of publication of the notice.

For properties that are not governed by the Cooperative Societies Act, the legal heirs would have to follow the rules prescribed under the Transfer of Property Act. This may require a succession certificate or a Will as the case may be.

Need for a Death Registrar

Considering that a death certificate is mandatory for a nominee or an heir when filing a claim for the deceased's assets, the creation of a 'Registrar of Deaths' (in each municipality and *panchayat*) would help smoothen the transmission process greatly. Such a registrar would automatically send information to a central repository, as a mandatory process, with a copy of the death certificate.

Creating such a mechanism will speed up transmission processes by eliminating the need for heirs (once authenticated) to submit multiple death certificates to different agencies. It will also allow cross-verification, as the data would be automatically uploaded, updated and maintained by the registrar. For instance, in the case of SEBI's centralised mechanism for reporting the demise of an investor, the intermediary could verify the death certificate submitted by the nominee or heir through such a registrar. Alternatively, it could also refer to the death certificate directly on the registrar's portal with the use of identity documents of the deceased.

Mechanisms for Redress

A brief description of the grievance redress mechanisms available for various asset classes is given below.

Banks and Non-banking Finance Companies (NBFCs): Complaints can be escalated to a nodal officer whose name and contact details are available on the official website of each entity. The escalation process is specified and, if that does not provide respite within a stipulated period of 30 days, a complaint can be filed with RBI's integrated ombudsman scheme. This can be done online and a state-wise list of the offices of the banking ombudsman has been made available here: https://www.rbi.org.in/Scripts/AboutUsDisplay.aspx?pg=BankingOmbudsmen.htm

Shares, Mutual Funds and Bonds: Most issues concerning these instruments are handled by the RTAs; hence, one should first lodge a written complaint with them. If not satisfied, the matter can be then escalated to SEBI Complaint Redress System (SCORES) using the following link: https://scores.gov.in/scores/Welcome.html

SEBI also has an ODR mechanism to resolve issues at the RTA level. Legal experts believe that SOPs and guidelines defining this mechanism are handicapped by the fact that persons appointed as arbitrators or conciliators often have no knowledge about complex securities market regulations and issues. Such appointments tend to exacerbate issues rather than resolve them. While the principle of incorporating an ADR mechanism is sound and could potentially help in avoiding lengthy legal battles, it requires the right appointments to make it effective.

Insurance: Every insurance company has a nodal officer who handles grievances. In case there is no response or an unsatisfactory response has been given, the matter can be escalated to the insurance ombudsman either online or directly to the officer concerned. The state-wise list is available here: https://www.cioins.co.in/Ombudsman

Small Savings Schemes: Post-offices handle small savings schemes and any complaint that is not redressed by the post-office, can be lodged with the nodal state officers as per details available on this link:
https://www.indiapost.gov.in/VAS/Pages/Content/circle_pg_nodal_officer.aspx
If the small savings account is held in a bank, the procedure, as stated in the para for Banks and NBFCs above must be followed.

Government Stocks, Treasury Bills, etc: RBI Retail Direct portal has a toll-free number 1800 267 7955 (between 9am and 7pm on working days) as well as an email ID - support@rbiretaildirect.org.in for lodging grievances.

Employees Provident Fund (EPF): There is an online process with a list of claim forms to be submitted on the death of a member in different circumstances under the 'Deceased' option:
https://www.epfindia.gov.in/site_en/WhichClaimForm.php#Q5
Any grievances can be lodged on:
https://epfigms.gov.in/Grievance/GrievanceMaster

Regulators have framed required rules based on provisions in the governing laws, particularly, the Indian Succession Act, 1925. The timeframe set for redress, once all the requirements are met is generally 15 to 30 days. In practice, there numerous challenges as shown by Moneylife Foundation's online survey.

5. Challenges in Claiming Financial Assets

From the previous chapter, it is clear that regulatory bodies have issued guidelines or regulations that define the process of claiming various financial assets. While RBI has not mandated SOPs, IBA, as a nodal body for banks, has put out model operating guidelines which are adopted by banks. However, there still a wide discrepancy between the process that is followed by individual officials and the IBA guidelines.

On the other hand, SEBI has recently issued detailed guidelines and clear SOPs to intermediaries, including remarkable clarity on documentation requirements from claimants. Until this change, there have been complaints about arbitrary demands for documents by officials in charge of verifying claims because they were unaware of the mandated process.

Responses to Moneylife Foundation's online survey highlight the complex and, often, inconsistent processes that nominees and heirs are put through while claiming assets of their deceased loved ones. Common challenges include lack of clarity or changing requirements for supporting documents, lack of awareness about the mandated claim process, inordinate delays in processing the claim and a mostly offline process that adds to the delay.

The problem is more frustrating when it comes to unclaimed shares, where the IEPF has rather complex rules and processes for making claims that are at variance with the more relaxed stance of SEBI.

In recent months, especially after the PIL filed in the Supreme Court, all regulators including the EPFO have made efforts to streamline and simplify the transmission process as well as that for unclaimed assets. In practice problems remain.

Here are a few examples of the predicament faced by people as claimants, nominees or legal heirs. Names in all examples have been changed to protect privacy.

Bank-related Examples

Case 1

An illiterate woman approached a public sector bank with the passbook of her deceased husband and requested for settlement of the balance in the account. The branch manager told

her to obtain a legal heir certificate, without even examining the savings bank account passbook or the account details.

The lady travelled 25km to the nearest government office to apply for a legal heir certificate. She was informed that she may have to wait for a few months after applying for it. A middleman offered to help obtain the certificate for a charge of Rs6,000. However, the balance in the account, which she was attempting to claim, was a mere Rs2,000. She decided that it was not worth the time, money or effort to see the process through.

The demand is quite contrary to what RBI's circular for simplification of procedure for death claim[59] has said:

> *2.3 In case where the deceased depositor had not made any nomination or for the accounts other than those styled as 'either or survivor' (such as single or jointly operated accounts), banks are advised to adopt a simplified procedure for repayment to legal heir(s) of the depositor keeping in view the imperative need to avoid inconvenience and undue hardship to the common person. In this context, banks may, keeping in view their risk management systems, fix a minimum threshold limit, for the balance in the account of the deceased depositors, up to which claims in respect of the deceased depositors could be settled without insisting on production of any documentation other than a letter of indemnity.*

Chandramouli Mohan, a retired senior manager from a PSB and a consumer activist, discovered that the bank in the case mentioned above, had set a threshold limit of Rs5,000 for death claims. Below this limit, the bank required only a "declaration from respectable person/s known to the family of the deceased, and a declaration/undertaking from claimants, and an unstamped letter of indemnity signed by all the heirs."

Unfortunately the branch manager was either callous in dealing with a poor and illiterate customer, or unaware of the RBI directives, leading to harassment of a genuine claimant.

Case 2

Rakesh Jha contacted the branch of a multinational bank where his deceased sister had a savings account, with a balance of approximately Rs8 lakh. He was the registered nominee to his sister's account. The bank staff and operations head were unaware about the claims process and procedures.

[59] Settlement of claims in respect of deceased depositors – Simplification of Procedure, RBI/2005-06/48 RPCD.CO.RF. BC.No.12/07.38.01/2005-06. July 12, 2005 https://www.rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=68 (accessed 13 December 2023)

A few weeks after making a claim, an employee of the bank contacted Mr Jha and informed him that a succession certificate is mandatory for settling the claim and it had to be obtained from a court of law. He offered his help by sharing the address of a lawyer who would arrange the required certificate at a nominal cost of Rs75,000.

An examination of the passbook revealed that Rajesh Jha's name was registered as a nominee, but the bank claimed that it had no record of the nominee at the branch level, as information was centralised in Mumbai. The bank had no physical or digital records to disclose the name of the nominee or certify it. A follow-up with the branch and the central office in Mumbai did not yield any positive results and the claim was settled only after escalation of the complaint to the banking ombudsman.

This exposes how badly the bank maintained important customer records, the casual manner of dealing with legitimate claim by and the shocking attempt to misguide a legitimate nominee. This flies in the face of RBI guidelines and circulars with no consequences to the officials concerned.[60]

Case 3

John Fernandes (name changed), a respondent to Moneylife Foundation's online survey says that his deceased father had some outstanding dues to be paid to his broker, Angel One. The broker insisted that pending dues must be paid from the deceased's bank account, before settling the claims.

This was not possible as the account was frozen for debits until legal formalities were completed. The broker also would not accept payment made from John's account although he was the legal heir. While writing this report, the claim had not been settled, since there was a stalemate over a paltry sum of Rs1,062 that needed to be paid from the deceased's account.

Case 4

Ankur Verma (name changed) passed away at the age of 95, leaving Rs1.25 lakh in his savings bank account with a private sector bank in Bengaluru. There was no nomination registered in Mr Verma's account and his three legal heirs had amicably decided that two would relinquish their rights on the deposit, allowing the third heir to claim the entire amount.

They filled out the necessary application forms and submitted a stamped indemnity bond, to attest that they had no objection to one heir claiming Mr Verma's deposit. However, the local branch manager said their application would be forwarded to the regional office, since the branch was not authorised to settle the claim.

[60] https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/64668.pdf (Accessed on 21 November 2023).

Twenty days later, the branch emailed them to say that there were discrepancies in their forms which had to be rectified to process the claim. These turned out to be as basic as –

i. *page no. 3 of the application has not been signed by all the claimants*
ii. *page no. 5 of the application should not bear the signature of 'authority holder'*
iii. *alteration in page 7 requires authentication*
iv. *ID proof of all the claimants not submitted.*

A clear SOP and verification at the branch, before forwarding the claim to the regional office, would have saved everybody a lot of time. The casual attitude, lack of sensitivity and time wasted in submitting a new application continues to be a fairly normal experience.

Case 5

Shruti Singh, a widow, was the registered nominee in her deceased father's savings account and a few fixed deposits. Her father had registered her name as a nominee before her marriage. At the time Shruti approached the bank to make a claim on her deceased father's accounts, the self-attested copy of her Aadhaar card mentioned her post-marriage name and the address of her marital home, while her PAN card mentioned her father's name.

The bank asked her to provide proof of old address, knowing full well that such a demand was unrealistic, irrelevant and not feasible. Shruti was forced to escalate her complaint and meet the bank's zonal office officials, before her claim was finally processed. This delay was entirely avoidable and caused undue stress at a time of bereavement.

Case 6

Rajesh Verma had three married daughters and all his bank accounts as well as fixed deposits had registered nominees. Rajesh passed away in a city where one of his daughters resided. On his demise, each of the daughters separately approached the bank with death claim forms, notarised death certificate, self-attested KYC documents, cancelled cheque of the bank where they had their own respective accounts, as well as bank-attested and certified details of their accounts.

While the FDs were in Rajesh's sole name, the bank claimed that, as per their records, they were being held jointly. They were not ready to accept the FD receipts that had his sole name printed on them. The bank further went to raise the following objections –

i. *death certificate must have the permanent address (as registered with the bank);*
ii. *nominees need to be physically present at the home branch to make a claim, even if they are NRIs.*

One of the daughters, who resided abroad, having completed the necessary demands and compliance requirements of the bank, was denied the claim until she could personally visit the home branch. The settlement was unnecessarily delayed due to an arbitrary rule that the bank had concocted and its own records were not accurate.

Case 7

A probate for a Will is still mandatory only in three presidency town in India – Mumbai, Chennai and Kolkata (if the person resides in these cities or owns properties in them). However, Avinash Khairwar (name changed) says that many intermediaries insist on a probate, as a matter of 'best practice' for claiming mutual fund proceeds even if it is not mandated.

Separately, when Avinash approached HDFC Bank for an account statement of his deceased father, which was required to file an income-tax return, the Bank claimed that for amounts of over Rs1 lakh, a probate is required. When Avinash explained that he had only sought information to file an I-T return and not made any claim to the balance in his father's account, HDFC Bank's legal department refused to oblige.

Case 8

Nitin Rao (name changed), superannuated from a public sector bank, invested all of his retirement benefits in term deposits with the same bank where he had served for 40 years. He was unmarried, meticulous and a perfectionist who made sure that all of his financial assets had nominations registered in favour of his five different siblings.

After his demise at the age of 70, 10 of his deposits were settled; the respective nominees received the proceeds without any hassle. Only one savings account with a balance of Rs5 lakh remained, as the branch claimed there was no nomination on record for it.

The nominee, Mr Rao's sister, was confident that she was the nominee for the concerned account. She, therefore, requested the branch to physically verify the account opening forms submitted by late Mr Rao. The branch unofficially told her that they could not trace the original application and suggested that the claim could be settled equally between all legal heirs.

This meant that the application had to be signed by all legal heirs, who resided in three different states. The bank also insisted on a stamped indemnity form to be submitted by two persons unrelated to the claimants and those known to the bank (i.e., customers of the bank). The claimants, however, were aware that only one indemnity letter from a third party was sufficient under the death claim settlement policy of the bank.

After educating the branch about their own claim settlement policy, the claimants managed to convince the branch to process their application and send it to the regional office, which approved the claim with a caveat: "Branch to ensure that there are no other legal heirs."

In compliance with this caveat, the branch again started insisting on unnecessary documents such as a copy of the death certificate of Mr Rao's parents. Only when the claimants said they would approach the banking ombudsman for relief and damages for undue harassment, was the claim settled. It took more than 45 days and a lot of stress for a simple matter involving a former employee.

A bank, NBFC or any other RBI-regulated entity, is required to draft, adopt and periodically update a comprehensive document preservation policy, based on the rules and regulations stipulated by various laws such as the Banking Regulations Act, Banking Companies (Period of Preservation of Records) Rules, Information Technology Act, Prevention of Money Laundering Act and Prevention of Money Laundering (Maintenance of Records), etc.

Accordingly, the "account opening forms, inventories prepared in respect of articles in safe custody and safety locker and nomination forms," are to be preserved for a period 'not less than five years'.[61] Loss of nomination records in this particular case meant that the bank could not authenticate the nominee's claim and the claimants were inadvertently penalised by delaying the claim process.

Lack of knowledge about the bank's own death claim settlement policy further exacerbated the delay with the demand for unnecessary documents. It is important to note here that RBI's directions clarify -

> *In cases where the deceased depositor had not made any nomination or for the accounts other than those styled as 'either or survivor' (such as single or jointly operated accounts), banks are advised to adopt a simplified procedure for repayment to legal heir(s) of the depositor keeping in view the imperative need to avoid inconvenience and undue hardship to the common person. In this context, banks may, keeping in view their risk management systems, fix a minimum threshold limit, for the balance in the account of the deceased depositors, up to which claims in respect of the deceased depositors could be settled without insisting on production of any documentation other than a letter of indemnity.*[62]

[61] Banking Companies (Period of Preservation of Records) Rules, 1985.https://upload.indiacode.nic.in/showfile?actid=AC_CEN_2_11_00002_194910_1517807317779&type=actfile&filename=a1949-10.pdf (Accessed on 23 November 2023)

[62] https://www.rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=68 (Accessed on 23 November 2023).

It is a shame that these guidelines were not followed by the regional office or the branch. The very purpose of obtaining a stamped indemnity letter from a third party is to indemnify the bank in case another person comes forward to claim the amount. Ignoring this simple fact, the branch demanded death certificates of parents, whom they perceived as possible claimants or legal heirs, that too when 10 deposits had already been smoothly transferred to respective nominees.

Demat-related Issue

Case 9

Manish Jain went through the long and arduous process of obtaining a legal succession certificate from the court. It took him three years and cost a substantial amount of money in court and lawyer fees. Axis Direct had demanded a succession certificate for transmission and settlement of his mother's demat account.

After producing the succession certificate, Axis Direct went on to quote old SEBI circulars and demanded additional documents such as an affidavit from all legal heirs. The harassment reached a point where he suffered panic attacks. He says that employees of Axis Direct had no clue about SEBI and NSDL rules and repeatedly provided conflicting information.

