

## Handbook on Succession & Inheritance

BY  
Vijayaraghavan R  
(rvnotes@127gmail.com)



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**Disclaimer:**

This write up is meant for information purposes only and do not purport to be a legal document. The author does not warrant the accuracy or completeness of the information. The Hand Book has been provided to serve as a reference guide for information only. Readers are requested to refer the relevant Acts, official and Government guidelines for a detailed view and to act upon.

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## **Chapter 1. Useful Tips to make the succession plan Simple**

### **1. Preserve the following documents carefully:**

Details of Bank Lockers, Key Numbers and upkeep of Keys.  
Details of Bank Accounts and other investments.  
Proper upkeep of Cheque Books, share certificates, De mat accounts, Life Insurance Policies, Health Policies along with ID Cards, Pension Papers, Recoverable and Payable money from/to friends and relatives, Title deeds of Property, General Power of Attorney if given to anyone, Original Will (Execute if not already done) etc.

### **2. Password-Safe Upkeep**

Proper and safe upkeep of Password of email ID, ATM and Credit Cards, Bank accounts, online profiles, net banking, life insurance, vehicle insurance, Demat trading accounts, Income Tax e-filing etc. Phone number and contact persons name of the bank insurance co. Investment consultant etc. It can be in hard copy or can be digitally stored with a safe access known to next of kin.

### **3. Ensure Nomination**

Ensure nomination in all investment accounts, lockers, Insurance Policies and Digital Assets. As far as possible all the investments be in joint names of self and spouse with nomination registered in every account. Ensure documentary evidence for registered nomination. One can cancel and re-register the nomination during the currency of investment.

### **4. Nomination for Social Media accounts**

In the digital era the new concept of keeping the online Social Profiles, email ID's, Facebook data secure and nomination is gathering momentum and even Google has introduced the Inactive accounts manager so as to enable nominated persons to access your Digital Assets, Email ID's and Social Profiles.

### **5. Execute Will wherever needed**

Nomination does not legal right to the nominee and legal heirs can claim money from the nominee. To ensure that your wishes are fulfilled after your death – one must execute registered/unregistered will.

## **6. Prepare a Family must Know – Register**

It is better to maintain a register either as a soft copy or hard copy containing the following important particulars. This is only illustrative and one can improve add or modify depending upon the need and convenience.

- a. Contact Number of Close relatives/Friends
- b. Contact Number of Doctors/ Hospitals, Laboratories
- c. Contact number of Investment, Tax consultants.
- d. Details of Investments
- e. Details of assets including Movable/immovable properties
- f. Details of Life Insurance Policies
- g. Details of Health Insurance and General Insurance policies
- h. Details of Locker
- i. Details like Aadhaar Card, PAN card, Voter id, Driving License and Passport etc.
- j. House Tax, Electric Bill, Telephone Bill and Water Tax
- k. Liabilities if any and amount if any due to be paid or received with details

## **7. Train the Next of Kin /Spouse and prepare a guidance Note**

You may also train or counsel your legal heirs to the procedures for making the claim for bank accounts, how to claim family pension etc. In case of emergency hospitalization what should be done for availing cash less facility etc.

The facilities, benefits available in case of unfortunate death like claim of funeral expenses, benefit of family pension, health insurance coverage should be documented and informed.

If possible, prepare a Note, a guidance as how the assets you left behind to be handled by your next of Kin or legal heirs. You can share your thoughts and inputs as how best they can be handled /shared/used. Also You can mention the name / contact number of your friend/ well-wisher/auditor/Legal counsel or a Reliable person from whom the next of kin or heirs can seek opinion on guidance in case of need.

### **I. A guide to handle Medical Emergency Situations:**

Let us all hope and pray that none should be in any medical emergency situations. But when independent Living by Senior Citizens becomes order of the day, due to situations that their next of kin have to live separately.

In such cases no one should be caught unaware as what to do., when medical emergency situation happens.

Recently I came across one case, when on emergency call a team of volunteers went to the flat of a Senior Citizen, where the male Senior Citizen is in unconscious state and his wife in shock unable to answer the health history and medical condition of her husband or the contact number of their family doctor.

The reason being everything was handled by her husband and she has totally depended on him for her own medication. Their son who is abroad is also not aware of such details

In such cases it would be difficult for the friends/volunteers for adopting the best course of action and to the doctors for starting immediate treatment.

To avoid such situations, more so when the threat of pandemic and isolation is looming large all over the world, one should prepare and do certain basic things to meet any unexpected eventuality.

1. Keep the important Contact numbers of Close relatives/Friends who may help in cases of medical emergency easily visible and accessible.
2. Contact number of Family Doctor, Hospitals where treatment is being taken
3. It is important for the Senior Citizens to prepare a brief important medical information for self and spouse separately. It is better to keep that in hard copy as well in soft copy. A copy of model format designed by me is uploaded. In the annexure. The same can be improved /modified. Details may be filled in and should be kept in a prominent place known to spouse with easy access.
4. Prepare two files one each for self and another for spouse and keep all the latest Medical documents like Lab Reports, Doctor's prescription etc. in a ready to take condition.
5. Keep Health Insurance Cards, id cards, policy copy, TPA contact details in a pouch that can be easily accessible and can be taken during emergency.
6. Keep Two separate Boxes for Self and spouse that contains regular medicines. Ensure replenishment well in advance. Apart from that, it is better to keep two separate boxes for keeping non regular and SOS medicines/ointments.
7. Have some emergency cash exclusively for medical contingency, if that is possible. Also, one should train the spouse, if not done already or if they are not accustomed to, for cash withdrawal from ATM and use of Debit Cards, UPI, Digital wallets etc.
8. Ensure that emergency contact numbers are saved in self and spouse mobiles. Spouse should be informed that in case of medical emergency whom to be contacted (Relative, Friend/Hospital/ Association Volunteer Group)
9. In latest android phones there is a facility to save important medical information that can be viewed without applying screen lock.  
In New model phones it can be done as follows. Click Phone>Contacts>Groups>Create Emergency Contact List. Here one can save blood group, health condition, allergy etc. along with important Family members, friends contact number.  
In old Phones-Settings>Security & Location>Screen Lock>Settings>Lock Screen message.  
In case if there is no provision of screen lock or when a screen lock is not preferred, one can save the emergency Contact Numbers in Phone

Directory> Create Contact and under ICE (In Case of Emergency) this can be done.

Let us all pray for the good health of every one and at the same time educate and equip one, as how to handle real life situations effectively.

## **II. Seven Golden Rules to manage life effectively and to make it Simple**

1. Make your life and plan simple. Have a plan B or contingency plan to meet the unexpected eventuality. The dictum is plan for the best and prepare for the worst
2. Evolve a system of routine and follow. Keep the habit of placing things regularly used, not often used, rarely used (but important) in fixed places so that it would be easy to find and use.
3. Keep a health diary duly mentioning the Medicines you are taking regularly for you and your spouse, including blood group, past history and allergies with list of contact numbers of family doctor, clinic's contact person and number. Also keep the Health insurance card and the kit of forms and contact number in a pouch, readily reachable during emergency. It is better to carry this pouch on a long sojourn or travel.
4. Keep the tablets, medicines that are being taken regularly in a box. Similarly keep another box for the spouse also. Also form the habit of getting the required medicines well in advance attest before a fortnight or 10 days without waiting for the last date of consumption.
5. Whenever on travel (on tour or going out for marriage) keep important medicines, id documents (not all one or two), diary containing the contact numbers in a bag where it can be easily taken. Also form the habit of not keeping the entire cash and all the cards in the same purse or place. Keep them in a bag secured and placed where it will not be disturbed while searching for other things like towel or clothes. Also, when you travel with spouse, a certain amount of cash can be kept in their hand bag. Keep required cash with adequate changes sufficient for travel along with a debit or credit card in a purse securely placed in the pant. Also, it will be better to travel with a small hand bag containing our mobile phones, small cash with changes adequate to meet the expenses like food, taxi or auto or purchases like magazine etc. However, it is left to the individuals to form their own ways according to their habit and convenience. But it is important to have a system.
6. Educate your spouse, if not already done on ATM Usage, internet banking, on line booking of cabs etc.
7. As people tend to forget as age advances it is always better to have systematic life, organizing things with a list of dos to be done with a calendar of events and things to follow in a diary or notepad. Smart phones are handy and would help us in organizing things in a better way if one knows how to use the utilities.

### **III. Tips for Senior Citizens, to make life comfortable and easy for others**

Enjoy life as it comes. Never Complaint, Criticize. The tendency to be critical, impatient, finding fault develop as age advances. Develop a conscious mind to overcome it and avoid them. Accept things as they are and never compare your way of doing things with what others do. Deficiency in Service lies everywhere and you are not the only one get affected. Instead of reacting, which may only affect our health, respond to the situation by following the remedies given in the system to set it right. Complaining and grouching against the system only spoils our peace of mind and health.

1. For daily routine, evolve a System and follow. Have a simple plan. Keep a note of things to be done, as age advances, we tend to forget.
2. Do not try to change Others or System unnecessarily. Accept it and move on. If people, who are close, fail to pick up good things, your experience or seek good advice from you, the loss is not yours.
3. Do not over react to political, religious, language and cultural views of friends and relatives. It is difficult to make others accept your views. Result in most cases would be, loss of goodwill and friendship with no fruitful result.
4. Appreciate and recognize others help or good intention to help, however small it may be. Be helpful to others and be kind to those who help us. When people around you are busy preparing them for their fast life, help them in a small way or don't obstruct them using their space or time. As age advances your hand grip tend to fail at times. Avoid holding glasses, hot vessels, heavy items etc. during rush hours or always.
5. Invest in your health and take care of your spouse health too. Follow good healthy habits in eating and exercising. Prepare and train your spouse to be independent, when need arises. Ensure that the regular medicines that you and your spouse are replenished at least 10/7 days in advance, to avoid last minute troubles.
6. Laugh and smile bring positive energy. Have fun with children as one can derive energy by simply watching them play. Spend time with friend, likeminded people and youngsters without creating nuisance or disturbing them.
7. Don't act in haste, especially while doing Online Transaction like Net Banking, Mobile Banking or Booking a cab. We tend to accept or press a wrong command without reading full or knowing the implication. As online frauds are on the increase, do not click unknown link, share your credentials are lured by fake offers and prizes.
8. Beware of fraudsters and keep a safe distance from unknown people. In the guise of asking address any one can cause injury or attack. While drawing money from ATM or Bank, have risk awareness and be wary of possible threats and avoid going alone late night in risk prone places.
9. A major threat to Senior Citizens is falling down resulting in serious injury and prolonged illness. Be careful while walking in wet or shiny surface, bathrooms

and in attending midnight calls. (While wake up, make a practice to sit on the bed few minutes, before rising). Also avoid padlocking bathroom doors, if it cannot be opened from outside easily. Especially in Train journeys it is important and if required you can ask your companion to stand aside the door to prevent people from entering)

10. While going outside it is preferable to carry a small shoulder bag, containing your mobile, purse, your id card and contact number card. It essential to prepare your own contact card (preferably laminated, at least two- one for you and other for your spouse) containing important numbers to be contacted in emergency. It can contain additional information about your blood group and spouse. Visiting cards of persons known to you closely, can also be carried. When Senior Citizens live alone, it is better to display prominently in a visible place, important contact numbers in bold letter. This may be helpful in case of emergency.
11. Remove all old unnecessary records, matured/lapsed policies, Certificates etc. and if necessary, keep them in a separate file, mentioning as old records. This may help your next of kin to handle things smoothly after your period.
12. Finally, when the time to say good bye do it with grace and bit adieu, leaving pleasant memories for others to think about!

#### **IV. Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

This Act provides a legal framework to protect the rights and interest of parents and senior citizens. It recognizes the right to 'live with dignity' for elders and provides legal recourse for parents to claim maintenance from their children for shelter, food and medical treatment expenses. Another aspect of the Act is that it empowers the parents to reclaim any property back from their children if they fail to fulfil their commitment of looking after their parents. In the unfortunate case of children not sharing the responsibility of taking care of their aged parents, they can be forced legally to provide them a steady amount every month to enable them to meet their basic needs at least.

#### **V. Important points that a Pensioner's Family needs to know**

##### **RBI guidelines on Withdrawal of pension by old/ sick/ disabled/ incapacitated pensioners**

(i) In order to take care of problems/ difficulties faced by sick and disabled pensioners in withdrawal of pension / family pension from the banks, agency banks may categorize such pensioners as under:

(a) Pensioner who is too ill to sign a cheque / unable to be physically present in the bank.

(b) Pensioner who is not only unable to be physically present in the bank but also not even able to put his/her thumb impression on the cheque/ withdrawal form due to certain physical defect / incapacity.

(ii) With a view to enabling such old/sick/incapacitated pensioners to operate their accounts, banks may follow the procedure as under:

(a) Wherever thumb or toe impression of the old/sick pensioner is obtained, it should be identified by two independent witnesses known to the bank, one of whom should be a responsible bank official.

(b) Where the pensioner cannot even put his/her thumb/ toe impression and also would not be able to be physically present in the bank, a mark can be obtained on the cheque/withdrawal form, which should be identified by two independent witnesses, one of whom should be a responsible bank official.

Agency banks have been asked to display the instructions issued in this regard on their notice board at the branches so that sick and disabled pensioners can make full use of these facilities.



## **Chapter 2. Entitlements to the Spouse and Family after the Life time of Pensioner /Individual.**

### **I. Following are the entitlements for the Spouse /Legal heirs after the Life time of the pensioner**

1. In case of Pensioner retired on Superannuation or under VRS, the family of the deceased is entitled for funeral expenses depending upon the organization. Most of the PSBs do sanction certain amount from the staff welfare fund on the death of their ex-employee. In IOB, it is RS 7500/-for retired employees including Superannuation, VRS, CRS Resigned etc.
2. Pensioner is eligible to draw pension till the date of his/her death. Unreleased pension till the date of death is called life time arrears of pension.
3. Family Pension as per eligibility and sanctioned terms is eligible to the Spouse from the date following the death of the pensioner till death or remarriage.
4. Those who retired from State, Central Government, Railways, PSBs, GIC are eligible to avail certain concessions meant for retired employees, including provision of Health Insurance Cover at subsidized/Group Insurance rates. Most of the organization extend the benefits to the spouse of the retiree.
5. Spouse of the deceased retired Bank employee/Spouse of the deceased Bank Staff is eligible for following concessions
  - a. Staff and Retired Staff of Banks are eligible for additional interest rate meant for Staff category in SB and Term Deposits. For retired Staff this is in addition to eligible Senior Citizen additional rates in Term Deposits. Spouse of the deceased retired Bank Staff is also eligible for the benefit of additional rate meant for Staff. To avail this, benefit the Roll number of EX Staff has to be used.
  - b. Bank Staff are eligible for Concessional rate of Interest and margin for loan against deposits standing in the name of staff. The same facility is available to Retired Staff, spouse of the deceased staff and spouse of the deceased retired staff.
  - c. Pensioners' Loan and other loan meant for pensioners can be availed at concessional rate meant for retired staff by the spouse of the deceased retired staff.
  - d. Banks extends Concession in Service Charges for certain category of Services for Staff. The same can be availed by the Retired Staff and Spouse of the deceased retired Staff.
  - e. Locker Rent concession as applicable to Serving staff can be availed by Retired staff and Spouse of the Deceased retired staff.
  - f. A "retired Member of the bank's staff" means an employee retiring whether on superannuation or otherwise, but does not include an employee resigned or removed from service.

- g. All the above concessions are applicable to the Spouse of the deceased Staff and Spouse of the deceased retired staff.
  - h. In case of Retired Staff who have opted for Group Health insurance Scheme , on their death their spouses can continue the scheme if they wish to.
  - i. In case of resigned Bank employees who have opted for Group Health Insurance Cover meant for Retired Bank employees, their spouses can continue the Group health insurance Scheme in case of unfortunate death of the resigned employee.
6. Life Insurance – Nominee can claim the policy amount on the death of the policy holder. For multiple policies multiple claims should be made. There are different Life Insurance policies like
- a. Endowment, Whole Life Policies - Policy amount with bonus can be claimed.
  - b. Term Policies- Policy amount can be claimed.
  - c. Certain policies cover only accidental death. If a Bank account is linked to accidental death cover the same can be claimed on accidental death of the policy holder based on the terms of the policy.
  - d. Some annuity Policies have the option that the spouse /nominee can continue to receive the annuity amount till their life time or lumpsum payment. Depending upon the need and convenience such options can be exercised.
  - e. Some Life insurance Policies have double cover for accidental death where the risk cover is more than the normal death.
7. In case of death while in Service there are certain benefits available like Social Security Benefit Scheme (Family Benefit Fund Scheme), Death cum Retirement Gratuity, Leave encashment, PF, Life risk cover benefits from the employer. In most of the Banks they have special compensations for death while on duty, Death due to pandemic etc.