Conclusion

In addition to the above examples Moneylife Foundation's online survey, which collected feedback from 632 respondents threw up the following issues:

- **Lack of Knowledge at Banks Leading to Harassment**: Lack of understanding among officers in charge of the settlement process and documentation required was a common complaint.

  a) In one case, the list of supporting documentation required for compliance kept changing and the entire process was completed on a trial and error basis, as neither the managers nor the back-end employees are aware of the mandated supporting documents.

  b) A no objection certificate or an affidavit was demanded from all heirs, even when there was a nomination registered for the concerned account.

  c) One claimant was asked for a '*kutumbpatra*' or family tree and a surety/witness was required, even where a nomination had been registered.

  d) A legal heir certificate is not required for a claim below a set threshold, yet the bank officials insisted on it.

  e) In one case, although re-KYC was done recently, officials demanded that the process be repeated. The respondent was asked to obtain a signature from the local member of legislative assembly (MLA) to certify that the name mentioned on the application form is the same as the name on identity documents which only had initials. The lack of standardisation and

differences in various identification documents such as Aadhaar, PAN, voter ID and passport is another unending source of harassment on various issues.
f) Insistence on the personal appearance of all legal heirs even if they lived in different cities has been cited by many respondents. Often, multiple visits were required, if the manager is unavailable or on leave.
g) One bank did not accept a signature attestation obtained from another bank and insisted that the claimant open an account in their bank and get attestation done separately.
h) One bank asked for a copy of the deceased person's Aadhaar even though he did not have one.
i) A masked Aadhaar of the legal heirs was not accepted by the bank, even though UIDAI recommends masking. What is worse, respondents are asked to fill and submit a form that categorically states 'I voluntarily submit Aadhaar'.
j) A public sector bank insisted on the claimant opening an account in the branch by refusing to transfer the money into the claimant's account in another bank.
k) Foreign nationals claiming assets of deceased Indian parents have the hardest time. They are forced to make repeated trips to India and pay hefty legal fees to complete the formalities, since the officials handling transmission are ignorant about the role of executors and their duty to distribute assets.
l) Asking claimants to provide an indemnity bond for transmission even when they had a probated and registered Will is a frequent complaint.
m) A public sector bank manager asked one nominee to submit a statement of assets and liabilities, to determine if he was worthy of access to the locker.

- **Misplaced Documents and Callousness**: Several respondents have complained about misplaced documents or record of nomination by deceased account-holders. One respondent says, "Despite having proper nomination, Unit Trust of India (UTI) insisted it did not have any nomination on record. Luckily, my father had preserved copies of the original forms submitted and I also had the original allotment letter with the nomination. It took 11 years for the mutual fund units to finally get transferred." This is pure harassment.

  In another instance, despite the claimant insisting that his deceased wife had more than a savings account at Kotak Mahindra Bank, the bank denied it. It was only later that he stumbled upon documents of his wife demat account at the bank holding multiple shares. He is now going through a tortuous process of resubmitting KYC and other mandatory documents which were already submitted for the earlier claim.

- **Probate & Wills**: Asking claimants to probate a Will, as a 'best practice' even when it is not applicable, is time consuming and expensive is a common complaint. This has been sought in some instances even when the amount involved is below the threshold for seeking extra documentation. Officials have harassed claimants by seeking indemnity bonds even when there is a probated Will, defeating the very purpose of the exercise.

  One claimant says settlement officers rejected a probated Will and demanded a succession certificate because they did not understand difference between the two.

  In one egregious case, a bank insisted it would distribute assets equally among all because the probate was not well construed. It had taken the claimants six years to probate the Will. In the absence of SOPs banks get away with such ignorance and callousness or keep claimants busy in endless battles.

- **NSC**: When a claimant made an application with the necessary identity documents (Aadhaar, PAN and passbook) to claim a National Savings Certificate (NSC) from his local post-office, he was advised to produce two witnesses as the claim was being made at a different post-office from the home branch, where the account was initially opened.

- **LIC**: When making a death claim with LIC, a nominee was asked to get the signature of the LIC agent who had sold them the policy. As the same agent could not be reached, another agent who signed the form coerced the nominee into buying additional policies.

- **PPF**: A penalty was deducted from the PPF account of the deceased husband of the claimant, as the account was closed before completing the term of 15 years. The wife had to persistently follow up and fight her case with SBI, as no penalty should have been deducted in a death claim. The Bank simply stated that the system deducted the penalty automatically and issued a cheque for the deducted amount after a grievance was filed.

- **Government Bonds:** The transmission of a government bond required signature and bank account certification twice, because the format was changed and initially-submitted forms were returned.

6. Legal Hurdles for Families of Incapacitated Adults

While exploring the various challenges in asset *transmission*, we came across a critical legal gap regarding the *management* of assets belonging to incapacitated adults. There are persons who have assets and savings but are no longer able to manage them because of accidents, illness or age-related disabilities like dementia, Alzheimer's or Parkinson's disease. This prevents them from operating bank accounts, lockers, trading accounts, beneficiary accounts, etc, leaving them vulnerable and helpless.

As a result, they lose access to their own funds and, often, deprive family members from resources, even to care for the incapacitated persons who may need round-the-clock medication, nursing care or attendants. It also applies to those in a coma or a vegetative state due to an accident.

Many Indians in nuclear families with children living abroad are increasingly stressed at the absence of close relatives who can be depended upon to manage their funds. It is worse for those who have no families, even if they move to assisted living centres. The law is stringent about giving access to a person's assets and it requires a court order, even if it is a spouse, child, sibling or close relative coming forward to care for an incapacitated person. Those who have to depend on professional help (such as assisted living centres, hospices, etc) have no solution at present, especially if such a person is already in a coma or a vegetative state.

This chapter makes an attempt to understand the legal aspects of such situations in India and suggests solutions which can be adopted to ease hurdles for families who wish to be guardians of their loved ones.

Parens Patriae

The concept of taking care of patients in comatose state has been recognised in the United Kingdom since the 13th century and is referred to as '*parens patriae*'. It means that the king was the father of the country and had an obligation to look after those who are unable to look after themselves. The concept of '*parens patriae*' was also recognised in India where the king was supposed to be the protector of citizens as a parent.

And yet, independent India has no law or legislation to provide for the appointment of guardians for adults suffering from age-related mental disease or in coma. There are various Acts under which a guardian can be appointed, but none of these offers any provisions for appointment of a guardian for patients who are comatose or in a vegetative state. This may not have mattered in the past where people lived in joint families and close-knit communities and life expectancy was also low.

No Law for Appointment of Legal Guardians: There is, at present, no law that provides for appointment of guardians for adults suffering from age-related mental disease or in coma.

With India's ageing population and changed demographics, where senior citizens are living longer and have adequate resources for their own care, the need for clarity and legislation have become more important.

The Supreme Court has held that, in order to invoke the *parens patriae* jurisdiction, exceptional circumstances have to exist. The scope of *parens patriae* jurisdiction has to be exercised with great caution and with enormous seriousness. The apex court has recognised that constitutional courts, including High Courts, can also act under the *parens patriae* jurisdiction to 'meet the ends of justice'. Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction. Essentially, if the court is satisfied that the person concerned is in a vegetative state, then surely *parens patriae* jurisdiction can be exercised.

Below is a brief examination of present laws that relate to appointment of a guardian in specific circumstances:

(i) **The Guardian and Wards Act, 1890:** This Act provides guardians to minors; however, various courts have used their powers as writ courts to appoint close family members including husband, wife and sons/children as guardians. They have also permitted them to operate and manage movable and immovable properties of the incapacitated person subject to monitoring by designated officers of the government from the National Legal Services Authority.

This Act was enacted to consolidate various laws relating to guardians and wards applicable to all the classes, creeds and races, who were subjects in British India. Under this Act, the court can appoint a guardian to take care of the properties of a minor. This Act was only to provide guardians for the minors and was not applicable for appointing a guardian to a person lying in comatose state or otherwise incapacitated.

(ii) **The Hindu Minority and Guardianship Act, 1956**: This Act regulated the guardianship of Hindu minors and for managing their properties. It was a supplement to the Guardians and Wards Act, 1890. It also defined rights and duties of a natural guardian. In this Act, welfare of the child was paramount consideration. Again, the legislation was confined to Hindu minors and has no applicability for appointing a guardian of person lying in comatose state.

(iii) **The Mental Health Act, 1987 (Repealed):** The Mental Healthcare Act, defined mental illness and Section 17 of the Act provides for a nominated representative for the affected person; however, the nominated representative did not have any right to the property of the mentally diseased person and did not provide for guardianship of a mentally ill person.

The Act was introduced because The Indian Lunacy Act, 1912, had become outdated after considerable developments in medical science. Mental illness is curable, if diagnosed at an early stage. The attitude of the society towards such people is also changing. Hence, it was necessary to bring in fresh legislation for treatment of mentally ill persons in accordance with the new approach. Accordingly, The Mental Health Act, 1987, was enacted and came into force with effect from 1 April 1993.

Chapter VI of The Mental Health Act, 1987, dealt with judicial imposition regarding mentally ill persons possessing property, custody of such persons and the management of their property. Sections 52 and 54 provide for the appointment of a manager for a mentally ill person for management of property. However, there is no provision in the Act for appointment of guardianship of a person who is in comatose state.

(iv) **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**: This Act has been repealed by the Rights of Persons with Disabilities Act, 2016.

(v) **The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999:** This Act was enacted to provide for the constitution of a national body for the welfare for autism, cerebral palsy, mental retardation, multiple disabilities and for other related matters. This Act focused on welfare of persons suffering from disabilities mentioned above. Section 14 of this Act deals with 'appointment of guardian' but is confined to diseases or disabilities mentioned in the Act. Though the preamble of the Act states that 'matters connected therewith or incidental thereto', the provisions do not cover people in a comatose state. Further, the benefit of this Act will be applicable only to

people who have any two or more disabilities, to fall under 'multiple disabilities' category defined by the Act.

(vi) **The Mental Healthcare Act, 2017:** This Act was the outcome of the United Nations Convention on the Rights of Persons with Disabilities which was ratified by the Government of India in October 2007. The Convention made it obligatory on the government to align its policies and laws with the Convention. The Mental Health Act, 1987, could not protect the rights of persons with mental illness and promote their access to mental healthcare in the country. There was no provision to protect the rights of persons with mental illness and the Act did not promote access to mental healthcare in the country.

To ensure healthcare, treatment and rehabilitation of persons with mental illness as well as to protect and promote the rights of persons with mental illness during the delivery of healthcare, the Mental Health Bill was introduced in 2013. Hence, The Mental Health Act, 1987 was repealed and The Mental Healthcare Act, 2017 was enacted with effect from 29 May 2018.

Section 14 permits the mentally ill person to appoint a nominated representative. However, where a nominated representative is not appointed, the person who would be deemed to be the nominated representative, in the order of precedence, is laid down under Section 14 (4) of the Mental Healthcare Act, 2017. The duties of the nominated representative have been laid down under Section 17 of the Act.

(vii) **The Rights of Persons with Disabilities Act, 2016**: Following the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), India being a signatory State, enacted the Rights of Persons with Disabilities Act, 2016 (RPWD Act). Section 2(s) of the RPWD, 2016 lays down that 'person with disability' means a person who has a long-term physical, mental, intellectual or sensory impairment, which hinders their effective participation in society. Section 14 lays down provision for guardianship for such a person who is unable to take decisions and needs limited support by the guardian. Section 14(2) lays down that every guardian appointed for a person with disability will be deemed to function as a limited guardian.

A joint reading of the provisions of RPWD Act, 2016 and the Mental Healthcare Act, 2017, shows that there is clear distinction between both the Acts. The Mental Healthcare Act, 2017, only deals with the delivery of mental healthcare and services. It does not maintain any provisions with respect to moveable or immovable assets or financial affairs of the patient. Hence, we can see a clear departure from

management of the property of a mentally ill person which was available in the Mental Health Act, 1987.

Under the Mental Healthcare Act, 2017, the nominated representative is responsible for providing support in respect of decisions of treatment and for taking decisions in respect of providing access to family, rehabilitation services, planning of admission, planning of discharge, appointments of attendants, etc, on behalf of the mentally ill persons. Therefore, the nominated representative has to be a person who has to ensure that the rights and benefits of the mentally ill person are well protected.

As per Section 14(4)(b), while appointing a nominated representative, a relative by blood or marriage or adoption is given precedence over a caregiver. Section 14(4)(c) recognises that the care given to a mentally ill person by a family member would be far more than that of a relative.

Under Section 13 of the RPWD Act, 2016, a person with disability has a right to take all decisions in respect of his or her financial affairs, and to own or inherit movable or immovable property, etc. To protect this right further, Section 13(3) provides that if a conflict of interest arises between the persons with disability and the person providing support, then such supporting person shall abstain from providing support to the disabled person.

Section 14 envisages limited guardianship in the case of such persons with disabilities, who have expressed their desires in the past or are able to express their desires, going forward. The provision of the RPWD Act, 2016 apply to persons with varying degrees of disabilities, as the definition of disabilities is extremely wide.

It is clear that the intention of the RPWD Act, 2016, is to first, examine if the person with disabilities is capable of expressing his or her will or preferences; and, second, under exceptional circumstances, where consultation is not possible, enable the provision of total support. However, both the Acts provide for appointment of support/guardian for people with particular disabilities / mental illness, but do not address the situation of a person who is in comatose state.

However, the only real option to access the funds of an incapacitated person is a court order. Fortunately, the Supreme Court and various high courts have used their powers as writ courts to appoint close family members including husband, wife and sons and guardians and permitted them to operate and manage movable and immovable properties of the ill person, subject to monitoring by designated officers

of the government's Legal Services Authority. Such cases are also treated with compassion and as a priority.

Below is a brief summary of precedence-setting cases from various parts of the country, where courts have permitted the appointment of a guardian for and incapacitated person in response to specific applications seeking access to funds; in almost all cases it is a spouse, sibling or a child who is appointed. The court usually imposes certain restrictions on their access to a person's assets and requires the guardian to report periodically to court appointed authorities. In one exceptional case, in the absence of any relative, the Bombay High Court appointed the lawyer of a comatose individual as the guardian-in-charge of financial and other pertinent affairs. In another case, the Kerala High Court acknowledged the lack of legislation governing adult guardianship in India and proceeded to frame guidelines which would assist in drawing judgement on future cases. We were unable to find any examples of non-government organisations (NGOs) or individuals who are not family members (social workers or neighbours, colleagues, etc) asking to manage the affairs of an incapacitated person.

Court Frames Guidelines in Absence of Existing Laws

- Shobha Gopalakrishnan *vs* State of Kerala[63]: This case involved the wife of a comatose individual who had filed a petition in the Kerala High Court seeking guardianship of her husband, to manage their financial affairs and property. The central question before the Court was to determine the appropriate legal framework for appointing a guardian to manage the financial affairs of an incapacitated person in a coma, considering the limitations of existing legislation. Acknowledging the limitations of existing laws in addressing guardianship for comatose individuals, the Kerala High Court framed guidelines for appointment of guardians for comatose persons, their responsibilities and oversight mechanisms. The guidelines are broadly as follows:

  1. The person seeking guardianship must disclose details of the comatose person's property (movable and immovable).
  2. A medical board, including a neurologist, will assess the comatose person's condition.
  3. Revenue authorities will visit the comatose person's residence to gather information about relatives, finances, etc.
  4. The guardian should be a close relative (spouse, children) or, in their absence, a public official like a social welfare officer.

[63] Writ C No. 37278 of 2018 decided on 20 February 2019. Kerala High Court. https://indiankanoon.org/doc/45820104/ (accessed on 24 May 2024).

5. The appointed guardian must be legally competent.
6. The court will appoint a guardian for specific assets (property, bank accounts) managed in the comatose person's best interests.
7. The guardian must file reports every six months with the court, detailing transactions and fund usage related to the comatose person's care.
8. The court will maintain a separate register for guardianships and reports.
9. The guardian can be appointed temporarily, for a specific period, or permanently.
10. Misuse of power, misappropriation of funds, or neglecting the comatose person's care can lead to the guardian's removal and potential legal action.
11. The guardian's responsibilities are similar to those under the National Trust Act, including maintaining accounts.
12. The guardian must inform the local social welfare officer, who may visit the comatose person and report to the court, if necessary.
13. Property transactions by the guardian must comply with the law. Failure to act in the comatose person's best interest can lead to removal.
14. Moving the comatose person outside the court's jurisdiction would require specific court permission.

These guidelines would serve as an important framework for future legislation on adult guardianship in India.