**II. In IOB the following Schemes are available covering the life of Staff. This is in addition to any special schemes that covers death due to covid 19.**

- a. **GROUP PERSONAL ACCIDENT INSURANCE WITH UNIVERSAL SOMPO** The Group Personal Accident Insurance Policy for all our staff members M/s Universal Sompo General Insurance Company Ltd., Chennai. This policy provides insurance cover for all our employees, who are on rolls of IOB, round the clock i.e., 24 hrs irrespective of whether the member is on duty or not, due to any accident. This is in addition to Special Group Insurance Scheme with LIC/SBI Life. The cover ranges from Rs1 lakh to Rs15 lakh depending upon the staff cadre. (amount may vary depending upon the terms of renewal)
- b. Special Group Insurance Scheme with SBI Life-Covers the loss of life Natural death-Rs 1 lakh, Accidental death- Rs 2 lakh. (Amount may vary depending upon the terms of renewal/ continuity of the scheme.

- c. Benefits under Social Security Benefit Scheme – if the deceased staff was enrolled as a member in that scheme during service.

**Important Note:** In case of cause of death is due to pandemic illness, It is important to get the death Certificate of the deceased, duly mentioning the cause of death due to Covid or Covid related ailments as to avail Special Life risk coverage benefits due to covid 19.

### III. Risk Cover and benefits available under various Insurance Schemes: Life and General Insurance (Accidental Death)

#### Risk cover for the same event under multiple insurance policies

##### A. Accidental Death Insurance Cover.

This cover is available through specific insurance schemes of the GIC, Banks or GOI Subsidized Scheme. In addition, debit (ATM Cards) and credit cards of the Banks have the in-built cover for accidental death. (In fact, many debit cards have certain unknown additional features as accidental death risk coverage, free access to airport lounge, baggage insurance, buyers' protection subject to conditions.)

1. **PMSBY- Pradhan Mantri Suraksha Bima Yojana** Accidental death cover at subsidized premium is available through Govt of India Scheme PMSBY implemented through Banks. Scheme details are as follows

Eligibility -18 to 70 Years. Period June 1-May 31<sup>st</sup>. - **Premium:** Rs. 12 per annum- Risk Cover- Accidental Death- Rs 2 Lakh. Injury due to accident-Rs 1 to Rs 2 Lakh. Even if the account holder is having multiple accounts with the same Bank/Different Bank Risk is covered per policy holder only. (Max –Rs 2 Lakh)

2. **RuPay Debit Cards**-Risk benefit per Customer. Even if a person is having different RuPay cards, risk can be covered per person only. The **Insurance policy** is applicable for the compensation of only one eligible **RuPay card per** cardholder or **per customer**, even if multiple **cards held by** cardholder of same / different banks meet the eligibility criteria. The choice of the **card for** the claim would rest with the **customer**.
3. **Visa /Master Debit/Credit Cards**- Accidental Death -Covers Risk per Bank/per Customer, subject to conditions.  
In respect of Accidental Death of a person, for the same person claims can be made for all the above categories.
4. In case of death happened due to Train/ Flight accident compensation can be claimed as per the Insurance cover available in respective Tickets. This is apart from any compensation sanctioned by respective Govt/Airlines,
5. In case of accidental death on roads involving Motor Vehicles, claim can be made under Motor Vehicle Insurance Act. Compensation will be decided by the court based on the age, income and dependents of the insured.
6. Apart from the above in case of death due to natural calamity, freak accidents State Government sanction compensation through Chief Minister's relief Fund.

## **B. Risk cover under Life Insurance**

- 1. Life Insurance Policy**-Can be claimed per policy. If a person having multiple policies claim can be made for natural death/Accidental Death.

For accidental death apart from claim under Life Insurance, additional claim can also be made under General Insurance vide Category A above.

Life Insurance Cover at subsidized premium is available through Government of India Scheme PMJJBY implemented through Banks. Scheme details are as follows.

- 2. PMJJBY (Prime Minister Jeevan Jyothi Beema Yojana)**

Those who are having accounts with the Bank can join subject to age restrictions.

- Age – 18 Years – 50 Years can join. (Risk cover up to 55 Years)
- Irrespective of income level one can join.
- Yearly premium – Rs 330/- + GST
- Life Risk Cover- Death due to any reason – Rs 2 lakh
- Cover period- 1<sup>st</sup> June to 31<sup>st</sup> May. Any time one can join the scheme. First premium depending upon the quarter in which the customer is joining.
- Even if a person is having multiple bank accounts, benefit is restricted to one account only.

NRIs also can join the scheme.

**Important Point:** Apart from the above, for the Bank account holders most of the Banks have tie up Schemes with Insurance Companies and offer Life Insurance cover and Accidental death cover to their account holders subject to age criteria. Most of the customers are their legal heirs are not aware about this cover. A perusal of Bank Statements, if one finds annual debit entries towards insurance, the legal heirs are to approach the concerned Bank branch and should make a claim with in the time limit prescribed for natural death and accidental death cases, subject to cover availability. Most of the legal heirs are ignorant of availability of such cover due to lack of policy details or information from the bank about such cover facilities, though the accounts are debited with a small amount of annual premium.

## **C. Health Insurance:**

Health Insurance policies can be taken individually as a floater policy for family or via group policy taken by the employer or through Schemes of the Bank covering the account holders of the bank who are willing to join the scheme.

If a policy holder having multiple policies, claim can be made for a single hospitalization, depending on the choice of the policy holder. For one hospitalization claim can be made with different insurers only when a limit with one insurer is fully exhausted and for balance amount claim can be made with the other insurer.

## **Chapter 3. FAMILY PENSION**

### **A. Eligibility**

Family pension will be paid to the spouse of the deceased from the date following the death of the pensioner. The terms of family pension, quantum depends upon the organization. In Banks the following is the norm for family pension. To ascertain the Quantum and other terms the Pension Payment order has to be looked in to.

To make the process of claiming Family Pension, the PPO with amendments if any should be kept in a place where it can be easily traced. Pension Certificate or Pension Payment Order usually contains two halves. One is called disbursers half which will be with the pension disbursing office/Branch. The other half is called Pensioner's half of PPO. Though conventionally called as half, both the halves contain similar particulars with due details of terms of Pension and family pension with identification mark details of Pensioner, Family Pension Nominee, Photo of Pensioner and spouse etc.

As per the terms of Pension payment Family Pensioners have to furnish periodical Certificates Like Life Certificate, Non-Remarriage declaration in case of Widows and Non-Remarriage certificates in case of Widowers etc.

#### **Important Point:**

It is important to intimate the demise of the Pensioner to the Pension paying Branch, with a request to make arrangements for the eligible funeral expenses as early as possible.

Formal request for commencement of family pension, the spouse of the deceased can be made after some time after the recovery of the family from the initial shock and grief.

### **B. Bank Pension Scheme**

The terms of Payment of Family Pension in Banks are as follows, most of which are formulated based on the earlier Central Govt Pension Scheme.

#### **Family Pension:**

#### **Enhanced Rate of Family Pension:**

Where the employee has completed 7 years of continuous service at the time of death family pension may be paid at 50% of last drawn or twice the ordinary rate of family pension whichever is less for a period of 7 years or till the deceased employee attains the age of 65 years had he survived.

#### **Period of Payment:**

The period for which the pension is payable is:

- a) In case of widow/widower, up to the demise or re-marriage whichever is earlier.
- b) In case of son, until he attains age of 25 or until he gets married whichever is earlier.
- c) In case of unmarried daughter, until she attains age of 25 years or until she gets married whichever is earlier.

d) The total income of the children should not exceed Rs. 2550/- per month and for parents wholly dependent on him should not exceed 2550/- provided he has left no widow/widower or child after him.

e) However, a son or daughter shall continue to get family pension if he or she suffers from any mental or physical disability irrespective of attaining 25 years of age.

#### **Order of Payment of Family Pension:**

After the demise of the employee the family pension will be paid in the following order:

a) Widow or widower (if not remarried).

b) Children in order of birth. Youngest one will become eligible only if elder ones have become ineligible.

c) Disabled child will receive family pension for life, if nobody else is there.

d) Payment to twins and widows: It will be paid in equal shares in case of twins and to widows in case there is more than one.