Guardian Appointed by Court in Absence of Surviving Family Members

- Nitin G Thakker and anr. *vs* State of Maharashtra and Others[64]: This case before the Bombay High Court highlights the legal process for incapacitated adults with no designated decision-maker. Mr Damania, an 87-year-old lawyer, had no family and had not appointed anyone to manage his affairs. Due to his illness, the court used its inherent power to appoint a legal guardian (in this case his lawyer advocate Nitin Thakker) to handle his finances, including covering his daily hospital bills. We understand that the issue was brought to the attention of the Court by other lawyers. This case emphasises the importance of legal planning for incapacitated individuals and the Court's role in protecting their well-being as much as it highlights the absence of an appropriate mechanism to care for such individuals.

  The case sets an important precedent in situations where the comatose or incapacitated individual has no surviving family or designated decision-maker.

[64] LC-VC-GSP-75 of 2020 decided on 13 August 2020, Bombay High Court. https://www.livelaw.in/pdf_upload/pdf_upload-379943.pdf (accessed on 24 May 2024).

It should ideally serve as a template for codifying national law on adult guardianship.

Court-appointed Authority for Monitoring Functions of Guardian

- Vijay Ramachandra Salgaonkar *vs* State of Maharashtra[65]: The Bombay High Court appointed the husband of a woman with vascular dementia (with diabetes mellitus and hypertension), as her guardian. The Maharashtra State Legal Services Authority was designated to monitor the functioning of the guardian who would submit monthly reports to the Authority.

  While the Court allowed the husband to be appointed as her guardian, it also designated a separate legal authority to monitor the actions of the guardian to ensure there was no abuse of power or finances.

Spouse or Immediate Relatives Appointed as Guardian

Ideally, the decision regarding a guardian for an incapacitated individual should be straightforward, prioritising the well-being of the person. Fortunately, numerous court cases across India demonstrate a growing recognition of this principle. As we will see, courts have consistently appointed the spouse, children and close relatives as guardians for incapacitated individuals, particularly those in a coma.

- Smt Shalini Agarwal and Others *vs* State of UP and Others[66]: In a situation where husband of the petitioner was in a comatose state, a coordinate bench of the Allahabad High Court declared his wife as guardian and allowed her to do all acts and deeds required for proper medical treatment and welfare of her husband.
- Uma Mittal *vs* Union of India[67]: The Allahabad High Court appointed the wife of a person in comatose state, as his guardian, and framed guidelines for the state of Uttar Pradesh, that are similar to those in Shobha Gopalakrishnan *vs* State of Kerala.[68]
- Sairabanu Mohammed Rafi *vs* State of Tamil Nadu[69]: In an identical situation as Shobha Gopalakrishnan's, the Madras High Court appointed the wife of a

[65] Writ Petition No. 637 of 2021 decided on 17 July 2021. Bombay High Court. https://indiankanoon.org/doc/101981570/ (accessed on 24 May 2024).
[66] Writ C No.5783 of 2020 decided on 14 October 2020. Allahabad High Court. https://indiankanoon.org/doc/6898836/ (accessed on 24 May 2024).
[67] Writ C No. 40096 of 2019 decided on 15 June 2020. Allahabad High Court. https://indiankanoon.org/doc/79667853/ (accessed on 24 May 2024).
[68] Writ C No. 37278 of 2018 decided on 20 February 2019. Kerala High Court. https://indiankanoon.org/doc/45820104/ (accessed on 24 May 2024).
[69] Writ Petition No. 28435 of 2015 decided on 6 January 2016. Madras High Court. https://indiankanoon.org/doc/108578965/ (accessed on 24 May 2024).

person in comatose state as the guardian of her husband and she was allowed to deal with his immovable properties and also operate the bank accounts.

- Philomena Leo Lobo *vs* Union of India[70]: This is a similar case decided on 13 October 2017, a division bench of Bombay High Court declared the wife as guardian of her husband Leo Lobo who was in a comatose condition.
- Rajni Hariom Sharma *vs* Union of India[71]: The Bombay High Court appointed the wife as the guardian of a man who was in coma. It was held that this is not covered by the existing legislations concerning mentally or physically challenged persons.
- Dr Madhu Vijaykumar Gupta *vs* The State of Maharashtra and Others[72]: In an identical case, the Bombay High Court, in 2019, appointed the wife as guardian of her husband who was in comatose condition and appointed her as manager of all movable and immovable properties of the husband.
- Smt Reshma Salam Kondkari *vs* Union of India[73]: The Bombay High Court declared the wife as the guardian of her husband Abdul Salam Ismail Kondkari, who is in a vegetative state, for managing the bank accounts and immovable property of the husband including selling of flat.
- Sikha Arjit Bhattacharya *vs* Union of India[74]: The Bombay High Court declared the wife as the guardian of her husband Dr Arjit Bhattacharya who was in a vegetative state.
- Rita Arvind Kakodkar *vs* State of Maharashtra[75]: The Bombay High Court in Writ Petition (L) No.10787 of 2022 appointed the wife as guardian of her husband Shirishkumar Shantilal Parekh and permitted her to manage his movable and immovable property.
- In Vandana Tyagi and another *vs* Government of National Capital Territory of Delhi and Others[76]: The Delhi High Court appointed the sons of a comatose lady

[70] Writ Petition (L) No.28269 of 2017 decided on 13 October 2017. Bombay High Court. https://indiankanoon.org/doc/5693324/ (accessed on 24 May 2024).
[71] Writ Petition (ST) No.3883. of 2020 decided on 12 March 2020. Bombay High Court. https://indiankanoon.org/doc/73348917/ (accessed on 24 May 2024).
[72] Writ Petition No. 2476 of 2017 decided on 2 April 2019. Bombay High Court. https://indiankanoon.org/doc/85914690/ (accessed on 24 May 2024)
[73] Writ Petition (L) No. 11394 of 2021 decided on 17 June 2021. Bombay High Court. https://indiankanoon.org/doc/48207930/ (accessed on 24 May 2024).
[74] Writ Petition (L) No. 11757 of 20181 decided on 27 June 2020. Bombay High Court. https://indiankanoon.org/doc/125161691/ (accessed on 24 May 2024).
[75] Writ Petition (L) No. 10787 of 2022 decided on 11 April 2022. Bombay High Court. https://indiankanoon.org/doc/58153973/ (accessed on 24 May 2024).
[76] Writ Petition C No. 11003 of 2019 decided on 7 January 2020. Delhi High Court. https://indiankanoon.org/doc/141765845/ (accessed on 24 May 2024).

as her guardians, to utilise her assets, including specifically her late husband's PPF account. The Court held that such a situation would not fall under the Mental Health Care Act, 2017 or the Rights of Persons with Disabilities Act, 2016 and, therefore, in absence of legislative guidance and relying on the other precedent judgements ruled in favour of the sons.

- Smt Prabhat Vinnakota *vs* The State of Telangana, and Ors[77]: The Telangana High Court appointed the wife as her husband's guardian, but with limitations. Property management is allowed, but selling it required approval from a designated authority which would also monitor the guardian's actions. This case emphasises the need for clear legal procedures in such situations while acknowledging the court's role in protecting vulnerable individuals.

- Satula Devi *vs* Govt. of NCT of Delhi[78]: The Delhi High Court created a guardianship committee comprising the wife, son and brother as nominated representatives under the Mental Healthcare Act, 2017 and also to manage all affairs of the patient including medical treatment, healthcare decisions regarding daily living, financial affairs dealing with immovable and movable assets, decision with regards to shareholding of the patient, operation of bank accounts.

- Asha Sharad Bhagwat *vs* Union of India through Its Secretary[79]**:** In this case, Asha Bhagwat, the sister of a comatose man had petitioned the Bombay High Court seeking to become the legal guardian. In his order, justice Gautam Patel explained that the existing legal framework, including the Guardians and Wards Act and the Mental Healthcare Act, does not provide clear guidelines for such situations and, therefore, under *parens patriae,* allowed the sister to be appointed as the legal guardian, but with limitations on managing his finances.

It would be plain that ensuring what is mandated by the court would be difficult to implement in practical terms. There is a need for a legally mandated mechanism to ensure stringent oversight, transparency and accountability to safeguard the interests of incapacitated individuals. The judgements of various courts in India mentioned above have a common theme: when an incapacitated individual is unable to make decisions for his/her own well-being, it becomes the guardian's duty to act in their best interest, ensuring that their personal and financial needs are adequately met.

[77] Writ Petition C No. 1436 of 2023 decided on 9 February 2023. Telangana High Court. https://indiankanoon.org/doc/199103836/ (accessed on 24 May 2024).
[78] Writ Petition C No. 1271 of 2020 decided on 6 January 2022. Delhi High Court. https://indiankanoon.org/doc/102201965/ (accessed on 24 May 2024).
[79] Writ Petition (L) 8144 of 2023 decided on 13 April 2023. Bombay High Court. https://indiankanoon.org/doc/62605249/ (accessed on 24 May 2024).

Given the increasing proportion of senior citizens in our country and the increased incidence of age-related debilitating diseases, there may be cases where adults with means, income and assets do not have anybody willing to take responsibility for their care and welfare without being adequately compensated. Hence, there is a need for legislation to confer guardianship on close family members or others (a social welfare organisation or any other person) to care for an incapacitated person, since the state/government has a duty towards such persons. This would entail ensuring that the person appointed as guardian would be granted powers and rights to deal with such assets as required with a stringent oversight and reporting mechanism to ensure that the funds are correctly used. Such legislation would also have to ensure that guardians (especially non-family guardians) are compensated for their effort which will involve care, reporting requirements and other statutory filings including payment of taxes.

A Comparative Analysis of Systems and Legal Framework Globally

Here is a comparative overview of legal frameworks and support systems for financially and medically vulnerable, incapacitated individuals, with a specific focus on senior citizens living alone in five developed nations, namely, US, Canada, Australia, UK and Germany.

Legal Frameworks for Decision-Making

- ***Pre-Incapacity Planning*:** All five countries allow individuals to designate representatives through Durable Power of Attorney (US) or Lasting Power of Attorney (UK/Australia) instruments to manage finances and healthcare decisions in the event of incapacity. Canada offers a similar mechanism with substitute decision-makers.
- **Court-appointed Guardianship:** The US and Canada have separate Guardianship (financial) and Conservatorship (personal care) systems appointed by courts. The UK and Australia rely on Court of Protection and Guardianship and Administration Orders, respectively, for similar purposes. Germany utilises a *Betreuungs* system (Guardianship System) for comprehensive decision-making support.

Key Considerations for Guardianship

- ***Triggering Incapacity*:** All countries have legal standards to determine incapacity for decision-making, often involving medical evaluations.
- ***Least Restrictive Approach*:** Courts generally prefer options that least restrict an individual's autonomy. Pre-designated representatives are prioritised whenever possible.

- ***Guardian Oversight*:** Courts, typically, monitor guardians through reports and periodic reviews.

Elder Abuse Protections

- ***Legal Safeguards:*** All countries have established legal frameworks to protect seniors from financial and physical abuse. The specific enforcement agencies and reporting mechanisms vary by country.

Developed countries offer a variety of legal and social support systems for financially and medically vulnerable, incapacitated individuals, particularly senior citizens living alone. While core principles like pre-incapacity planning, court oversight and social safety nets exist across all countries, the specific structures and eligibility criteria can differ significantly.

7. Living Will or Advance Medical Directive

A 'Living Will' in legal terms is known as an 'Advance Medical Directive' (AMD) which empowers a person, to assign another person, the power to make decisions regarding their medical treatment when the person is in a comatose or unconscious state. An AMD helps your caretaker or loved ones take a decision to withdraw or withhold life sustaining medical treatments which will delay death, but will cause prolonged pain, anguish, suffering and result in loss of dignity.

While a Will is a legal document by which a person directs his or her estate to be distributed after death, an AMD becomes effective before your death. They are distinctly separate and serve a different purpose.

In India, the genesis of Living Wills began in 2018 with a constitutional bench of the Supreme Court, unanimously declaring that passive euthanasia is permissible and an 'Advance Directive' could be executed by a patient in order to express their wishes in this regard.[80]

The bench also laid down various guidelines encompassing aspects such as competence of the executor and the method by which such a directive can be made; the contents of the directive, ways to record and preserve them, the registration procedure and, finally, the circumstances under which the medical board may refuse such a directive and the revocation or inapplicability of such a directive.

However, the guidelines prescribed by the Supreme Court were overly complex, with bureaucratic procedures in place to prevent abuse by unscrupulous individuals seeking to exploit the patient's assets. Those wanting to get a Living Will registered faced hurdles due to the cumbersome guidelines. In January 2023, a miscellaneous application was filed by the Indian Council for Critical Care Medicine before the apex court seeking clarifications / modifications to the 2018 judgement as the previously issued guidelines were impractical, complicated and cumbersome to execute by medical professionals.[81]

[80] Common Cause (A Regd. Society) *vs* Union of India on 9 March, 2018. https://indiankanoon.org/doc/184449972/ (Accessed on 24 June 2024).
[81] *Ibid.*

The guidelines were, thus, modified to incorporate details of the authorised person in the directive; additionally a procedure for authenticating the directive by attesting it before a notary or gazetted officer was also prescribed.

These modified guidelines have removed the role of a judicial magistrate officer concerning the registration of the Living Will and has put the obligation on the competent officer of the local government or municipal corporation, as the case may be, to appoint a custodian for the said directive. The verification for the opinion of the secondary board has also been struck off.

Process of Making and Authenticating a Living Will

Generally, an AMD or Living Will should state the circumstances under which medical treatment can be withdrawn or withheld; and specific terms or instructions should be laid out for medical professionals. Additionally, it should specify the name of the guardian and should attest that the executor has understood the consequences of executing such a directive. Details on what an AMD should contain have been covered in a comprehensive FAQ provided in Annexure III of this report. Annexure IV also appends a sample format of a Living Will.

The AMD should be signed by the executor in the presence of two attesting witnesses, preferably independent and should be attested before a notary public or a gazetted officer. A copy of the directive has to be given to the concerned guardian, a family physician (if any) and a competent officer of the local government who shall name an officer to be the custodian of the AMD.

The AMD is given effect when the executor becomes terminally ill and does not have the decision-making capacity for further treatment. When a doctor discovers that a patient has an AMD, they must first verify its authenticity by checking the patient's digital health records or contacting the appointed custodian. If the patient is confirmed to be terminally ill with no hope of recovery, the doctor then informs the guardian or close relatives listed in the directive about the illness, available treatment options and the consequences of stopping treatment. The family must understand this information and decide if stopping treatment is the best option.

Next, a primary medical board, consisting of the treating doctor and two experienced specialists, is formed to give an initial opinion within 48 hours. If the primary board agrees to stop treatment, a secondary medical board is then formed. This board includes a doctor appointed by the chief medical officer of the district and two new specialists who were not part of the primary board and they also review the case within 48 hours.

If both boards and the family agree to stop the treatment, the hospital informs the local judicial magistrate of first class. The hospital can proceed with stopping the treatment without waiting for the magistrate's approval.

Expected Challenges

While the concept of Living Wills is fairly new to India and guidelines have now been stipulated by the Supreme Court, there are still challenges in implementation which hamper progress.

In early 2024, gynaecologist Dr Nikhil Datar filed a PIL in the Bombay High Court as the state of Maharashtra had not yet appointed custodians for Living Wills.[82] Dr Datar had earlier written a Living Will and tried to submit it to a custodian and also mailed a copy to the BMC commissioner's office. Having received no response even a year after the apex court's new guidelines, Dr Datar took the initiative to file a PIL in the Bombay High Court.

It was only when the matter came up for a second hearing in the Bombay High Court, that the state urban development department submitted an affidavit stating that 417 custodians for Living Wills' safekeeping had been appointed in all municipal and local government areas in Maharashtra. Dr Datar was able to successfully submit his Living Will to the BMC appointed custodian in March 2024 and he became the first to do so in Mumbai.

Justice MS Sonak, who serves on the Goa bench of the Bombay High Court, later became the first person in Goa to register a Living Will. Goa is the first state that has formalised, to some extent the implementation of directives issued by the apex court.

While implementation of guidelines is the primary challenge, there are other areas of concern such as an inefficient bureaucratic process that may potentially delay the decision-making process. Reaching out to the appointed custodian (*panchayat*, municipality or otherwise) and getting a timely response might be challenging.

Even assembling a primary medical board with qualified specialists within 48 hours can be logistically challenging, especially in under-resourced areas. Further ensuring that the secondary medical board members are impartial and have no prior involvement with the case to maintain objectivity could pose to be a challenge in some cases. Additionally, if the concerned hospital does not have clear protocols and

[82] Prof Dr Nikhil D Datar Anr Ors ....PETITIONER *V/S* State Of Maharashtra Through the Chief Secretary and Ors https://indiankanoon.org/doc/21263779/ (Accessed on 24 June 2024).

has not provided the necessary training for staff to handle AMDs correctly, it may cause difficulties in compliance.

Keeping ethical and cultural considerations in mind, there could potentially be legal challenges from other relatives or interested parties who disagree with the decision to withdraw treatment despite a Living Will, in states which have not appointed custodians for Living Wills.

Addressing such challenges would require a combination of clear protocols, adequate training for healthcare providers, efficient communication systems and support for families during the decision-making process. While India now has a fairly vague system in place for registering, recording and implementing the directions stipulated in a Living Will, there is still a lot more that needs to be done.

Public awareness campaigns are essential to educate people about the benefits and process of creating a Living Will. Support systems such as counselling services are crucial for families or appointed guardians making these difficult decisions. Additionally, establishing a feedback mechanism can help continuously improve the process and address issues faced by executors and families.

8. Online Survey - Findings & Analysis

Moneylife Foundation conducted an online survey to identify challenges and problems faced by nominees, legal heirs and beneficiaries while attempting to claim financial assets of their deceased loved ones. The survey was designed to restrict responses and gather data, feedback and suggestions from only those who have had to claim financial assets from various institutions, while disqualifying those who have had no such experience. This survey was promoted through mailers and social media platforms (Twitter, WhatsApp, Telegram, Facebook and LinkedIn).

A total of 1,377 individuals (randomised sampling) participated in the survey, with 795 (58%) having had to claim financial assets as a nominee or legal heir. The other 42% of respondents were disqualified from completing the survey as they lacked this experience.

The survey began with questions regarding nomination to establish whether the respondent understood the importance of adding a nominee to their financial assets and whether they had completed this process. A majority of the respondents (87%) confirmed that they had done so, with 9% claiming that they plan to; while a small percentage (1%) mentioned that they do not plan to add a nominee to their financial assets.

When asked whether the respondent was aware of the procedures involved in claiming financial assets of the deceased, 665 (49%) replied in the positive, while 26% were not aware and 25% said they were unsure. This suggests that a substantial portion of the surveyed have at least some knowledge or familiarity with the process; yet, a significant portion indicated a lack understanding or remained unsure about the process. Reasons for this lack of awareness could include a lack of exposure to such situations or simply never having considered the subject, until prompted by the survey. Here, reasons for uncertainty could include a vague understanding, mixed messages from sources or a lack of confidence in their knowledge.

Among the surveyed respondents, bank savings or current accounts emerged as the most frequently claimed asset, with 632 individuals reporting having undergone the process. Following closely behind were fixed deposits (473

individuals), shares (461 individuals), mutual funds (378 individuals), bank lockers (261 individuals) and government savings schemes (240 individuals). Conversely, assets such as bonds, insurance and pension were identified as the least commonly claimed by respondents.

Bank accounts are often the most accessible and visible assets, as most individuals have one or more such accounts. They are commonly used for day-to-day transactions, making them more likely to be claimed during the process of handling a deceased person's estate. Shares and mutual funds may require a higher level of financial literacy and awareness to claim, compared to savings accounts. Individuals may be less familiar with the procedures involved in claiming these assets, possibly leading to fewer claims.

Furthermore, in some families or cultural contexts, assets such as shares or mutual funds may be less commonly inherited or passed down compared to others like bank accounts or fixed deposits. Some assets could be perceived as requiring more complex documentation or formalities to claim which could deter some individuals from pursuing their claim. Individuals may also prioritise claiming assets they perceive as having higher immediate value or necessity, such as bank accounts, over assets such as bonds or insurance policies which may have longer-term benefits or be less immediately accessible.

The vast majority of respondents (78%) reported that the claim process operated entirely offline, necessitating the submission of physical forms and supporting documents through in-person visits to the relevant office. Only a small fraction (3%) stated that their process was entirely conducted online, with others indicating a partial online component to the procedure.

Several factors contribute to the predominance of offline claim processes reported by respondents. For instance, many financial institutions and government offices still rely heavily on traditional paper-based processes for handling claims. Legacy systems and established procedures might not have been updated to accommodate online submissions. Legal and regulatory frameworks in certain jurisdictions may mandate specific documentation and verification processes that necessitate physical submission of forms and supporting documents. Certain types of documents, such as original copies of Will or notarised forms, may require physical submission as per legal requirements, contributing to the prevalence of offline claim procedures.

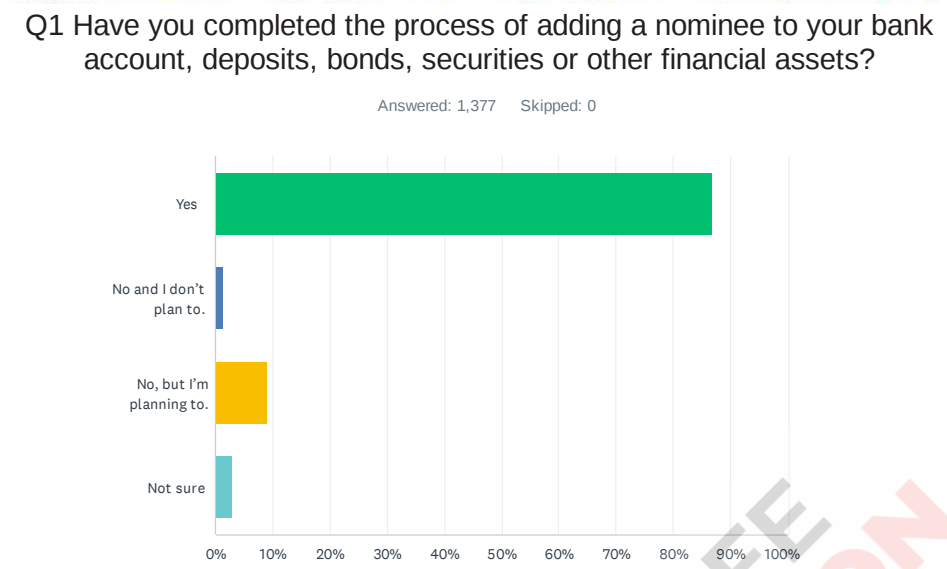
On challenges encountered during the claims process, a majority of respondents pinpointed "ineffective communication and ambiguity regarding the application/claim procedure" (493 individuals) and an "offline claims procedure" (499 individuals) as the primary issues. Additionally, a substantial number (412 individuals) cited "unreasonable delays in claim processing" as a significant frustration. "Requirement for unnecessary supporting documentation" (368 individuals) and "complex and incomplete claim submission forms" (303 individuals) were also identified as major hurdles.

Although RBI mandates a 15-day resolution period for death claims, this does not always happen. Feedback from respondents on the actual timeframe for claim settlements revealed the following: as many as 151 respondents said that their claims were resolved within 10-15 days, whereas 156 respondents reported that it took over a month for them. Additionally, 108 individuals mentioned that their claims were resolved between three to six months; 65 respondents reported a settlement period of over six months and 98 respondents stated that their claims had not yet been settled.

There are various factors which could determine the claim settlement period – complexity of a claim, processing officer's knowledge of the process, documentation required in support of claim and awareness of the claimant regarding the claims process. The ability to raise claims successfully also helped. Overall, it was clear that if deceased persons had a nomination and documentation in order, the process would work smoothly, especially if the officials handling it were aware of the rules. Otherwise, the hardships and delays are enormous as has been narrated elsewhere in this report.

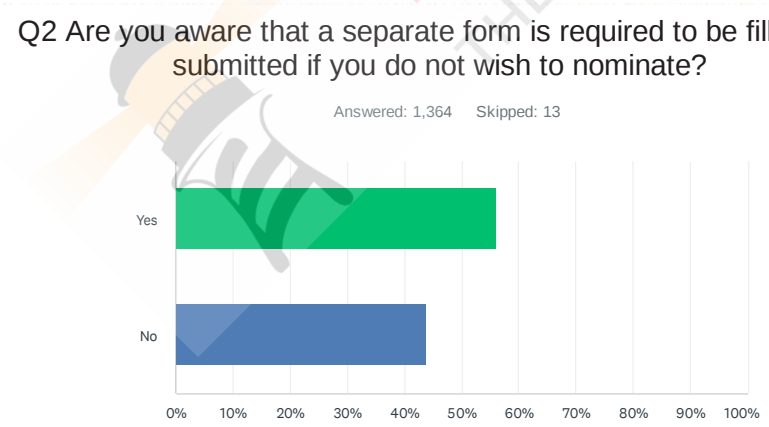
A primary cause of delay was bureaucratic red tape and officials' inadequate awareness of the required procedures. Other contributing factors included insufficient communication regarding the process and its requirements, staff unavailability, the need for legal documentation (such as a succession certificate or probate) and a lack of coordination between departments, resulting in repeated demands for document submission.

Moneylife Foundation's Online Survey Results



ANSWER CHOICES	RESPONSES	
Yes	86.71%	1,194
No and I don't plan to.	1.23%	17
No, but I'm planning to.	9.01%	124
Not sure	3.05%	42
TOTAL		1,377

Finding: A vast majority of respondents has indicated that they have completed the process of adding a nominee to their financial assets.

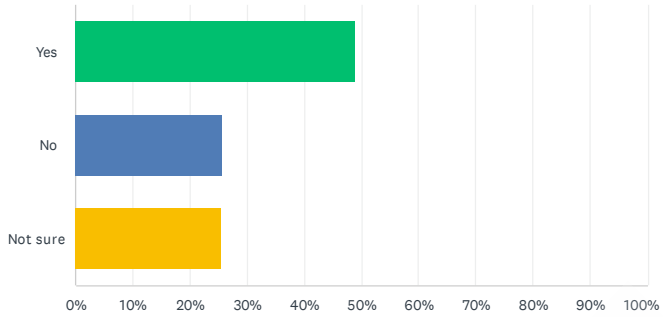


ANSWER CHOICES	RESPONSES	
Yes	56.16%	766
No	43.84%	598
TOTAL		1,364

Finding: Most respondents have indicated that they are aware about an 'opt-out' process for not adding a nominee to their financial assets.

Q3 Are you aware of the procedures involved in claiming financial assets of a deceased person, as a nominee or legal heir?

Answered: 1,359 Skipped: 18

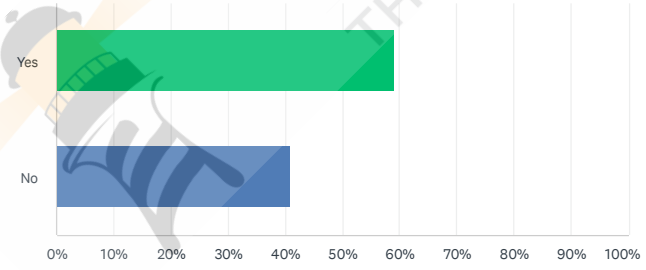


ANSWER CHOICES	RESPONSES	
Yes	48.93%	665
No	25.61%	348
Not sure	25.46%	346
TOTAL		1,359

Finding: While a larger portion of respondents indicated that they were aware of the claim process, an equal number were either not aware or not sure about their knowledge of the subject.

Q4 As a nominee, legal heir or beneficiary, have you ever had to claim financial assets?

Answered: 1,348 Skipped: 29

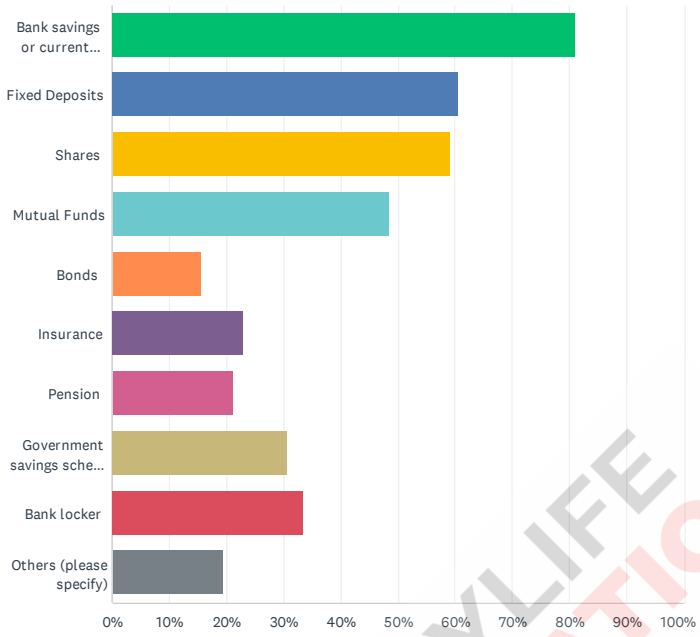


ANSWER CHOICES	RESPONSES	
Yes	58.98%	795
No	41.02%	553
TOTAL		1,348

Finding: Respondents, who indicated that they had experienced the process of claiming financial assets of their deceased loved ones, were allowed to complete the survey, while others were disqualified at this stage.

Q5 Please check all types financial assets that you have had to claim.

Answered: 780 Skipped: 597

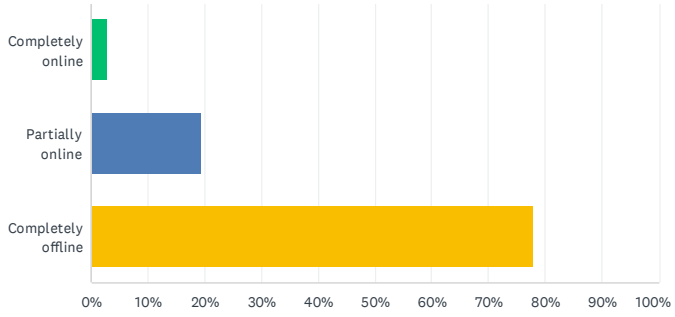


ANSWER CHOICES	RESPONSES	
Bank savings or current account	81.03%	632
Fixed Deposits	60.64%	473
Shares	59.10%	461
Mutual Funds	48.46%	378
Bonds	15.51%	121
Insurance	22.95%	179
Pension	21.15%	165
Government savings schemes (post office, PPF etc)	30.77%	240
Bank locker	33.46%	261
Others (please specify)	19.49%	152
Total Respondents: 780		

Finding: Bank accounts, share and mutual funds were identified to be the most commonly claimed financial asset, while bonds, insurance and pension were the least common assets.

Q6 Did you find the claim process to be completely online or were there offline elements involved?

Answered: 774 Skipped: 603

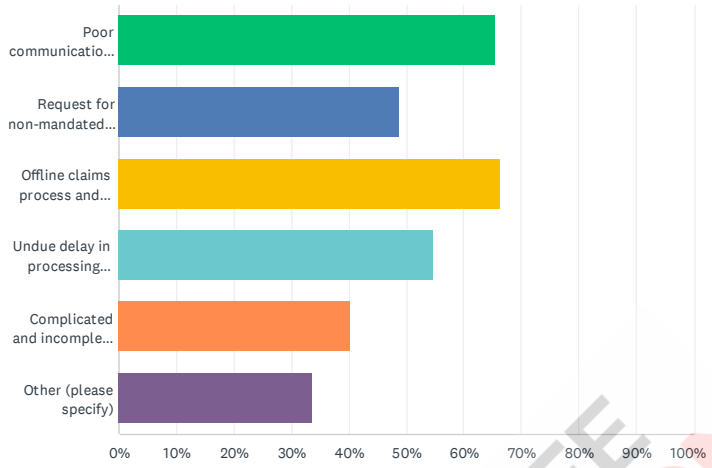


ANSWER CHOICES	RESPONSES	
Completely online	2.71%	21
Partially online	19.51%	151
Completely offline	77.78%	602
TOTAL		774

Finding: A significant portion of the respondents indicated that the claims process was completely offline, while a smaller percentage found the process to be partially online.

Q7 What were the difficulties you faced when trying to claim financial assets as a nominee, legal heir or beneficiary? Check all that apply.