#### **Receipt of two-family pensions:**

In case of demise of both husband and wife who were employees of the bank, the child will get two family pensions subject to ceiling on the total amount of pension.

#### **Suspension of Family Pension:**

If the person who is availing pension benefits in the event of death of the employee is charged with murdering the employee or involved in abetting such offence, the rights of such person to avail such benefits shall be withdrawn along with all other eligible family members till the conclusion of such proceedings. a) In case of conviction in such offence, he shall be barred from receiving family pension which shall be payable to other family members from the date of death of the employee. b) In case of acquittal, family pension shall be payable from the date of death of the employee. Similar provisions shall apply to pension payable to an employee after his retirement, if he is convicted by court or he is found guilty of grave misconduct.

#### **C. Whether a Joint SB Account can be continued for family pension after death of a pensioner?**

Yes, the banks should not insist on opening of a new account in case of pensioner if the spouse in whose favour an authorization for family pension exists in the Pension Payment Order (PPO) is the survivor.

The family pension should be credited to the existing account without opening a new account by the family pensioner for this purpose if the family pensioner desires so.

### **Chapter 4 - Bank Accounts in the Name of the Deceased Depositor**

## **I. Saving Bank Accounts**

### **Saving Bank Accounts:**

#### **1. SB Pension Account -Joint account with E or S with the Spouse (Family Pension nominee)**

On the death of the pensioner, application along with copy of death certificate of the pensioner and identification documents (KYC if required) are to be submitted to the pension paying Authority/Branch for the commencement of family pension. If the applicant is having Joint account with the deceased pensioner, then it can be requested to credit the family pension in the same account if desired by the family pensioner.

In such cases Branch, after the demise of the pensioner, will complete the formalities of settling the balance in the account to the survivor and take action to delete the name of the pensioner as prime account holder and make the family pensioner as primary holder. The family pensioner may opt to continue with the existing nomination or can make a fresh nomination.

The family pension account cannot be a joint account. It should be an individual account only. While filing Income Tax returns, the family pensioner should add this account, as an operative SB account. Alternatively, the family pensioner can opt to close the joint account with the deceased pensioner and may request credit of family pension in the already existing account in the name of her, if any or a new account can be opened. But family pension accounts cannot be a joint account.

#### **2. Other than Pension Account-SB account -Joint account with E or S clause:**

Upon the death of one of the account holders in a joint account carrying the mandate "Either or Survivor" the balance in the accounts becomes payable to the survivor(s) upon production of the death certificate of the deceased.

In the case of running accounts, although the account can be continued in the name(s) of the survivor(s), it is advisable to get the account closed by the survivor and a new account opened in the name(s) of the survivor(s).

It should be remembered the role of the survivor is akin to Nominee, that the survivor is receiving money as a trustee on behalf of legal heirs and answerable to the claims of legal heirs if any.

However, Bank is discharged by making payment to the survivor based on E or clause.

#### **3. SB accounts -Joint account without E or S clause:**

Upon the death of one of them, operations in the account will not be allowed, as the balance is payable to the survivor(s) and the legal representatives of the deceased person. Hence the survivor along with other legal heirs can make the claim for settling the balance in the account. Here it should be noted that there is no role or right to nominee. The nominee will come into picture only on the death of all the joint account holders. Death of one of the joint holders confer no rights to the nominee to claim the balance in the account.

## **II. Term Deposit accounts**

### **1. Repayment of Term Deposit Accounts-Joint Accounts-E or S Clause**

Upon the death of one of the account holders in a joint account carrying the mandate "Either or Survivor" the balance in the accounts becomes payable to the survivor(s) upon production of the death certificate of the deceased.

The signatures of both the depositors need not be required for payment of the amount of the deposits on maturity.

However, the signatures of both the depositors may have to be obtained, in case the deposit is to be paid before maturity.

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 on maturity.

Specific Joint Mandate has to be given at the time of opening the deposits, to allow premature withdrawals of fixed/term deposits with the mandate of 'Either or Survivor'. In other words, in case of term deposits with "Either or Survivor" banks are permitted to allow premature withdrawal of the deposit by the surviving joint depositor on the death of the other, only if, there is a joint mandate from the joint depositors to this effect.

It should be clearly understood that in the case of term deposit accounts, the survivor has no right to close them before maturity or avail of an advance against such deposits unless the account holders had given a mandate jointly signed by them at the time of opening the deposit, enabling that the survivor/s to foreclose the deposits or raise any loan before maturity.

Even if there is nomination exist in that account it will not be given effect as nominee will come in to force only on the death of all the joint account holders.

Following options are available to the survivor of the Deposit account

- a. Based on the joint mandate (given by the depositors at the time of opening the deposit) to foreclose the deposit -the survivor can opt to pre close the deposit. In such cases there won't be any pre closure charges/penalty.



Interest rate would be as applicable for the period run as prevailed at the time of opening the deposit.

- b. In absence of joint mandate or if the survivor is not in need of that deposit or the survivor wants to avail the benefit of higher interest on the deposit - survivor can opt to close the deposit at the time of maturity. If the deposit is cumulative then maturity proceeds can be credited to survivor account on maturity.

In cases of deposits where monthly/quarterly interest is payable, the survivor may request the Bank to credit the interest to his/her account. Survivor is liable to account for interest income while filing IT returns and survivor is entitled to furnish 15g/15h as applicable.

## **2. Repayment of Term Deposit Accounts-Joint Accounts- without E or S Clause**

As signatures /discharge of both the depositors are required for payment either on maturity or Preclosure, in case of one of the depositor dies the amount is jointly will become payable to the survivor along with the legal heirs of the deceased depositor. The survivor and the legal heirs of the deceased should approach the branch to complete the claim formalities. There is no role to the nominee as the nomination would come in to force upon death of all the joint deposit holders.

## **3. Repayment of Term Deposit – Single Account with Nomination:**

In case of Individual deposits, where the depositor died or in case of Joint Deposit accounts where all the joint account holders died, Nominee can opt for pre closure of the deposit (without pre-payment penalty). Interest rate would be as applicable for the period run.

Alternatively, though the nominee can claim the deposit on maturity. But if the interest amount is substantial, it is advisable to close the deposit instead of continuing the deposit till maturity due to the problems in getting the payment of interest due as well interest tax implications on the interest accrued on the cumulative deposits (TDS provisions and accounting for interest in the income tax liability)

## **III. Safe Deposit Lockers and Safe Custody Articles**

### **Access to Safe Deposit Lockers – (With Survivor/Nominee Clause)-**

In case of Sole heir -nominee will have the rights to access the locker of the deceased and liberty to remove the contents of the locker on submission of requisite documents.

In case of locker Joint accounts with joint operations-in the event of death of one of the hirers, the Bank will access of locker and liberty to remove the contents jointly to the survivor/s and the nominee(s). Here all the Nominees and the survivors will join together to make a claim

In case of Locker Joint accounts with either or survivor, or any one or survivor clause – access of the locker will be given to the survivor(s) according to the survivorship clause on the death of one or more of the locker hirers.

However, in all cases Banks should make it clear to the survivor(s) / nominee(s) that access to locker / safe custody articles is given to them only as a trustee of the legal heirs of the deceased locker hirer i.e., such access given to him shall not affect the right or claim which any person may have against the survivor(s) / nominee(s) to whom the access is given.

Similar procedure will be followed for return of articles placed in the safe custody of the bank.

The facility of nomination is not available in case of deposit of safe custody articles by more than one person.

#### **IV. Features of Bank Account Nomination**

1. In Bank accounts there can be only one nominee, even in case of Joint accounts.  
In case of Joint accounts, Nomination will come in to force only on death of all the joint account holders.  
In case of Joint Locker accounts there can be more than one nominee corresponding to the number of account holders.
2. Nomination is only a facility for hassle free payment on death of a depositor. It won't confer any absolute ownership to the nominee. Nominee receives the money only as a trustee on behalf of legal heirs of the deceased and he is answerable to them. The same case is applicable to the survivor in E or S accounts.

Money Received by the Survivor/ Nominee on death of the account holder-survivor(s) / nominee that he would be receiving the payment from the bank as a trustee of the legal heirs of the deceased depositor, i.e., such payment to him shall not affect the right or claim which any person may have against the survivor(s) / nominee to whom the payment is made

#### **V. A. Nomination in Bank accounts favouring Non-Resident Indians**

1. A non-resident Indian can nominate a resident as a nominee and a resident Indian can nominate a non-resident as a nominee. However, remittance of funds from the account of the deceased depositor to the non-resident nominee will be subject to the Exchange Control Regulations, prevailing at the time of remittance.
2. In respect of Non-Resident Nominee, the claim proceeds will be credited in to the NRO account of the Nominee.
3. Presently (as on May 2021) Balances in an NRO account of NRIs/ PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets. Assets acquired from legacy/ inheritance/ deed of settlement. Non Resident Indians may remit up to USD 1 Million in a financial year

**B. Which are the cases related to Remittance of Assets for which prior approval of RBI is to be sought for effecting the remittance?**

RBI approval is required if:

Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year:

- a. on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
- b. by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

**C. What are the Tax implications in respect of remittance of assets?**

All remittances are subject to payment of taxes as applicable in India – Authorised Dealers are to convince themselves on this aspect.

**VI. Important Points**

Earlier banks were not paying interest on Overdue deposits not renewed. As per RBI initial guidelines Banks to pay simple Interest at SB rate for such deposits not renewed. Subsequently Banks were allowed to frame their own policies for payment of interest on Overdue deposits. But most of the Banks pay simple Interest at SB rate for the overdue deposits not renewed.

The nominee/Survivor/Legal heirs must be aware that for the overdue deposits in the name of the deceased depositor, they are entitled to receive interest at SB Interest rate from the date of maturity till date of settlement of deposits.

## Chapter 5. Loan Accounts in the Name of the Deceased Borrower

### Loans in the Name of the Deceased Borrower

There could be different type of loans in the name of the deceased borrower

#### A. Home Loan:

1. Most of the home Loans have the Liability Insurance Cover in case of death of the borrower or in case of one of the joint borrowers. In case of unfortunate demise of the home loan borrower the entire outstanding will be paid by the insurance Company if there is such cover exists.
2. In such cases Intimate the Bank about the death of the borrower and request them to take action for clearing the outstanding based on the liability insurance cover. If no such cover exists take action to clear the outstanding Loan and seek time or interest waiver if needed. Once the loan is closed get a No due Certificate from the Bank and take action for clearing any encumbrance with the registrar office. After discharge of encumbrance, it is better to get Nil encumbrance Certificate from the Concerned Registrar Office.
3. In case the legal heir/Legal heirs join together to Sell the property and to close the outstanding dues against the property, Bank should be informed about their intention to sell the property. If needed in the meantime Bank may be requested to give extension for time for clearing the outstanding dues if any. Based on agreement that the sale proceeds will be deposited directly in the Bank account and on completion of formalities of documentation Bank may give NOC with conditions that the Original Title Deeds and Parent Documents will be released directly to the buyer on the date of registration after ensuring that the proceeds are credited/will be credited to the Bank account for closure of Bank account. If there is any likely shortfall in the proceeds Bank may insist for additional arrangements for the closure of Loan account. The surplus proceeds will be treated as claim and settled among legal heirs.
4. For releasing her documents most of the Banks do not consider it as a claim process. Most of the Banks follow the procedure given below for releasing the Title deeds mortgaged.
  - a. The title deeds will be returned to the legal heirs only against a written request and after confirming the discharge of mortgage.
  - b. If one of the joint mortgagors is reported to be dead, the title deeds may be returned to the surviving mortgagor (s) on receiving a true copy of the death certificate.
  - c. On the death of sole mortgagor, the title deeds may be returned to all the legal heirs after obtaining the following:
    - (i) True copy of the Death Certificate;
    - (ii) Legal heirship Certificate obtained from the Tehsildar or Notarized affidavit given by two respectable and independent persons certifying the legal heirs in the format adopted for settlement of claims on deceased constituents accounts.

If any of the legal heirs could not come in person, authorisation letter may be given in favour of another legal heir to receive the title deeds.

#### **B. Loan against immovable property standing in the name of the deceased**

Same procedure as applicable to Housing Loan may be followed.

#### **C. Education Loan**

When education loan is taken for studies of the Son and Daughter of the deceased – On the death of the co borrower of the education loan, Bank may be informed about the death of the co borrower.

Most of the educational Loans come with the optional Liability Insurance Cover for the Student/joint Borrowers. In such insurance cover is taken and available, Bank may be requested to adjust the outstanding dues with the insurance cover.

If no such insurance cover is available for the obligant/co borrower, and if the student is yet to complete the course necessary action has to be taken for continuing the loan facility so as to facilitate completion of course by the student. In such cases, Bank may be requested to complete required formalities/documentation for continuing the education Loan Scheme duly informing the death of the co borrower.

#### **D. Vehicle Loan**

In case of vehicle Loan in the name of the deceased, Legal heirs should intimate the Bank/Financier about the death of the borrower. On clearing the outstanding dues discharge Certificate and Necessary RTO forms to be obtained to lift the hypothecation clause in the RC book. Simultaneously action may be taken to name transfer the vehicle to the nominee/ legal heir. In case the legal heirs decided to sell the vehicle, action can be taken for name transfer simultaneously while lifting the lien or hypothecation clause. Appropriate action to be taken for change of name in Insurance documents too.

#### **Important Note:**

1. On release of Documents of immovable properties, it is important to get the registered Lien entry lifted at Registrar Office. A Nil encumbrance Certificate has to be applied to verify the discharge of Mortgage.
2. For vehicle Loan, hypothecation clause has to be removed in the RC book. After Name transfer in the RC Book, insurance policy name change should also be applied.

## **Chapter 6. Cancellation of Credit/Debit Cards -SI/ECS/SIP on the death of the Card Holder**

### **Process involved in cancellation of Credit and Debit cards**

#### **A. Credit Card:**

On the death of the card holder, the legal heir should find out any insurance Cover is available on the cards like accidental death cover, life cover etc.

Card issuer has to be intimated about the death of the card holder and if there is any insurance claim is eligible the same may be claimed.

The legal heirs are liable to pay the Credit Cards dues of the deceased. For that out Statement has to be called for to verify the outstanding dues to be paid including interest and charges if any. The same has to be paid and a final Statement indicating that Nil due on the card should be obtained. If the outstanding amount is substantial, it is open to the legal heirs to negotiate the final settlement if possible and needed.

After ensuring that No insurance benefits are available or after availing Insurance cover if any, Legal heirs should send a request to the card issuer to cancel the Credit after settling the dues on the card.

Even if there is no outstanding it is better to inform the insurer and obtain a NO due statement on the card from them.

But before cancelling the card take action to cancel the Standing Instructions arrangements for recurring payments/Subscriptions to utility providers /Service Providers. Eg-Mobile – Cell Phone, Land Line Telephone, Internet Service, Power, water, House Tax etc.

Cancelling the credit card is not enough to stop these payments from being processed. Check the Credit Card statements to ascertain such recurring transactions and take action with the concerned Service Provider/Organizations intimating the death of the card holder to cancel the existing Standing instructions.

#### **B. Debit Card**

Once the account linked with the Card is closed the card atomically stands cancelled. Certain Debit cards provide Accidental Death Insurance Cover. Before closure of account ensure all eligible insurance covers related to the Bank account are availed.

#### **C. Disposal of the card**

Once the card account has been cancelled, it's important to destroy the physical card. The best way to dispose of any cards is to run them through a shredder or cut them into pieces so that the magnetic strip and EMV chip isn't viable and the personal information isn't readable.

#### **D. Preservation of Statement/Records**

It is important to preserve the Statements and Closure Letter from the Card holders for Income Tax and other Purpose at least for a period of 7 years or as a permanent record till the generation passes over.

#### **E. How to Cancel the Standing Instructions, SIP/ECs mandate?**

On death of the account holder the Standing Instructions given the account holder automatically stands cancelled.

While informing the Bank about the Death of the account holder it is better to advise Stop payment /Cancel the existing Standing Instructions, SIP and ECs arrangements. As a precautionary measure it is advisable to inform the concerned AMC/Organizations in whose favour ECS and SIP were given to cancel them informing the death of the account holder.

#### **F. Can the Debit and Credit cards be used after the demise of the card holder?**

No. Even if the legal heirs or next of kin of the deceased know the pin of the Card, they should not use any Debit or Credit cards of the deceased. It could be termed as fraudulent transactions.