Answered: 753 Skipped: 624

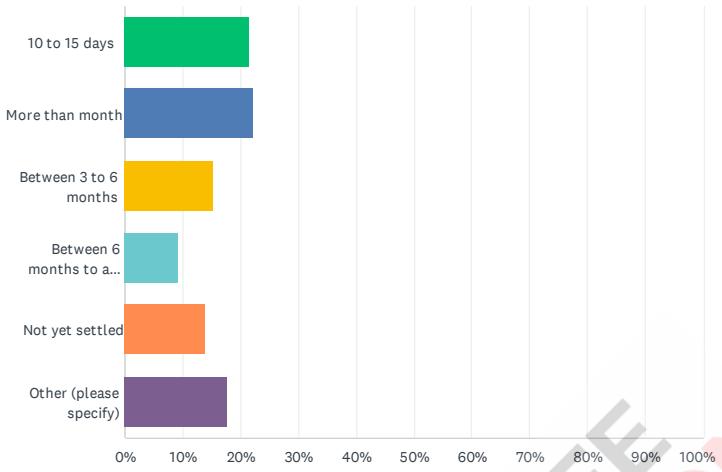


ANSWER CHOICES	RESPONSES	
Poor communication and lack of clarity about the application/claim process from concerned financial institution.	65.47%	493
Request for non-mandated supporting documentation.	48.87%	368
Offline claims process and insistence on hard copies of documents in support of claim.	66.27%	499
Undue delay in processing claim.	54.71%	412
Complicated and incomplete claim submission forms	40.24%	303
Other (please specify)	33.73%	254
Total Respondents: 753		

Finding: The most prevalent cause of difficulty for claimants seems to be poor communication and lack of clarity on the application process. Other issues such as a predominantly offline and complicated application process are also a significant cause of strife for claimants.

Q9 How long after application and submission of documents, was the claim processed and assets transmitted?

Answered: 702 Skipped: 675



ANSWER CHOICES	RESPONSES	
10 to 15 days	21.51%	151
More than month	22.22%	156
Between 3 to 6 months	15.38%	108
Between 6 months to a year	9.26%	65
Not yet settled	13.96%	98
Other (please specify)	17.66%	124
TOTAL		702

Finding: An equal number of respondents indicated that their claim took 10-15 days or more than a month to be settled. Additionally, a significant number of claims were settled in a period of three to six months.

9. List of Abbreviations

ADR – Alternate Dispute Resolution
AMD – Advance Medical Directive
CUPA – Central Unclaimed Property Authority
DEA – Department of Economic Affairs
DEAF – Depositor Education and Awareness Fund
DP – Depository Participant
EPF – Employees' Provident Fund
GSR – General Statutory Rules
G-Sec – Government Securities
IA – Investors' Associations
IEPF – Investor Education and Protection Fund
IPV – In-person Verification
IRDAI – Insurance Regulatory and Development Authority
KRA – KYC Registration Agency
KVC – Kisan Vikas Patra
KYC – Know Your Customer
LODR - Listing Obligations and Disclosure Requirements
LIC – Life Insurance Corporation
MIS – Monthly Income Scheme
NBFC – Non Banking Financial Company
NSC – National Savings Certificate
NSI – National Savings Institute
OTP – One Time Password
PAN – Permanent Account Number
PF – Provident Fund
PFRDA - Pension Fund Regulatory and Development Authority
PPF – Public Provident Fund
PSB – Public Sector Bank
RBI – Reserve Bank of India
RE – Regulated Entity
RTA – Registrar and Transfer Agent
SCSS – Senior Citizen Savings Scheme
SDL – State Development Loans
SEBI – Securities and Exchange Board of India

SE – Stock Exchanges
SGB – Sovereign Gold Bonds
SSS – Small Savings Scheme
UCIC – Unique Customer Identification Code
UTI – Unit Trust of India

About Moneylife Foundation

Moneylife Foundation, launched on 6 February 2010, is a non-profit organisation registered with the Charity Commissioner of Mumbai. The Foundation is engaged in spreading financial literacy, consumer awareness and advocacy for safe and fair market practices. To this end, it organises workshops, round table meetings and awareness campaigns for grievance redressal. It undertakes research and publishes white papers. It also has regular counselling sessions on consumer protection and also files petitions on public interest cases. It is one of the fastest growing and foremost NGOs for consumers and investors. In recognition of its efforts, it was awarded the 10th MR Pai Memorial Award in September 2014 for outstanding work.

The Foundation's mission is to make savers and investors financially aware, empower consumers to fight for their rights and citizens to think and act responsibly. It represents the voice to those of us who work hard, earn and save but do not have a say in the decisions that affect us. The Foundation's specific objectives are:

- To create interest in financial markets and enhance financial literacy.
- To protect investors and consumers of insurance, banking and other financial services through information, counselling and grievance redressal.
- To hold regular workshops and expert talks on financial issues.
- To provide a forum of networking among organisations involved in similar work and also support voluntary organisations working in this area.
- To collaborate with /assist/support organisations/ NGOs/ civil society groups that engage in public intervention to create a just, fair and a corruption-free society.
- To educate the public of their legal rights in areas of investor protection financial programmes.
- To help prevent corruption and malpractices at all levels of the financial markets.

- To undertake qualitative and quantitative research and analysis in areas of finance, economics, politics, public policies, environmental, business and all other allied fields.
- To provide a forum for committed volunteers and experts to involve themselves in a meaningful way for improvement in financial literacy and consumer protection.
- To create and promote enlightened public opinion on various issues affecting citizens, investors and consumers.
- To encourage, support and assist research and studies in financial, economic, social and related areas that affect individuals.
- To litigate and take any other lawful measures to safeguard the rights and interests of the investors and consumers.

Moneylife Foundation's work encompasses the following areas:

1. **Awareness Sessions:** Spreading financial literacy and awareness about the rights of consumers and citizens through workshops, lectures, articles and awareness campaigns. Sessions have been conducted on banking, Aadhaar, real estate, consumer awareness, right to information, food & health, senior citizens' issues, taxation and documentation, and many others.

2. **Daily Counselling Sessions:** As direct solutions to the problems that savers, consumers and citizens face, guidance is provided to them through one-on-one counselling.

3. **Helplines:** The Foundation runs two free helplines with the help of our voluntary advisers and experts. The Legal Helpline offers guidance on vast variety of legal issues and real estate matters especially those pertaining to cooperative housing societies; the Credit Helpline guides people in financial distress on dealing with loan defaults, credit scores and so on.

4. **RTI Centre:** A Right to Information Centre was launched in September 2017 to create awareness on the Right to Information Act. With the RTI Centre, the Foundation undertakes various activities with the aim to promote transparency through the RTI Act.

5. **Research Projects:** Looking to influence policy changes through in-depth research and recommendations, specific issues that affect a large number of people have been an area of focus for the Foundation. Research studies have been undertaken and their recommendations have been published

for the benefit of a large section of people whose voice does not reach the policy-makers. The Foundation has published research reports on 'Retirement Homes in India', on 'Reverse Mortgage Loans in India', on 'Efficacy of RERA from a Consumer's Perspective' and 'Rental Housing in India'.

6. **Representations:** The Foundation does advocacy for safe and fair market practices through workshops, round table meetings, research and presenting memorandums to regulators and policy-makers.

7. **Legal Action:** At times, the Foundation has also filed public interest litigations (PILs) on matters that have affected our members and has taken up the issues with the Supreme Court. Recent PILs have been on LIC's Jeevan Saral, egregious bank charges that consumers are paying and on the Sahara credit cooperative societies. Our founder-trustee has filed also a writ petition regarding unclaimed deposits and the need for a centralised portal for searching and return of such funds to their rightful owners.

Although among the smallest, *Moneylife* is the only media company to have started such a non-profit initiative.

ANNEXURE I: Table Highlighting Required / Acceptable Documents in Support of Claim for Bank Deposits

Moneylife Foundation had conducted a short survey of nine public sector banks, 11 private sector banks, two foreign banks and two small finance banks, in order to understand the claims process prescribed for nominees and legal heirs by a particular bank. The survey revealed that all banks have set the time limit for settlement of claims at 15 days, provided all submitted documentation is in order. Further in most cases, the claims process is entirely offline and the claimant is required to visit the local branch with appropriate documents to make a claim. The surveyed banks have also set a threshold limit on the amount being claimed which determines the nature of supporting documentation that would have to be submitted in support of a claim. In most cases, a succession certificate, letters of administration or a probate would be required when the claim amount is above the threshold limit set by the concerned bank. Such threshold limits were observed to be as low as Rs10,000 (for Equitas Small Finance Bank) and as high as Rs40 lakh (for Bank of India).

	Bank	Branch Location	Required / Acceptable Documents for Filing a Claim										Threshold Limit (if any in Rs)	Time Norms for Settlement of Claim	Additional Requirements	Online or Offline Submission
			Application Form	Proof of Death	Identity Proof for Claimant	Consent letter of all legal heirs	Affidavit from claimant	FIR with Police	Letter of Indemnity from nominees / legal heirs	Succession Certificate*	Letter of Administration*	Probated order from Court*				
Public Sector Banks	Bank of Baroda	Prabhadevi	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	2 lakh and above	15 Days	No	Offline
	Bank of India	Shivaji Park	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	40 lakh	15 Days	Original pass books / unused cheque books etc. to be surrendered	Offline
	Bank of Maharashtra	Prabhadevi	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	50,000 in case of missing person & 1 lakh otherwise	15 Days	No	Offline
	Canara Bank	Shivaji Park	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	50,000	15 Days	No	Online
	Central Bank of India	Prabhadevi	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	1 Lakh	15 days	Original pass books / unused cheque books etc. to be surrendered	Offline

Public Sector Banks	Indian Overseas Bank	Dadar Station (W)	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	1 lakh	15 Days	No	Online
	Punjab National Bank	N.C Kelkar Rd	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	1 lakh or below	15 Days	It is suggested that the survivor(s) should open new account in his / their name(s) and request for transfer of balance to the new account.	Offline
	State Bank of India	Cadell Road	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	1 lakh or below	15 days	No	Offline
	Union Bank of India	Ranade Road	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	50,000	15 Days	No	No Information
Private Sector Banks	Axis Bank	Shivaji Park	Yes	Death Certificate	Identity Documents & KYC of	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	1 lakh	15 Days	Order of the Administrative General attached	Offline
	Bandhan Bank	Prabhadevi	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes -Missing Person	Yes	No Nominee or Second Holder	Yes	yes	5 lakh	15 Days	Order of the Administrative General attached to the High Court	Offline
	Federal Bank	Ranade Road	yes	Death Certificate	Identity Documents, Address Proof, Photograph	Yes	Yes	Not Mentioned	Yes	No Nominee or Second Holder	Yes	Yes	50,000	15 Days	No	Offline
	HDFC Bank	Prabhadevi	Yes	Death Certificate	Identity Documents	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	1 lakh or below	15 Days	No	Offline
	ICICI Bank	Gokhale Rd North	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Not mentioned on Website	Yes	No Nominee or Second Holder	Yes	Yes	NA	15 Days	No	Online
	IDBI Bank	N.C Kelkar Rd	yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	50,000	15 Days	No	Offline

Private Sector Banks	IDFC First Bank	Prabhadevi	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	No	15 days	No	Offline
	IndusInd Bank	Shivaji Park	Yes	Death Certificate	Identity Documents & KYC of Claimant	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Not mentioned on the website	Not mentioned on the website	1 lakh	15 Days	No	Both
	Kotak Mahindra Bank	Shivaji Park	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	10 lakh	15 Days	No	Offline
	RBL Bank	Shivaji Park	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	7.50 lakh	15 Days	No	offline
	Yes Bank	Shivaji Park	Yes	Death Certificate	Identity Documents, Address Proof & KYC of Claimant	Yes	Not available on website	Not available on website	Yes	No Nominee or Second Holder	Yes	Yes	NA	15 Days	No	offline
Foreign Banks	Citibank	Phoenix Palladium	Yes	Death Certificate	Identity Documents and Address Proof	Yes	No	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Yes	5 lakh	15 days	No	Offline
	Standard Chartered Bank	Opp Plaza Cinema	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes - To be stamped as Indemnity Rs300	No Nominee or Second Holder	Yes	Yes	Not available on website	15 Days	No Nomination, No Survivorship, No Probate, No Letters of Administration, No Succession Certificate Case should be on a Rs300 stamp paper	Offline
Small Finance Banks	AU Small Finance Bank	Dr Annie Besant Rd	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Yes	Yes - Missing Person	Yes	No Nominee or Second Holder	Not available on website	Yes	Not available on website	15 Days	No	Offline
	Equitas Small Finance Bank	Chembur	Yes	Death Certificate	Identity Documents and Address Proof	Yes	Not available on website	Yes - Missing Person	Yes	No Nominee or Second Holder	Yes	Not available on website	10,000	15 Days	Administrator General Certificate	Offline

* In most cases, a succession certificate, letters of administration or probate is required when the claim amount is above the threshold limit set by the concerned bank.

Annexure II: Note on Central Authority for Unclaimed Funds

This annexure encloses the text of the white paper on a 'Central Authority for Unclaimed Funds', with minor editorial modifications, prepared by Moneylife Foundation in collaboration with iSPIRIT Foundation and submitted to regulatory bodies.

Background

On 12 August 2022, the Supreme Court issued a notice to ministries of finance, corporate affairs, Reserve Bank of India (RBI) and Securities & Exchange Board of India (GSEBI), in Writ Petition (No 185/2022) filed by Sucheta Dalal of Moneylife Foundation through senior counsel Prashant Bhushan seeking a writ of mandamus or instructions to the government to put on a centralised, public platform the details of unclaimed money of investors and depositors held by various regulators that remains inaccessible to rightful legal heirs. The bench of justice S Abdul Nazeer and justice JK Maheswari issued notices to various regulators, returnable in eight weeks, and noted that the issue dealt with an important question.

The plea contended that unclaimed money of the public that gets transferred to government-owned repositories like the depositor's education and awareness fund (DEAF), investor's education and protection fund (IEPF) and senior citizen's welfare fund (SCWF), on the ground that the legal heirs or nominees did not claim it, should be made available to the legal heirs or nominees by providing the information of holders of inoperative or dormant accounts on a centralised online searchable database.

The Objective

The core objective, as enunciated by most developed nations, should be to "reunite unclaimed property (including all financial assets) with the rightful owner." The database should allow proven legal heirs to get a full picture of the investments and savings of the deceased and claim their money/bequest in a smooth and efficient manner. The system needs to integrate solutions for current savers in a seamless, technology-backed, automated process. It must be tasked with the job of tracing the owners of unclaimed assets by seeking adequate information from entities that transfer such unclaimed assets after the mandated 7 or 10 years.

In order to be effective, the central database may need to set up a statutory central authority, backed by appropriate legislation and adequately empowered to track the

rightful owners, resolve grievances and deal with security and privacy concerns. The central database will be effective and relevant only if it is updated at least on a weekly basis, if not in real-time. This will involve legal mandates and organisational structure, with IT-based automated processes.

The central database – since it will be funded with public money -- can also be the one single point for putting out advertisements/notices, etc, to allow other heirs and claimants, if any, to come forward with their claims. This will also make the process smoother, faster and less expensive. With interest on more than Rs82,000 crore currently existing, adequate resources should be available to publicise the central database and its utility.

There is a possibility that the finance ministry will demand that the funds be transferred to the Consolidated Fund of India (CFI), as it has done with the IEPF. This needs detailed discussion since these are public funds and adequate money has to be provided to set up and manage the central authority, track the rightful heirs and ensure that there are adequate resources to pay the rightful owners who submit proof of ownership.

Ensuring a lean and efficient organisation, which is conscious that it is utilising public funds for its functioning, will be crucial.

Issues Faced by People

- Claims processes differ across financial assets and require separate, often contradictory, proofs/averments by legal heirs of deceased persons.
- There are no standard operating procedures (SOPs) even within a class of institutions (e.g., each bank manager may add his own rules and demand sureties, fixed deposits, indemnity, etc) with regard to nominations and transfer of funds.
- Nomination is usually the first safeguard; however, rules differ widely. Nominations are not checked; details of nominee are not listed, leading to KYC (know-your-customer) issues. Often, software systems eliminate nomination mandates at the time of renewal, etc. There is a huge demand for successive, multiple and proportionate nominations which are available for some financial assets and not others. There is a need for standardisation.
- Nomination is a straight-forward contract (between the owners of assets and the financial entity) to transfer the asset to the nominee after the demise of the owner. The law is clear; but the transfer of funds is complicated by illegal and needless demands for indemnity and surety. **A simple PAN-based KYC of**

the nominee (non-mandatory) would make the process of identification and transfer of assets much simpler.