Especially drawing Pension after the demise of the pensioner using the debit card, without informing the death of the pensioner is a serious crime.

## **Chapter 7. Various Type of Accounts in the Name of the Deceased Depositor**

Mostly the family of the deceased got confused as how to handle the various type of investments in the name of the deceased depositor before and after its maturity. Tax Saver Deposit Scheme, PPF, Senior Citizen Savings Scheme, PMVVY etc....

### **I. Tax saver Deposit Scheme:**

On the death of the Account holder (individual account) -the nominee can claim the deposit amount before or after the maturity date. No pre closure penalty will be applicable. Tax Saver Deposit carries fixed interest for the term of 5 years. Deposits closed, on the death of the depositor will carry the same interest as contracted. (Rule 13 of Bank Term Deposit Scheme 2006-Tax Saving Deposit Schemes)

In case of deposits where the depositor died without giving nomination, the deposit amount can be settled to the legal heirs.

The nominee should make an application to the branch manager of the Bank, supported by proof of death of the account holder.

In case of Joint accounts, if one of the account holders dies, nomination will not come in to force and the survivor can reclaim the deposit only on maturity (rules are silent about making premature payment to the survivor)

### **II. Senior Citizen Savings Scheme (SCSS)**

#### **1. Individual account-Single**

On the death of the account holder nominee or legal heirs can claim the amount before maturity or after maturity.

- a. the account shall be closed and deposit refunded along with interest as applicable to this Scheme till the date of the death of the account holder, to the nominee or the legal heirs.
- b. From the date of death till date of claim settlement- interest at the rate applicable on Post Office Savings Account.
- c. If the spouse is sole nominee, she can continue the account till maturity subject to eligibility and Scheme investment ceiling.

#### **2. Joint Account**

- a. In case of a joint account, the spouse may continue the account on the same terms and conditions as specified under this Scheme, if the spouse meets eligibility conditions under the Scheme on the date of death of the account holder.
- b. Joint account holder on the death of the First holder will have the option to close the account before maturity or after maturity.
- c. Interest as applicable in 1 a and b.



**Note:** Where both the spouses have opened separate account or accounts under this Scheme and either of the spouses dies during the currency of such account or accounts, then such account or accounts standing in the name of the deceased account holder shall not be continued in the name of the spouse

### **3. Senior Citizen Savings Scheme- Important points**

A Senior Citizen can open a joint account with his/her spouse. Spouse need not be a Senior Citizen.

Maximum 4 persons can be nominated with ownership rights, duly mentioning the percentage of share to each.

Upon death of the Senior Citizen in case of joint accounts with spouse, spouse, if she is a Senior citizen, can continue the account. If Spouse is the sole nominee, she can also continue the account.

Where both the spouses have opened separate account or accounts under this Scheme and either of the spouses dies during the currency of such account or accounts, then such account or accounts standing in the name of the deceased account holder shall not be continued and the account has to be closed.

In case the spouse is not a Senior Citizen or in case of single account on death of account holder payment will be made to the nominees /legal heirs with interest as applicable to this Scheme till the date of the death of the account holder.

Interest on the deposits in the account shall earn interest at the rate applicable on Post Office Savings Account from the date of death of the account holder till the date of final closure of the account.

#### **Nomination -Important conditions:**

A Depositor in a Single Account, or the depositors in a joint account, as the case may be, shall nominate one or more individuals as nominee but not exceeding four individuals.

Such nomination shall be made at the time of opening of the account by furnishing the following information in Form 10: (a) Name(s) of the nominee(s); (b) Percentage share each nominee shall be entitled to; (c) Whether the nominee shall receive the amount as a beneficiary with absolute and exclusive right of ownership, or as a trustee for the benefit of the legal heirs of depositor.

The nomination made may be varied by the depositors by making a fresh application in Form 10, together with the Passbook, to the Accounts

Office any time before the maturity of the account. On death of nominee fresh nomination has to be made.

**Payment on the death of depositor. -**

- a. In the event of death of the depositor of a single account or of all the depositors in a joint account, the eligible balance in the account shall be payable.
  - b. If a nomination made under rule 14 is in force at the time of death of the depositor of a single account or all the depositors of a joint account, the nominee may make an application in Form 11 to the Accounts Office for payment of the eligible balance and the application shall be accompanied by the proof of death of the depositor, and where any other nominee has also died, the proof of death of such nominee.
  - c. If there are two or more surviving nominees, the eligible balance shall be paid in the proportion as specified by the depositor while making the nomination, and if no such proportion or share is specified, then in equal proportion to all the surviving nominees.
  - d. If any nominee dies, his specified share in the eligible balance shall be distributed among the surviving nominees in the same proportion as their specified shares.
- 4. Question: In case of Joint accounts with Spouse, both are Senior Citizens, both can invest Rs 15 lakh each under SCSS. In case of unfortunate demise of one of them what will be the position. Whether the survivor can continue both deposits? If not, what will be the ROI on closure of one deposit?**

In such cases the deposit carrying the first name of the deceased to be closed as continuing the deposit would breach the Rs15 lakh ceiling per depositor.

Rate of Interest in such cases for the deposit closed is as per contract rate.

**Rule-** In case of death of the account holder before maturity or extended maturity, the account shall be closed and deposit refunded on an application in Form-3 along with interest as applicable to this Scheme till the date of the death of the account holder, to the nominee or the legal heirs, as the case may be.

Provided that interest on the deposits in the account shall earn interest at the rate applicable on Post Office Savings Account from the date of death of the account holder till the date of final closure of the account.

- 5. Question: SCSS-In case of death of the Sr citizen depositor wants to pre close the deposit what are the provisions for such pre closure and payment of interest? Whether pre closure attracts any penalty in such cases?**

In case the depositor wants to pre close the deposit in his/ her life time rules are

- a. No interest will be paid, if closed within one-year Int paid will be recovered.
- b. If closed after 1 year and before 2 years -Interest mentioned in the deposit receipt -1.5%
- c. Pre closed on or after 2 years from the date of opening - Interest on the Deposit -1%.
- d. The deposit period is 5 years. Can be extended for a period of another 3 years. (Rate of interest as applicable on the date of maturity). Such deposits can be closed any time after 1 Year of such extended date without any penalty/ deduction.

**6. Question: What is the settlement procedure in the event of death of the depositor where there is no nomination or the nominee also dies?**

The claimant has to produce probate of his will or letters of administration of his estate or a succession certificate as granted in the Indian Succession Act, 1925 (39 of 1925) is not produced within six months from the death of the depositor to the authorized officer of the Accounts Office.

In case the claimant could not produce the documents as above within 6 months from the date of death then he may approach the accounts office, **if the claim amount does not exceed Rs 5 lakhs** for claim settlement by producing the following documents.

- a. Death certificate,
- b. Pass Book or deposit receipt/statement of account in original,
- c. Affidavit in Form-13,
- d. Letter of disclaimer in Form-14,
- e. Bond of Indemnity in Form-15.

**If the eligible amount in a deceased account is above Rs. 5 lakhs.** the amount shall be paid by the Accounts office to the claimant on submission of 'Succession Certificate' issued by the court along with the following documents; namely: - (a) Claim form, (b) Pass Book or deposit receipt or statement of account in original, (c) Death certificate of the account holder.

**7. Question: What is the advantage of having more than one nominee in Seniors' Citizen Savings Scheme?**

In case of death of the depositor without nomination or in cases where the sole nominee also dies, it will be very difficult to claim the proceeds. The advantage of more than one nominee (Share can be judiciously given) is that in the event of death of one nominee the amount can be

claimed easily by other nominees with the proportionate share of the deceased nominee dwell upon them.

In absence of nomination for claim above Rs 5 lakh, succession certificate /probate is required, making the settlement process difficult and time consuming.

Even for the claim amount below Rs 5 lakh, one need to wait for 6 months to get the account settled without succession certificate.

### **III. PMVVY (Pradhan Mantri Vaya Vandana Yojana)**

Pradhan Mantri Vaya Vandana Yojana (**PMVVY**) is a government backed scheme sold through Life Insurance Corp. of India.

In the event of the death of policy holder during the policy term of 10 years, the purchase price shall be returned to the beneficiary.

During the policy period there is no pre closure option to the policy holder except on the grounds of critical illness. PMVVY-Premature exit is allowed only if the pensioner needs money for treatment of any terminal/critical illness of self or spouse. In case of such surrender, there will be premature exit penalty of 2%. one will get back 98% of the purchase price.