- Issues with the legal processes, such as probate, succession certificates and legal heir-ship certificates are even more onerous, expensive and lead to long delays in transmission of assets resulting in distress and harassment. A simple example is the tax department demanding a 'registered' Will, when the law of the land does not require one and places an onerous burden on the testator as well as the heirs.

Global Perspective

The problem of unclaimed assets is not unique to India, but a common theme is to put people first. Most developed countries have found workable, technology-based solutions and verification processes to return any unclaimed funds/assets to the rightful legal heirs. This is a three-step process. First, the authorities make rigorous attempts to locate the rightful heirs or owners of unclaimed assets; second, when the owner is not traceable for anywhere between 7 and 10 years, the assets are transferred to a centralised fund; third, claimants do not lose the right to such funds and have access to searchable databases to track the funds and follow the process laid down to recover the money.

There are different models of dealing with such funds; but most of them have some form of statutory backing. The ambit of what comprises unclaimed funds also differs widely. In the US, it also extends to royalties, unclaimed salaries, mining rights, etc, in addition to stocks, bonds, bank deposits and earnings thereon.

Some countries maintain a central database for unclaimed assets; others have managed to efficiently make the information available through multiple authorised agencies. In the United Kingdom, the agency operates as a public-private partnership.

India can adopt any of the well-established processes in place in the United Kingdom, United States of America and Canada, as appropriate for our country. Details on each of these countries' setup for unclaimed assets are mentioned later in this note.

Why a Central Authority

Government databases, with PAN linked to bank accounts, Aadhaar and other KYC databases, are common to all regulators with easy on-boarding. So, the creation of a

central database by plugging in, or accessing information from multiple sources, can easily be done in a manner that legal heirs/beneficiaries or owners of forgotten assets can obtain a snapshot of all savings -- whether it is bank accounts, public and employee provident funds, insurance, mutual funds, company deposits and bonds, based on PAN. It is likely that several legislative changes will have to be adopted to set up an online central database. These changes should, ideally, be made in line with international practices, as described in detail later in this note.

The primary job of the central authority would be to try and contact rightful owners of unclaimed assets and put in place a simple process for them to claim their rightful money. Such an authority should also be responsible for framing SOPs and rules, as well as investigation and grievance redress processes, when applicable, to make the claims process swift, smooth and efficient. The central authority should include a repository for authentic information or link to one – for instance, we need death certificates to be uploaded on a central database everyday by municipal offices.

Suggested Names

DUA (दुआ /blessing): Depository for Unclaimed Assets
VARIS: Verifiable Assets Registry of Individual Savers
HEIR: Holistic Estate Inheritance Rights.

Indian Situation

India has five different entities collecting unclaimed assets – four financial regulators and the senior citizens welfare fund (which pools unclaimed provident funds and Central saving schemes). There is no effort, legally mandated or otherwise, by any of them to contact the rightful owners; nor is there an effort to create a robust and searchable database that will allow true owners or heirs to track the funds and file claims. So far, only the IEPF (http://www.iepf.gov.in/) has a comprehensive website; but the claims effort remains cumbersome leading to the proliferation of agents offering a claims service for high fees ranging from 10% to 50% of the claim amount.

As mentioned earlier, the value of unclaimed assets in India, at well over Rs82,000 crore, is large enough to warrant a legal effort to reunite rightful owners or claimants with their money. This would best be done through a Central legislation to put in place a comprehensive database of unclaimed assets and their owners across insurance, pensions, banks deposits, stocks, mutual funds and government savings schemes. A central authority can frame common SOPs and processes for filing and verifying claims, including an online claim filing and verification mechanism. It

could also be authorised to investigate and resolve conflicting claims or simple disputes and release funds without long-drawn legal processes.

Comprehensiveness and ease of access will depend having access to information.

Register of Deaths: To make the process transformational, we need to create a 'Registrar of Deaths' (in each municipality and *panchayat*) to automatically send information to a central repository, as a mandatory process, with a copy of the death certificate. This will be a big step in ensuring speed and eliminating the need for heirs (once authenticated) to submit multiple death certificates to different agencies. It will also allow cross-verification. The central repository could be under the administrative control of 'Unclaimed Assets Authority'.

The Unclaimed Assets Authority should also be tasked with issuing notices/advertisements, based on the receipt of death certificates, with a centralised mechanism to receive objections.

Apostilled Documents: A large number of countries have joined the treaty called the Hague Convention abolishing the requirement of legalisation for foreign public documents, or the Apostille Convention, which simplifies the authentication of public documents used abroad. In countries where the Apostille Convention applies, the treaty reduces the authentication process to a single formality - the issuance of an authentication certificate by an authority designated by the country where the public document was issued. This certificate is called an Apostille.

Usually, when foreign nationals need to submit essential public documents in a country, they have to first get them legally authenticated or notarised from an embassy or consulate, before they are accepted. However, since this process is usually slow, cumbersome and costly, a number of countries have adopted the Apostille Convention and India is one of them. Such a process can easily streamline the required authentication/notarisation of documents for non-resident Indians (NRIs) who are legal heirs of the unclaimed assets. Ideally, there should be no reason why apostilled documents should not be legally accepted as proof for an NRI legal heir or descendant.

Management of the Processes

Interest earned on unclaimed assets and funds alone will provide adequate resources to create and manage the Unclaimed Assets Authority. This Authority needs to call bids and have the process handled on the lines of MCA21, GSTN or the

Tax Network. The bidders may be market infrastructure institutions or technology companies with appropriate competency.

Present Infrastructure

We already have multiple registrars & transfer agents (RTAs)/depositories collating information on identity documents. The shares depositories, tax information network, the PAN database and the Aadhaar database already collate and store enormous information about financial assets, nominations, etc.

The annual information statement (AIS) sought by the income-tax (I-T) department has a database that uses 53 distinct sources of data and is comprehensive. In addition, the already available databases of the two national depositories are also comprehensive. The National Securities Depository Ltd (NSDL) manages multiple databases -- tax information, dematerialised data, NASSCOM's (National Association of Software and Service Companies) database; the Central Depository Services Ltd (CDSL) and Stock Holding Corporation of India Ltd (SHCIL) also do the same.

We understand that CDSL's attempt to create a database for sharing unclaimed bank deposits data was scuttled, despite a high-level discussion at the finance ministry (before 2014), because it would have been under SEBI's regulatory ambit and was not acceptable to other regulators.

This is the reason why one needs the Supreme Court's intervention/ direction to prevent turf-issues among regulators that could delay or mothball a comprehensive database covering all unclaimed assets/properties.

A central repository like CERSAI (Central Registry of Securitisation Asset Reconstruction and Security Interest of India) can eliminate turf issues; however, we have a lot of negative feedback about its flexibility, interaction and willingness to engage.

CERSAI is a central repository licensed under Section 8 of the Companies Act, 2013, and has a 51% shareholding by the Central government, select public sector banks (PSBs) and the National Housing Bank. It maintains and operates a registration system for asset securitisation but is also linked to all credit bureaus, does CKYC (Central KYC), is linked to websites of VAHAN (automobile registration) and the ministry of company affairs.

CERSAI also has different searches available for debtors and should find it easy to create a central database across financial vectors. In that sense, it may be better placed to create a central database than the two depositories, namely, NSDL and CDSL.

Suggested Process for Access

The access process needs to be finalised after detailed discussions with various regulators to standardise processes across the system. A stage-wise access can then be created to meet concerns about privacy and security/fraud by using basic identifiers such as PAN, Aadhaar, address and date of birth.

A key decision would be on whether or not to use the 'Account Aggregator' framework (as suggested by iSPIRIT Foundation and detailed below) or for the central authority to create access to be able to ping various existing databases and resources.

Stage-1

Anyone entering a search with the basic KYC details (name, date of birth, PAN/ other identity) of a deceased person will only get first-level information, based on two-factor authentication to create a trail on who is searching for the information. For example, Mr Bharat, born on, say, 15 August 1947 and PAN –BSYPE9809O and a particular listed address has: bank deposits, life insurance policy, X or Y mutual fund schemes, a public provident fund (PPF) account and post-office savings, etc. There is no need to provide details or amounts.

Stage-2:

a) If a living person has forgotten or omitted to claim the funds, submission of documents and other proofs should be adequate for the central authority to transfer funds.

b) In case of a deceased person, the central database would contact a registered nominee when a death certificate is uploaded on the death registry.

c) Alternatively, the nominee/heir will submit the death certificate (which will be matched with the death registry and assets transferred to the registered nominee (based on valid e-KYC) without further processes or harassment, as happens today. If the central authority puts in place successive and proportionate nomination (as it should), then appropriate rules will apply.

d) In the absence of a valid nomination, the claimant should be required to submit documents (such as death certificate, legal heir-ship/succession certificate, family settlement documents/probate, etc), for a valid claim, to get further access to information. The central authority will strive to eliminate legal processes,

especially those under a pre-decided ceiling of say Rs25 crore – /particularly in case of an uncontested Will or family settlement agreement (with newspaper notice). The IEPF has already set up a verification process, which is rather cumbersome, and can be further refined with the help of technology, to prevent fraud and identity theft.

Checks & Balances

a) While assets will be transferred to the central authority after 7-10 years, all entities transferring funds should be mandated to make an all-out effort to trace the true owners in the 5th and 7th year (before the funds are transferred) and provide detailed reports of action taken to the central agency.
b) The agency/ entity managing the central database should not be allowed to monetise data of deceased or heirs.
c) All efforts must be made to minimise fraud and vulnerability without compromising ease of use.
d) Examine if the central repository can play a role in hastening the issue of succession certificate, heir-ship certificate, legal process and eliminate the need for probate (all of which are expensive and time-consuming).
e) Discuss and fix who bears the financial liability for errors, hacks, staff malfeasance, or carelessness and ensure an insurance cover (risk/fraud insurance will help).
f) Ensure a strong grievance redress mechanism and a helpline.
g) Standardise nomination processes across assets to provide for serial/successive nomination and/or proportionate nomination. This is especially required for bank accounts, which permit only one nominee today and turned out to be problematic during the recent COVID pandemic when several members of a family died in quick succession.
h) Serious thought and streamlining is required when it comes to demat accounts. Today, a demat account cannot be closed if the holdings are in defunct companies (zombie shares) and we need a process of registering a claim without having to keep demat accounts live. If a person has multiple nominees, depositories require multiple demat accounts to be opened for transfer (a simple sale from the deceased's account should be considered, if heirs do not want to hold shares and have them transferred).

Advisory/Supervisory Board

The central authority must have a supervisory board with representatives from the respective ministries, financial and corporate sector, regulators and citizens' groups

who would monitor the working of the system and suggest changes periodically, primarily based on user feedback.

Annual Report to Parliament

TS Krishnamurthy, trustee of Moneylife Foundation and former chief election commissioner (CEC), has suggested that the centralised agency should table in Parliament an annual report about the unclaimed funds and also publish it on a specific website. This annual report should detail the amount which lies unclaimed, amount which has been refunded to legal claimants; names of claimants and names of parties whose amount is pending settlement can be hidden from public view to safeguard against fraud. Such an annual report should also indicate an analysis of claims pending settlement, along with a month-wise progress report.

Technology Inputs and Thoughts of Experts

Indian Software Products Industry Round Table (iSPIRT), a non-profit tech think tank, has shared a technical perspective on building and maintaining a central database which is appended at the end of this note.

Rajkumar C, an IT expert and consultant for iSPIRT, suggested that the database could be designed with a distributed architecture where the "application can be at a central location, while the data can be spread across any number of entities." As long as the entities work on a common agreed contract in terms of interaction, the central application would be able to collect the needed data and show it to the necessary users. Designing the central application and database in such a manner would help restrict duplication of data which resides with the respectful entities. This also restricts data access only to the trusted applications and entities, thus mitigating the risk of losing data integrity.

Dr Prakash Hebalkar, a leading IT expert and founder of ProfiTech, a strategy and public policy consulting firm, believes that the concerns about a centralised database, as put forward by iSPIRT, are valid if the data in question is frequently changing and must be presented as it is in real-time. In his opinion, the data being stored in this proposed centralised database 'is largely of an infrequent nature', as in the case of nominations or other information about unclaimed assets. Accordingly, a real-time synchronisation of such data is perhaps not required when a 'daily or perhaps even a weekly synchronisation would suffice'. He says that storing the required information in a centralised database would be to the advantage of the end-user, providing them with a one-stop solution/access to the requisite information rather than having data pulled in from various sources individually.

Dr Hebalkar has also emphasised the need to implement an effective failure/redress mechanism at each step of the process for the end-user. For instance, he argues that a delinquent or corrupt death registry administrator, who delays or withholds intimation of death or makes typing errors in names or entry of Aadhaar, etc, can cause enormous hassles and harassment for the user. Such cases require that a grievance mechanism is in place at each step of the process, so that mistakes or oversight at any stage can be redressed in a time-bound manner without causing further delays.

According to him, potential sources of delay and corruption will also be eliminated when SOPs establish a list of accepted documents (Will, probate, death certificate, succession certificate, etc) as evidence for legal heir-ship. This will bring in necessary uniformity to the process, eliminating situations where officials seek any number of unrelated documents for validation of a claim.

Delays will also be reduced if the process takes into account that claimants who are NRIs can submit apostilled documents as evidence, instead of going through a time-consuming notarisation process from the embassy or consulate.

Global Experience

United Kingdom (UK)

The UK has a Dormant Assets Scheme (https://www.gov.uk/government/publications/the-dormant-accounts-scheme) which is voluntarily supported by the industry and backed by the government. The scheme evolved out of the government taking the initiative to reunite people with their financial assets through the Dormant Bank and Building Society Accounts Act (2008). Dormant assets in the Act are defined as funds held within financial services products which have been idle for a certain period of time, and the Scheme attempts to trace their owners to reunite them with their money have been unsuccessful.

Under the current scheme, dormant accounts are UK bank and building society accounts that have had no customer-initiated transactions for 15 years or more, and where the bank or building society has been unable to establish contact with the customer who owns the account. Following the success of this scheme, efforts are being made to expand the scheme to other financial assets such as insurance and pensions, securities and others.

The Dormant Bank and Building Society Accounts Act sets out the Scheme's two component parts – the 'general scheme' which enables participating firms to transfer in dormant account funds and the surplus is channelled to social and environmental initiatives across the UK; and the 'alternative scheme' which enables firms with balance sheets below £7bn (billion) to transfer in dormant account funds and the participating firm nominates its local or aligned charity to receive the surplus. Both schemes are voluntary and have consumer protection guarantees.

The entire process is facilitated by Reclaim Fund Ltd (RFL), the only authorised reclaim fund in the UK that operates the scheme by enabling those organisations who voluntarily participate to route dormant asset/ funds to the nominated distributor, The National Lottery Community Fund (TNLCF). It ensures that at least 40% of the unclaimed money is retained for meeting claims, while the rest is released for social and environmental causes across the UK via the TNLCF.

The Scheme operates according to three core principles which were established among participating banks and building societies and will also underpin the upcoming expanded scheme.

1. **Reunification First:** Prioritising consumer protection, assets are classified as 'dormant' and made available to the Scheme, only after satisfying strict criteria, and only after the participating firms have completed their first priority to trace and reunite owners with their assets.
2. **Voluntary Participation:** Potential participants can choose whether to contribute to the Scheme and to what extent. The Scheme is a voluntary commitment by industry to pool dormant assets to help address social challenges.
3. **Full Restitution in Perpetuity:** Owners are able, at any point, to reclaim the amount that would have been due to them had a transfer into the Scheme not occurred. RFL ensures that sufficient funds are available so that this guarantee can always be fulfilled.

The founding principle of this Scheme is consumer protection – owners should always be able to reclaim the amount that would be due to them had a transfer into the Scheme not occurred. After an independent commission on dormant assets has recommended that the Scheme be expanded to other financial assets, the government is now planning to involve three additional categories – insurance & pensions, investment & wealth management and securities.

United States of America

The US does not have a government-wide, centralised information service or database on how unclaimed government assets may be obtained. Instead, each individual Federal agency, and sometimes state government, maintains its own records. There is a government website for unclaimed money (https://www.usa.gov/unclaimed-money) which provides links to a number of recognised organisations at the Federal and state level to help track a wide array of unclaimed assets.

There is also the National Association of Unclaimed Property Administrators (NAUPA - https://unclaimed.org/who-we-are/), which comprises 'unclaimed property administrators', who represent governments of all 50 states of America, and provides free assistance to the public to search for unclaimed assets. It also helps several other countries set up claims processes.