### **IV. Public Provident Fund Scheme (PPF)**

#### **1. Closure of account on death of the account holder. -**

(a) In the event of the death of the account holder, the account shall be closed and the nominee or the legal heir shall not be allowed to continue the account.

(b) The balance in the account of the deceased account holder shall earn interest till the end of the month preceding the month in which the eligible balance is paid to the nominee or the legal heir, as the case may be.

(c) Important point is that till settlement (up to previous month of settlement) the account will earn interest as applicable to the PPF scheme, irrespective of date of death of the account holder. That is even after the date of death, or maturity, the PPF account would continue to earn higher interest as applicable to PPF Scheme.

#### **2. Question: How many persons can be nominated in PPF accounts?**

Maximum four can be Nominated. at the time of opening of the account by furnishing the following information in Form 1: (a) Name(s) of the nominee(s); (b) Percentage share each nominee shall be entitled to; (c) Whether the nominee shall receive the amount as a beneficiary with absolute and exclusive right of ownership, or as a trustee for the benefit of the legal heirs of depositor.

**3. Question: In case of death of a nominee how the PPF account would be settled?**

In the event of death of the depositor of a single account or of all the depositors in a joint account, the eligible balance in the account shall be payable as specified to the nominee/s in the proportion as specified by the depositor while making the nomination, and if no such proportion or share is specified, then in equal proportion to all the surviving nominees. In cases where any other nominee has also died, the proof of death of such nominee to be given along with claim., his specified share in the eligible balance shall be distributed among the surviving nominees in the same proportion as their specified shares.

The balance in the account of the deceased account holder shall earn interest till the end of the month preceding the month in which the eligible balance is paid to the nominee or the legal heir.

**4. Question: In case if there is no Nomination what is the cut off amount up to which hassle free claim settlement can be made?**

Up to Rs 5 Lakh. Above Rs 5 lakh Succession Certificate is required.

**5. Question: What is the procedure for claim settlement without Nomination?**

If a depositor dies and there is no nomination in force at the time of his death, and probate of his will or letters of administration of his estate or a succession certificate as granted in the Indian Succession Act, 1925 (39 of 1925) is not produced within six months from the death of the depositor to the authorized officer of the Accounts Office where the account stands, then, - (i) if the eligible amount in the account does not exceed Rs. 5 lakh, the authorized officer of the Accounts Office or the authority specified by the Institution to which the Accounts Office belongs, may pay the same to any person appearing to him as the rightful claimant and to his satisfaction to be entitled to receive the amount or to administer the estate of the deceased, on an application in Form-11 accompanied by the following documents; namely:- (a) Death certificate, (b) Pass Book or deposit receipt/statement of account in original, (c) Affidavit in Form-13, (d) Letter of disclaimer in Form-14, (e) Bond of Indemnity in Form-15, (ii) if the eligible amount in a deceased account is **above Rs. 5 lakhs**, the amount shall be paid by the Accounts office to the claimant on submission of '**Succession Certificate**' issued by the court along with the following documents; namely: - (a) Claim form, (b) Pass Book or deposit receipt or statement of account in original, (c) Death certificate of the account holder.

## **V. Employee Provident Fund (EPF)**

1. Under EPF, on death of the subscriber the amount will be paid to the nominee.

If there is no nomination entire sum would be paid to family members in equal share. Sons who attained majority and married daughters whose husbands are alive. In case of EPS, if a person is unmarried pension would be payable to dependent father/mother.

### **2. Employee Provident fund (EPF) nomination rules for family**

- The 'spouse,' 'legitimate children,' 'stepchildren,' 'deceased son's widow,' 'deceased son's legitimate children,' 'deceased son's step-children' and 'dependent parents' are considered as legal 'family members' while nominating a family member in EPF account.
- The provident fund account holder having a family can only nominate one or more persons belonging to the family.
- Any nomination made by a PF account holder in favour of a person not belonging to his family will be treated invalid.
- If in case the provident fund account holder doesn't have a family while filing the nomination request, then he is eligible for nominating another person or persons.
- However, such nominations shall be considered as invalid if the PF account holder acquires a family after in future.
- In such cases, the PF account holder will be allowed to make a fresh nomination in favour of one or more persons belonging to the family.

### **3. Provident fund nomination modified rules**

- A person has the complete right to modify the nominated individuals and the share payable to them at any time by giving written notice to the trustees of EPFO describing his intention of doing so in Form No. 40B.
- According to the present rules of provident fund nomination, a modification of nomination will come into effect from the date on which it is received by the trustees of EPFO.
- Further, the interest of the nominee will be reverted to the original PF account holder if the nominee dies before the provident fund account.
- The provident fund account holder will be, therefore, required to make a fresh nomination in respect of such interest.

#### 4. EPF Nomination Rules 2019

- A person having an EPF account can nominate one or more persons who can receive the PF amount that may stand to his credit in the provident fund account.
- A person nominating more than one person is required to specify the amount or the share payable to each of the nominees in such manner as to cover the whole of the amount that may stand to his credit in the provident fund account.
- The provident fund account holder having a family can only nominate one or more persons belonging to the family. Any nomination made by a PF account holder in favour of a person not belonging to his family will be treated invalid.
- As per EPF Nomination rules only family members can be nominated. Under EPF act, in case of Male member family is defined as –wife, Children, Dependent Parents, Deceased Son's widow and children
- In case of Female-husband, children, her dependent parents, her husband's dependent parents, her deceased Son's widow and children.
- Under Nomination rules family is defined differently for EPF and pension (EPS). In case of EPF member has the option to nominate even his/her parents apart from Spouse and children.
- But in case of Pension Scheme, (EPS) member can nominate only Spouse and children.
- After marriage for EPF, member can nominate parents or any family members. If the member is not having any family, he can nominate anyone. But the nomination becomes invalid, once he acquires a family.
- Under EPF, if there is no nomination entire sum would be paid to family members in equal share. Sons who attained majority and married daughters whose husbands are alive. In case of EPS, if a person is unmarried pension would be payable to dependent father/mother.
- Nomination made for EPF/EPS accounts become invalid on marriage of the subscriber. A fresh nomination is required after marriage of the subscriber.

## Chapter 8. Nomination - Various Assets Classes

**Nomination:** In most of the asset classes, the legal position of the nominee is that the nominee has to act as a trustee and cannot own ownership rights. The money rightly belongs to the legal heirs or to the person nominated in the will of the asset owner. There are exceptions to this rule.

In case of Nomination for the Retirement benefits like Life time arrears, Gratuity, PF and other Service benefits the nominee will receive ownership rights. The employee while making nomination in such a way that he can mention the proportionate rights for each nominee.

In a Nutshell- Nomination with reference to Insurance Policies, Small Savings Schemes, Retirement benefits can create “beneficial ownership”.

Where as in all other cases like Deposits, Shares, Mutual Funds Nomination can create “fiduciary interest” only (Position of Nominee is only a Trustee to the Legal heirs).

Even in Coop Society Flats, Nominee can get the shares /Interest transferred in his/her name. However, the nominee is legally answerable to the other members of the family, if they pursue their case of succession or inheritance against the nominee.

This highlights the imperative need for making a valid “Will” clearly mentioning the legal heirs of the testator, the manner of distribution among legal heirs or other persons on his/her **death**, name of the executor, to manage the estate until its final distribution.

### Effect of Nomination on various asset classes

- 1) Nomination for Bank Accounts** According to Section 45ZA (2)(Banking Regulation Act), nominee merely get exclusive right to receive money from bank.

But he will not derive ownership rights. But point to be noted here is, banking laws will not be concerned about succession acts.

Hence banks responsibility end once they transfer the amount to nominee. But it is the nominee’s legal responsibility to act as a trustee and transfer the money according to succession act. He is answerable to the person nominated in the will if any or to the legal heirs of the deceased.

- 2) Nomination in Government Small Savings Schemes like PPF, SCSS, NSC Etc.**

Small Savings Schemes like PPF, SCSS, NSC, Post Office Time Deposit Schemes do not have the provision to confer ownership rights to the nominee. It is akin to Bank Deposits nomination. Such payment to nominee does not deprive the legal heirs and holders of succession certificate to receive the amount in the hands of the nominee. [Supreme Court decision in VIDYA Vs VISHIN case, October, 2000 and D.G. Posts letter No. 105-26/93-SB dated 5.8.1994]

To obviate this Small Savings rules 2019 amended the Nomination form to include Ownership benefits to the nominee.