NAUPA engages in regulatory advocacy and for laws to ensure that unclaimed assets are returned to owners. Its definition of unclaimed assets covers unclaimed tax returns, mining rights, safe deposit boxes, security deposits, uncashed bank and travellers' cheques, etc, in addition to bank deposits, shares, interest, dividend, insurance and other issues that worry us in India.

NAUPA, in turn, endorses MissingMoney.com (https://www.missingmoney.com/en/) an organisation that started in 1999 to help state governments gather and track lost property such as uncashed pay cheques, stocks and bonds and safe deposit box contents. The states share information with MissingMoney.com, which also handles claims verification and payment processes. It has processed several billion dollars of unclaimed money, over the years.

The US government resource on unclaimed money also lists specific websites such as TreasuryDirect.gov (https://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm) for unclaimed saving bonds, treasury notes. The Pension Benefit Guarantee Corporation (https://www.pbgc.gov/about/pg/contact/contact-unclaimed) helps with unclaimed and forgotten pensions, the National Credit Union Administration (https://www.ncua.gov/support-services/conservatorships-liquidations/unclaimed-deposits) for unclaimed deposits with liquidated credit unions. There is a separate website for unclaimed funds arising out of bankruptcy proceedings (https://www.uscourts.gov/services-forms/bankruptcy/unclaimed-

funds-bankruptcy). Individual states have also put in place robust efforts to reclaim assets. Below is an example illustrating this in the state of California.

California's Unclaimed Property Law requires banks, insurance companies, corporations and certain other entities to report and submit their customers' property to the State Controller's Office (SCO) when there has been no activity for a period of time (generally three years). Common types of unclaimed property in this case are: bank accounts, stocks, bonds, uncashed cheques, insurance benefits, wages and safe deposit box contents. The Unclaimed Property Law in California does not include real estate assets.

The State Controller safeguards this unclaimed property as long as it takes to reunite it with the rightful owners. There is no deadline for claiming it, once it is transferred to the SCO. In order to find out whether the State Controller is protecting property in a person's name, one only needs to search the online database by first filling a few essential details and then file a claim either online (if eligible) or offline by filling out a claim form. For an heir filing a deceased owner claim, additional documentation and a declaration under probate code is required from the claimant.

California law requires all holders (corporations, businesses, associations, financial institutions and insurance companies) of unclaimed property to attempt to contact owners before reporting their property to the SCO. Holders are required to send a notice to the owner's last known address informing him/her that the property will be transferred to SCO for safekeeping if the owner does not contact them to retrieve it.

SCO also sends notices to all owners of property that will be transferred to the state. These notices are sent out before the property is to be transferred, giving owners an opportunity to retrieve property directly from the holder. In case the notice receives no response within a given deadline, the property simply gets transferred to SCO from where it can be claimed by a potential owner. There is no time limit for claiming a property from SCO.

The state of California also permits investigators/heir-finders to help people locate their assets and file valid claims, but has strict rules governing their fees and operations.

Canada

In Canada, bank deposits or negotiable instruments held by federally regulated banks are transferred to the Unclaimed Properties Office (https://www.unclaimedproperties.bankofcanada.ca/), if they remain inactive for 10 years and the owners cannot be contacted in this period. This includes savings and current accounts, bank drafts, certified cheques, official cheques, money orders, travellers' cheques, credit card balances, term deposits, guaranteed investment certificates and depository receipts.

Unclaimed balances of less than $1,000 are held for 30 years, while those above $1,000 are held for 100 years. Interest is paid for the first 10 years of custody. If the balance remains unclaimed at the end of the custody period, Bank of Canada transfers the funds to the Receiver General for Canada.

There is a legal obligation to make the effort to reach out to the owners of unclaimed funds, through written notices after two, five and nine years of inactivity. The unclaimed properties office provides a simple and free online mechanism to search and file for claims. It also provides a reporting tool for financial institutions to report forgotten assets to the unclaimed properties office.

Input from Team iSPIRT

Technical Approach

In order to build a seamless system that involves the participation of various financial institutions and ensures that the integrity of the system is maintained, one option could be the Account Aggregator (AA) Framework, proposed by REBIT. The following financial instruments are included in the AA Framework per the proposal. The schema definition for each of the financial institutions can be found in the below-mentioned URL https://api.rebit.org.in/schema

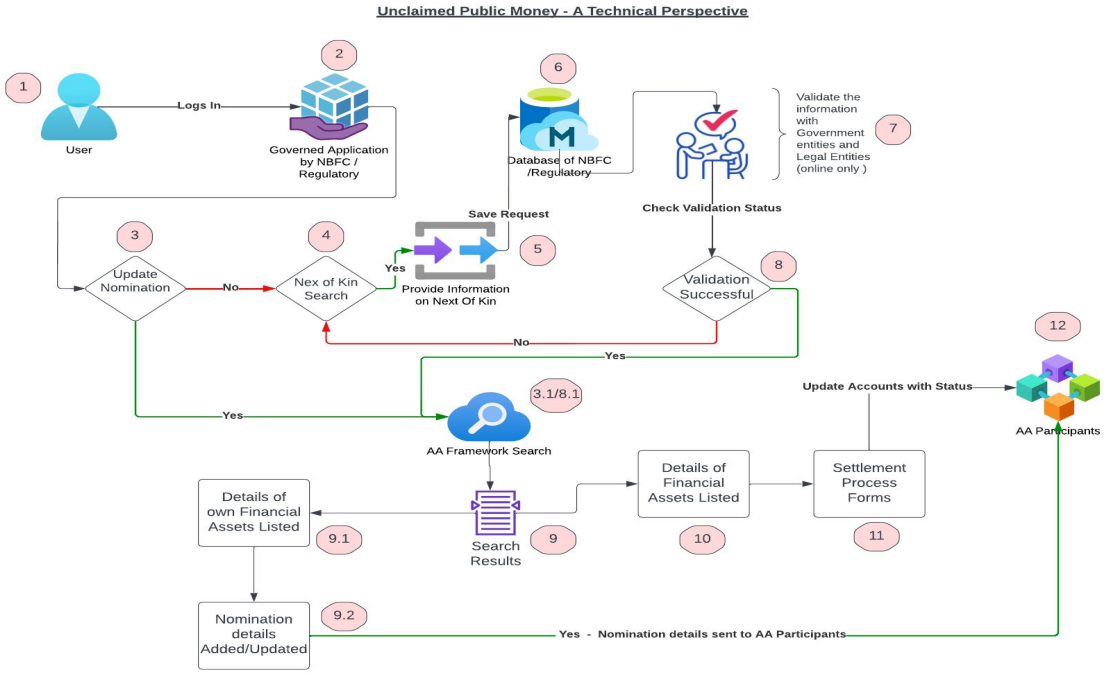
S.No.	Financial Information Type	S.No.	Financial Information Type
1	Deposit	12	Exchange Traded Funds
2	Recurring Deposit	13	Indian Depository Receipts
3	Term Deposit	14	Collective Investment Schemes
4	Systematic Investment Plan	15	Alternative Investment Units
5	Commercial Paper	16	Insurance Policies

6	Certificates of Deposit	17	National Pension System
7	Government Securities	18	Infra. Investment Trusts
8	Equity Shares	19	Real Estate Investment Trusts
9	Bonds	20	Employee Provident Fund
10	Debentures	21	Public Provident Fund
11	Mutual Fund Units	22	Unit Linked Insurance Plan

Among the above-mentioned schemes, it is required to identify the most impacted schemes for retail investors and help is needed from the regulators to make them participate in the AA Framework. This will ensure a seamless experience for our citizens to ensure a single technical solution, irrespective of the financial assets that the next of kin is searching for. The same approach can also be used to prevent the increase in unclaimed public money by ensuring nomination for the assets.

A primer on the AA ecosystem has been given below for reference.
AA Framework primer:
https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1753713

SEBI Participation on AA Framework:
https://www.sebi.gov.in/legal/circulars/aug-2022/participation-as-financial-information-providers-in-account-aggregator-framework_62157.html



The above diagram represents an indicative flow of how the entire process would work for unclaimed public money settlement for the existing corpus and also how it would span out in terms of preventing the increase by ensuring the nominations are present for the current financial assets. The explanation of the above diagram in the textual format is given below:

1. The flow is based on a simple web/mobile-based application that could be developed by an NBFC (non-banking finance company) or a government agency. (Step 1)
2. The user authenticates by means of the available existing mechanisms, or if a government agency has to do it on behalf of a common man, the process for the e-seva mechanism can be followed. (Step 2)
3. Once logged in, there are two options available for the user - one is to update the nominations for his/her existing assets or search for financial assets where he/she is acting as the next of kin. (Step 3 and 4)
4. For the next of kin option - the user will have to provide some details to prevent a data breach - the following could be the first set of data to begin with - name, PAN of the applying user, Aadhaar of the applying user, deceased name, deceased identity (Aadhaar/PAN), deceased death certificate, legal heir certificate, succession certificate. (Step 5)
5. Once the above-mentioned information is provided, the process for online verification of documents would take place seamlessly - death certificate / legal heir certificate verification -> interacting to the various corporations/municipal entities. To begin with, this could be manual - but this would mean the existing ERP (Enterprise Resource Planning) solutions of these government entities would have to be interacting with this system. This should be possible, given the recent payment gateway interaction for many corporations and municipalities for payment for the property and water tax components. Court entity validation for succession certification is to be explored. (Step 7)
6. If the validation is not successful, the information is passed on to the applied user - the details of why the validation has not passed are shared on a need-to-know basis and it is most likely a communication over email or SMS to ensure a single-way of communication.
7. If the validation is successful, a search inside the AA ecosystem should be initiated. This would need to change the AA consent Application Programming Interface (API), since the current system allows consent to be provided only to alive account-holders and since this is a provision to do a search on the accounts when the user is no longer present. (Step 8.1)

8. The search results are either displayed on the terminal or sent to an identified email address which is provided at the time of this request. (Step 9/Step 10)
9. Once the assets are listed - given the authentication of the user and his information is already complete and verified, based on the financial asset present, the settlement forms could be submitted online. In cases of more than one user as a legal heir or as a successor, the system should be able to provide the capability for each of them to enter the information with the necessary identification present in legal heir or succession certification. (Step 11). In this way, the settlement process could be unified across the different financial assets in a complete online manner.
10. (Step 3/ Step 3.1) For one's own financial assets listing, the user will not have to provide any additional information and a simple search should be able to bring up all the financial assets.
11. Step 9.1 - All the financial assets, which are part of the AA framework, could be listed on the screen, since it is the same individual who is doing the search for his information.
12. Step 9.2 - Given there is no nominee information that is being sent back in the AA schema - there is a change needed here.

AA API/Schema Related Changes

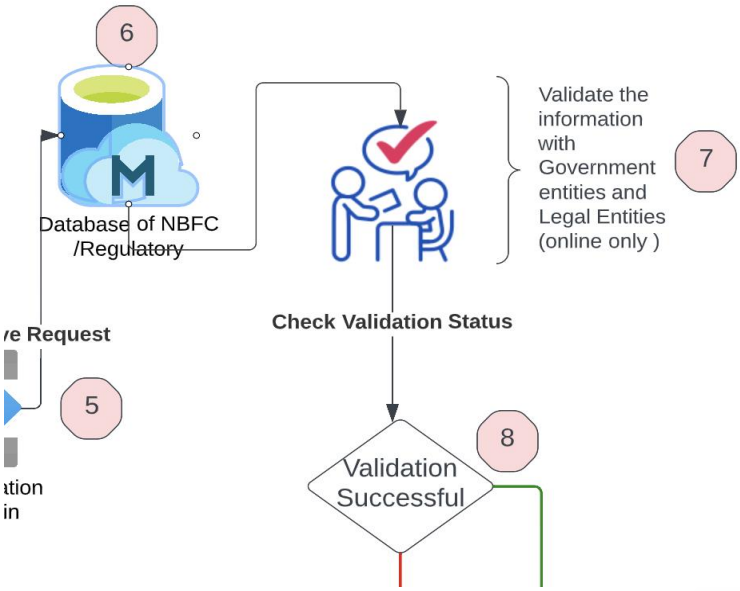
The complete list of the NBFC API specification can be found in the below-mentioned link->https://specifications.rebit.org.in/NBFC-AA%20API%20Specification_Core_Final_08Nov.pdf

Following is the high-level overview of the changes which would be needed to implement the above-mentioned flow:

API / Schema Name	Existing or New	Change Description
/Consents (API)	Existing	This should be modified to update consent for specific accounts being passed for users who are deceased.
/Consent/handle (API)	Existing	Modified to include the status of deceased personal
/Consent/{id} (API)	Existing	Modified to reflect the status of the deceased person.
/consent/Notification	Existing	Modified to create a temp consent to do

		a search of existing assets for deceased persons alone - a new state of notification is allowed here.
/FI/request (API) (OR) /Accounts/discover	Existing	Based on the modified consents - information should be allowed to fetch
/FI/request/update Account	New	This is a new API which needs to be introduced to update information on the accounts (either nomination) or deceased status - so that the account could not be misused.
Holding Nominee (Schema) e.g.,: https://specifications.rebit.org.in/api_schema/account_aggregator/documentation/others_ppf.html#HoldersType	Existing	The schema definition of the nominee has to be changed so that AA is able to provide the details of the nominee and associated information - along with the nominee's contact details.
Holder (Schema) e.g.,: https://specifications.rebit.org.in/api_schema/account_aggregator/documentation/others_ppf.html#Holder	Existing	Holder information to be updated in case of a single account-holder to deceased, which ensures misuse of funds from the financial institution.
Holding Nominee https://specifications.rebit.org.in/api_schema/account_aggregator/documentation/others_ppf.html#HoldingNominee	Existing	Currently, the holding nominee is just showing if the nominee is present or not. This will have to be changed to include the nominee details.
Nominee of Account	New	This would be a new type getting introduced - so that the nomination level information can be stored. The nomination should contain the name, identity type, identity information, and contact number.

Interfaces with External Systems



In order to ensure that the information is displayed only on a need-to-know basis for the next of kin, it is absolutely necessary to validate the information provided in terms of next of kin before it is shown. This can be done by introducing validation mechanisms for each item of information which was provided during the validation process. For beginners, we will consider the below-mentioned documents, to begin with:

1. Death Certificate
2. Legal Heir Certificate
3. Succession Certificate

When these certificates are uploaded - a separate form is presented to the user to submit information with regard to the certificate number and the government entity which issued the certificate. This would mean that the following API has to be implemented by the respective entity to validate the provided certificate information. If there are any existing APIs that can be used from the government entities (which have been used for integrating with the payment gateway), those could be considered for use as well. But, as a bare minimum, the following functionalities need to be provided.

API Name	**Functionality**
Get Token	Authentication mechanism to identify the caller who would be invoking the subsequent API.
Validate Entity	Would be used to validate the necessary entity based on the provided information.

The above API would have to be implemented by each entity to which our system should be talking, in order to validate the certificate information.

Note: The expansion of the system and its ability to scale would depend on the following factors:
All the financial institutions start adopting the common schema of interaction or figure out sending the data to a common entity in an agreed format.
A strong grievance redress mechanism for the users and, given the fact the interaction is between multiple parties, a strong dispute resolution system is also put in place.
There should be a seamless way of verifying the government documents, using an automation process which could be death certificate or any government-issued document.

This document has been prepared by Sucheta Dalal, who filed the PIL, with inputs from various experts and iSPIRIT Foundation: sucheta@moneylife.in;

Background Articles:

1. https://www.moneylife.in/article/use-global-practices-to-reunite-unclaimed-financial-assets-with-their-rightful-owners/68347.html
2. https://www.moneylife.in/article/sc-issues-notice-on-plea-by-sucheta-dalal-that-information-on-unclaimed-amounts-lying-in-dormant-accounts-be-made-publicly-available-on-a-centralised-platform/68045.html
3. https://www.moneylife.in/article/shouldnt-regulators-be-accountable-for-returning-rs82000-crore-of-unclaimed-money-to-savers/64694.html
4. https://www.moneylife.in/article/a-whopping-rs36000-crore-of-peoples-unclaimed-money-lying-with-just-three-financial-regulators/57587.html
5. https://www.moneylife.in/article/how-to-seek-refund-for-unclaimed-dividends-deposits-and-application-money-from-iepfa/66116.html

ANNEXURE III: FAQs on Advanced Medical Directive or Living Wills

What is an Advance Medical Directive which is also sometimes known as a "Living Will"

An Advance Medical Directive is a document that is executed voluntarily by an adult who is of sound and healthy state of mind stating as to when medical treatment may be withheld or withdrawn and authorizing a person or persons to take / give consent to refuse or withdraw medical treatment, in a manner consistent with the directions in the Advance Medical Directive, upon the executor becoming incapacitated to give such directions.

How is Advance Medical Directive different from Last Will?

An Advance Medical Directive helps your care taker or loved ones to take a decision to withdraw or withhold life sustaining medical treatments which will delay death, but will cause prolonged pain, anguish, suffering and result in loss of dignity. An AMD becomes effective before your death. A Will is a legal document by which a person directs his or her estate to be distributed after death.

Can an Advance Medical Directive be revoked?

An Advance Medical Directive can be revoked any time before you become incapacitated i.e. so long as you remain of sound and healthy mind.

What are the contents of a Advance Medical Directive?

An Advance Medical Directive should contain the following :-

- The circumstances in which the withholding or withdrawing of medical treatment can be done;
- Specific terms and instructions to be given to medical professionals;
- That the executor may revoke the instructions/authority at any time;
- Disclose that the executor has understood the consequences of executing the Advance Medical Directive;
- Specify the name of the guardian/s or close relative/s, who, in the event of the executor becoming incapable of taking a decision, will be authorized to give consent to refuse or withdraw medical treatment as per the Advance Medical Directive;

The document should be signed by the executor in the presence of 2 attesting witnesses, preferably independent and should be attested before a Notary Public or a Gazetted Officer;

How should an Advance Medical Directive be recorded and preserved?

(1) The document should be signed by the executor in the presence of 2 attesting witnesses, preferably independent and should be attested before a Notary Public or a Gazetted Officer.

(2) The Witnesses and the Notary or Gazetted Officer shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all relevant information and consequences.

(3) The Executor has to inform and hand over a copy of the Advance Medical Directive to:

(a) the guardian/s or close relative/s, who, in the event of the executor becoming incapable of taking a decision, will be authorized to give consent to refuse or withdraw medical treatment as per the Advance Medical Directive;

(b) the Family Physician, if any

(c) the competent officer of the local government i.e. the Panchayat or Municipality or Corporation (as the case may be), who shall name an officer to be the custodian of the Advance Medical Directive;

Advance Medical Directive should also be recorded in the Digital or other Health Records of the executor.

When is an Advance Medical Directive given effect to?

The Advance Medical Directive is given effect to when the executor becomes: -

(a) terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure and

(b) does not have the decision making capacity.

How is an Advance Medical Directive given effect to?

Step 1

Checking the veracity of the Advance Medical Directive

When the Doctor who is treating the executor becomes aware of the Advance Medical Directive, he or she has to confirm the genuineness and veracity of the Advance Medical Directive either by checking the existing Digital Health Records of the patient or from the Custodian named by the competent authority of the Panchayat or Municipality or Corporation (as the case may be).

Step 2

Information to guardian/close relatives mentioned in the Advance Medical Directive

Once the treating Doctor is fully satisfied that the executor is terminally ill and is undergoing prolonged medical treatment or is surviving on life support and that

there is no hope of recovery and cure and that the instructions in the Advance Medical Directive has to be given effect to, he or she should inform the guardian/s or close relative/s mentioned in the Advance Medical Directive about:

(a) the nature of the illness,
(b) the availability of medical care
(c) consequences of alternative forms of treatment and
(d) consequences of remaining untreated

The treating Doctor has to also ensure that the guardian/s or close relative/s understands the above, considers all options and comes to a firm decision that the withdrawal or refusal of further medical treatment is the best option.

Step 3

Constitution of a Primary Medical Board :-

A Primary Medical Board, consisting of the treating physician and at least two subject experts of the concerned speciality with at least five years' experience, will be constituted. This Board will form a preliminary opinion preferably within 48 hours of the case being referred to it.

Step 4

Constitution of a Secondary Medical Board :-

After the Primary Medical Board gives its sanction, the hospital will immediately constitute a Secondary Medical Board comprising of a registered medical practitioner nominated by the Chief Medical Officer of the District and at least two subject experts with at least five years' experience in the concerned speciality who were not part of the Primary Medical Board. This Board will form a preliminary opinion preferably within 48 hours of the case being referred to it.

Withdrawal of Treatment :-

Once the decision for withdrawal of treatment is made, and before giving effect to the decision to withdraw the medical treatment administered to the executor, the hospital shall convey the decision of the Primary and Secondary Medical Boards and the consent of the person or persons named in the Advance Medical Directive to the jurisdictional Judicial Magistrate of First Class. It is not necessary to wait for the authorization of the judicial magistrate to implement the decision.

Refusal by Primary Medical Board to follow an Advance Medical Directive:-

If the primary medical board takes a decision not to follow an Advance Directive, the nominees of the executor can request the hospital to refer the case to the Secondary Medical Board for consideration and for passing appropriate directions.

Refusal by Secondary Medical Board to withdraw treatment:-
If permission to withdraw treatment being administered to the executor is denied by the Secondary Medical Board, it is open to the nominees of the executor the treating physician or the hospital staff to file a writ petition at the jurisdictional High Court.

Procedure to be followed in cases where terminally ill patients with no hope of recovery did not execute an advance medical directive ahead of time :-
Before withdrawing treatment, a Primary Medical Board shall be constituted by the hospital on being informed by the treating physician as to the nature of the ailment. The Primary Medical Board would consult with the patient's next of kin, next friend or guardian and record the minutes of the discussion as well as their consent, if they choose to furnish it in writing. The Primary Medical Board would be required to certify the proposed course of action within 48 hours.

Approval by the Secondary Medical Board
The opinion of the Primary Medical Board shall be examined by the Secondary Medical Board formed by the treating hospital. If the Secondary Medical Board agrees to the opinion of the Primary Medical Board, they shall inform the jurisdictional Judicial Magistrate of First Class and the next of kin, next friend or guardian preferably within 48 hours of the case being referred to it.

Disapproval by the Secondary Medical Board
In a situation where the Secondary Medical Board does not approve the plan to withdraw the treatment, the members of the family of the patient or his treating physician or hospital staff may file a writ petition at the jurisdictional High Court.

Conclusion
Passive euthanasia (now recognized as a constitutional right under Article 21 by the Honourable Supreme Court of India) is a condition where there is withdrawal of medical treatment with the deliberate intention of hastening the death of a terminally ill patient. Also known as Living Will, it is the directive provided by that person at an earlier stage while in a situation where he /she is capable of delivering such a directive. It not only helps the executor die with dignity, but also relieves the executor as well as his/her loved ones from the trauma and mental agony meted out due to such a helpless or rather a hopeless medical condition.

ANNEXURE IV: Sample Format of an Advance Medical Directive or Living Will

ADVANCE MEDICAL DIRECTIVE

I, [NAME], [s/o or d/o or w/o] aged [AGE] years, [NATIONALITY], residing at [ADDRESS], holding Aadhar Card number [NUMBER] OR Passport No. [NUMBER] hereby express my wishes and issue the following directives regarding withholding or withdrawing medical care to be provided to me:

1. In the event that I suffer from a terminal disease or illness and if further life sustaining medical care will only delay death but cause prolonged anguish, pain, suffering and loss of dignity to me, I hereby direct my treating physician and/or other medical professionals who may be involved in my treatment to withdraw and withhold further medical treatment in accordance with the requirements and stipulations made hereunder and in law, including those that are set out in the judgements of the Hon'ble Supreme Court of India in this regard.

2. In the event that I become unconscious or incapable of taking a decision, I hereby authorize the following persons to convey my wish to my treating physician and/or other medical professionals who may be involved in my treatment to withdraw and withhold further medical treatment, including but not limited to efforts to resuscitate me; the same may be deemed to be consent given by me for the same.

(a) [NAME], [s/o or d/o or w/o] aged [AGE] years, [NATIONALITY], residing at [ADDRESS], holding Aadhar Card number [NUMBER] OR Passport No. [NUMBER]

(b) [NAME], [s/o or d/o or w/o] aged [AGE] years, [NATIONALITY], residing at [ADDRESS], holding Aadhar Card number [NUMBER] OR Passport No. [NUMBER]

3. I make it clear that I may revoke the aforesaid authority at any time prior to becoming unconscious or incapable of taking a decision regarding withholding or withdrawing further life sustaining medical care. I hereby revoke all existing Advance Medical Directives made by me.

4. I hereby declare that I have understood the consequences of issuing these directions and authorizing the aforesaid persons to convey these directions and my consent for withdrawal or withholding of further life sustaining medical care.

5. I state that this Advance Medical Directive has been made by me voluntarily and out of my own free will and while I am of sound mind; the same has not been made by me under coercion, inducement, misrepresentation, or while under influence of alcohol, drug, or substance.

[Name of the Executor]

Date

Place:

We hereby attest that this Advance Medical Directive has been signed by [Mr./Ms][NAME], [s/o or d/o or w/o] aged [AGE] years, [NATIONALITY], residing at [ADDRESS], holding Aadhar Card number [NUMBER] OR Passport No. [NUMBER] at [Place] on [Date] in the our presence.

Witness 1	Witness 2
[NAME] [ADDRESS] [AADHAR CARD NO] Date: Place	[NAME] [ADDRESS] [AADHAR CARD NO] Date: Place

Before me

This document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all relevant information and consequences.

(NOTARY PUBLIC) OR (GAZETTED OFFICER)

Date:
Place:

Date:
Place:

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 May 18, 2022

To
All registered Registrars to an Issue and Share Transfer Agents (RTAs)
All Recognized Stock Exchanges
All Listed Companies through Recognized Stock Exchanges
All Recognized Depositories
All Depository Participants (DPs) through Depositories
All Investors' Associations

Dear Sir / Madam,

Subject: Simplification of procedure and standardization of formats of documents for transmission of securities

1. SEBI has reviewed the process being followed by the Registrars to an Issue and Share Transfer Agents (**"RTAs"**) and the Depositories/ Issuer companies for effecting transmission of securities.

2. As an on-going measure to enhance ease of dealing in securities markets and with a view to make the transmission process more efficient and investor friendly, the procedure for transmission of securities has been further simplified vide the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 ("**LODR Amendment Regulations**") Gazette Notification no. SEBI/LAD-NRO/GN/2022/80 dated April 25th, 2022).

3. The LODR Amendment Regulations has *inter alia* enhanced the monetary limits for simplified documentation for transmission of securities, allowed 'Legal Heirship Certificate or equivalent certificate' as one of the acceptable documents for transmission and provided clarification regarding acceptability of Will as one of the valid documents for transmission of securities. Pursuant to the notification of the LODR Amendment Regulations, this Circular is being issued to specify the formats of various documents which are required to be furnished for the processing of transmission of securities.

4. For ease of reference, a ready reckoner listing out the documents required for transmission of securities, in case of demise of the sole holder, is provided in **Annexure – A** to this Circular. The Operational Guidelines for processing investor's service request for the purpose of transmission of securities are provided in **Annexure – B** to this Circular.

5. The format of the form to be filed by nominee/claimant/legal heir while requesting transmission of securities is provided in **Annexure – C** to this Circular.

6. The revised documentation requirements in case of transmission of securities are specified below :

6.1 Where the securities are held in a single name with a nomination, nominee shall be informed about the procedure to be followed for the claim on the receipt of the intimation of death of the security holder.

6.2 Where the securities are held in single name with a nomination, the following documents shall be submitted:

(a) duly signed transmission request form by the nominee;

(b) original death certificate or copy of death certificate attested by the nominee subject to verification with the original or copy of death certificate duly attested by a notary public or by a gazetted officer;

(c) self-attested copy of the Permanent Account Number card of the nominee, issued by the Income Tax Department.

6.3 where the securities are held in single name without nomination, the following documents shall be submitted:

(a) duly signed transmission request form by the legal heir(s)/claimant(s);

(b) original death certificate or copy of death certificate attested by the legal heir(s)/claimant(s) subject to verification with the original or copy of death certificate duly attested by a notary public or by a gazetted officer;

(c) self-attested copy of the Permanent Account Number card of the legal heir(s)/claimant(s), issued by the Income Tax Department;

(d) a notarized affidavit, in the format provided in **Annexure – D** to this Circular from all legal heir(s) made on non-judicial stamp paper of appropriate value, to the effect of identification and claim of legal ownership to the securities.

However, in case the legal heir(s)/claimant(s) are named in any of the documents for transmission of securities as mentioned in serial number 8 in **Annexure – A** to this Circular, an affidavit from such legal heir(s)/claimant(s) alone shall be sufficient;

(e) a copy of other requisite documents for transmission of securities as may be applicable as per **Annexure – A** to this Circular, attested by the legal heir(s)/claimant(s) subject to verification with the original or duly attested by a notary public or by a gazetted officer:

6.4 In cases where a copy of Will is submitted as may be applicable in terms of Indian Succession Act,1925 (39 of 1925) the same shall be accompanied with a notarized indemnity bond from the claimant (appropriate beneficiary of the Will) to whom the securities are transmitted, in the format provided in **Annexure – E** to this Circular.

6.5 In cases where a copy of Legal Heirship Certificate or its equivalent certificate issued by a competent Government Authority is submitted, the same shall be accompanied with:

i. a notarized indemnity bond from the legal heir(s) /claimant(s) to whom the securities are transmitted, in the format provided in **Annexure – E** to this Circular.

ii. No Objection from all non-claimants (remaining legal heirs), stating that they have relinquished their rights to the claim for transmission of securities, duly attested by a notary public or by a gazetted officer, in the format provided in **Annexure – F** to this Circular.

6.6 For value of securities up to rupees five lakhs per listed entity in case of securities held in physical mode, and up to rupees fifteen lakhs per beneficial owner in case of securities held in dematerialized mode, as on date of application by the claimant, and where the documents mentioned in serial number 9 in **Annexure – A**, are not available, the legal heir(s) /claimant(s) may submit the following documents:

(i) a notarized indemnity bond made on non-judicial stamp paper of appropriate value in the format provided in **Annexure – E** to this Circular, indemnifying the Share Transfer Agent/ listed entity:

(ii) no objection certificate from all legal heir(s) stating that they do not object to such transmission in the format provided in **Annexure – F** to this Circular or copy of family settlement deed executed by all the legal heirs, duly attested by a notary public or by a gazetted officer; and

The listed entity may, at its discretion, enhance the value of securities from the threshold limit of rupees five lakhs, in case of securities held in physical mode.

7. For transmission of securities to the surviving joint holder(s), RTAs shall comply with clause 23 of Table F in Schedule 1 read with Section 56(2) & 56(4)(c) of the Companies Act, 2013, and transmit securities in favour of surviving Joint holder(s), in the event of demise of one or more joint holder(s), provided that there is nothing contrary in the Articles of Association of the company.

8. The common norms stipulated in SEBI Circular SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/655 dated November 03, 2021 and SEBI Circular SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/687 dated December 14, 2021 shall be applicable for transmission service requests.

9. In case the securities were held by the deceased holder in a single name and in physical mode, then after verifying and processing the documents submitted for transmission of securities, the RTAs/ Issuer companies shall intimate the claimant(s) about its execution as may be applicable, within 30 days of the receipt of such request, by way of issuing a Letter of Confirmation in the format provided in **Annexure – G** to this Circular.

10. The provisions of this Circular shall come into force with immediate effect in supersession of the following circulars:

    a) Circular No. CIR/MIRSD/10/2013 dated October 28, 2013,
    b) Circular No. SEBI/HO/MIRSD3/CIR/P/2016/0000000085 dated September 15, 2016,
    c) Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/05 dated January 4, 2019, and
    d) Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/644 dated October 18, 2021.

11. Stock Exchanges and Depositories are advised to:
    a) make necessary amendments to the relevant bye-laws, rules and regulations, operational instructions, as the case may be, for the implementation of the above Circular; and
    b) to bring the provisions of this Circular to the notice of their constituents and also disseminate the same on their websites.

12. The RTAs/ listed issuers/ Depositories shall strictly adhere to the formats and documentation specified through this Circular for all transmission matters including requirement of Will.

13. This Circular is being issued to protect the interests of investors in securities and to promote the development of, and to regulate the securities market read in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015.

This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework -> Circulars”.

Yours faithfully,

Aradhana Verma
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Market Intermediaries Regulation and Supervision Department
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