In the present Nomination form, there is an option for the account holder to specify nature of entitlement, whether Trustee or Ownership with due share for each nominee. (Form 1)

Small Savings Rules 2019, rules provide Nomination facilities conferring ownership rights to the nominees of accounts like PPF, SCSS, NSC Etc.

**Important Note:** It is very important to exercise nomination facility for Small Savings Accounts like PPF, Senior Citizen Savings Scheme etc.

If account holder dies and there is no nomination at the time of death, the balance in the account, if it is up to Rs.5,00,000, will be paid by the Accounts Office to the legal heirs of the deceased on receipt of application in Form G supported with necessary documents without the production of succession certificate.

If the balance is more than Rs 5,00,000 then production of Succession certificate is mandatory.

**Question: How many persons can be nominated in Govt Small Savings**

**Accounts?**

Maximum four can be Nominated. at the time of opening of the account by furnishing the following information in Form 1: (a) Name(s) of the nominee(s); (b) Percentage shares each nominee shall be entitled to; (c) Whether the nominee shall receive the amount as a beneficiary with absolute and exclusive right of ownership, or as a trustee for the benefit of the legal heirs of depositor.

### 3) Nomination Under Insurance Act 1938

Nominee under Life Insurance Policies derives ownership rights.

A nominee is appointed by the policyholder and can be anyone to whom the policyholder wants to give a valid discharge to the policy monies in case of death of the policyholder during policy tenure.

As per Section 39 of the Insurance Act 1938, as amended by the Insurance Laws (Amendment) Act, 2015 (1) the policyholder of a life insurance may nominate the person or persons to whom the money secured by the policy shall be paid in the event of death. This nomination can be done when effecting the policy or at any time before the policy matures for payment. Where the nominee is a minor, the policyholder has to appoint a person as per the rules of the insurer, to receive the money on behalf of the nominee.

Any immediate family member (like spouse, children or parents) is made the nominee. They will automatically become the beneficial owners of the claim benefits and be referred to as 'Beneficial Nominee'. This means that the death benefit will be paid to beneficial nominees and not to any other legal heir.

### **Question: What will happen if the nominee dies before the policyholder?**

Where the policy matures for payment during the lifetime of the person, whose life is insured or where the nominee or nominees die before the policy matures for payment, the amount secured shall be payable to the policyholder or heirs or legal representatives of the policyholder bearing a succession certificate.

If the policyholder survives till the maturity, all benefits payable under the policy will be paid to the policyholder. In case the policyholder dies after the maturity of the policy but before getting the proceeds and benefits, then the nominee shall be entitled to the proceeds and benefit of that policy.

It is always advisable to nominate an immediate family member to ensure there are no disputes in future between the nominees and legal heirs. A policyholder can change the nominee as many times as he or she wishes. However, the latest nominee supersedes all previous ones. At the time of nomination, always update the insurance policy to avoid disputes later.

#### **4) Nomination in Mutual Funds**

In mutual funds you can nominate up to 3 nominees for single folio and even you can distribute the % of sharing. Nowadays it is mandatory for mutual fund investors to specify whether they want to nominate or not. If they don't want to nominate then they need to declare it by signing. If they want to nominate then they need to declare at least one nominee. Here also nominee(s) to act as the trustee and not vested with ownership rights.

#### **5) Nomination in Shares**

Here also nominee will not ownership rights but the legal heirs. Nominee is an important person; he or she has no rights over the money or shares unless that is specified under the will or the nominee happens to inherit the money.

So as such a nominee is a mere custodian of the Shares.

In the event of a person's death, the Depositories could get in touch with the nominee for further instructions to act on the account. At the time of claiming, the nominee will have to give a proof of his identity to the relevant authority.

## **Chapter 9. Transfer of Title-Immovable and Movable Properties**

### **I. Immovable Property standing in the name of the deceased:**

#### **A. How to Transfer the title to one among the legal heir?**

It is very important for legal heirs to secure the asset after the death of the person in whose name it is registered.

One need to go through legal formalities to obtain ownership of a property.

Formalities may differ based on the nature of the property, individual rights over it, the number of legal heirs and others.

In order to get inherited property transferred in one's name, that person must have substantial proof to claim the rights on the property and inheritance.

In the presence of a Will, the process is relatively simpler; executors are required to administer the property as per the Will.

**Documents Required:** 1. Property Documents- title deed, Old Title deeds, Encumbrance Certificate, Patti, Tax Receipts, Electricity Bill , Water Tax , House Plan and Permit etc.

2. Will

3. Death Certificate

4. Probate where ever applicable.

#### **Title transfer-When there is no Will**

When there is no Will - The plausible and most convenient situation that can arise is that the legal heirs mutually decide amongst themselves and distribute the shares accordingly.

The said distribution can be reduced to writing in terms of a family settlement which can be subsequently registered and the shares be divided in such terms. Typically, in the absence of a Will, appropriate succession laws come into effect.

**Documents Required:** 1. Property Documents- title deed, Old Title deeds, Encumbrance Certificate, Patti, Tax Receipts, Electricity Bill , Water Tax ., House Plan and Permit etc.

2.Succession or Legal heirship Certificate

3. Death Certificate

4. Affidavit

5.Consent Letter from Other Legal heirs.

**Important Points:**

1. The affidavit along with a no-objection certificate from other legal heirs or their successors to be filed for registration. Any consideration that has been paid to other legal heirs towards settlement should be mentioned in the transfer deed.
2. The process is not complete with the registration of documents in one's name. The next task is to apply for mutation of the property title. It is done to record the transfer of a title of an immovable property from one person to another in land revenue records. This is required for the purpose of payment of property taxes, or to transfer or apply for utility connection in the name of the new owner. It also adds evidentiary value in respect of the title to the property. Mutation of property records takes place at the local competent municipal authority office in whose jurisdiction the inherited property is located. The documents required and the fees for mutation of a property differ from state to state.
3. If there is an outstanding home loan or any other loan against the property, one who is inheriting is required to pay the outstanding amount. However, if the deceased owner had a home loan insurance, the insurer pays off the outstanding. Once the payment is made, the inheritor must collect the loan clearance certificate from the lender and the original documents of the property that were given to the lender to avail the loan. Mortgaged property can be transferred only with the written consent of the lender.
4. Also, if the property inherited has been let out, the inheritor become obliged to adhere to the lease agreement signed between the lessee (the predecessor) and the lessor. "If legal heirs are desirous of continuing the lease, then simply an agreement can be executed with the lessee wherein the lessee acknowledges that by operation of law the legal heirs of the deceased shall thereafter be treated as the new lessor.

**B. How to Sell the Property in the name of the deceased?**

One should make sure that there are no encumbrances over the property. In case the property is mortgaged to a Bank, No objection Certificate is required from the Bank for sale of the property. On issuing NOC, Bank will ensure that Title deeds are released only after proceeds are deposited with the Bank and the entire outstanding is cleared.

If the title deeds are free from encumbrance the following documents are required for Sale of The property.

- a. Original Title Deed conveying the title in the name of the deceased.
- b. All other parent title deeds, Revenue records, House Tax, water Tax Receipts, Electricity Bill, Building plan with approval etc.
- c. Nil Encumbrance Certificate
- d. Legal heirship Certificate
- e. All the legal heirs should join together in execution of sale deed and registration. If any of the legal heirs are not available valid POA signed by them is required. If minor interest is involved his interest has to be legally protected.
- f. It will be better to get a title opinion from a Lawyer to give comfort to the purchaser.

## **II. Vehicle Transfer in the name of the deceased**

### **a. Transfer of ownership in case of death of the registered owner:**

The legal heir of the deceased owner has to report to the registering authority within 30 days of the demise of the registered owner and his or her intention to be the owner of the vehicle. The legal heir can use the vehicle for a maximum period of 3 months without transfer of RC.

### **b. Important Points:**

1. The new owner of the vehicle has to submit Form 31 to the registering authority by filling all the details that have been asked in the form.
2. The new owner of the vehicle should submit the form for the transfer of ownership within 3 months of taking actual ownership of the vehicle.
3. The new owner of the vehicle has to make the payment for charges levied by the registering authority for transfer of ownership of the vehicle under Rule 81 of the Central Motor Vehicles Rules, 1989.
4. The legal heir of the insured who is in the custody of the vehicle after the death of the owner should apply for car insurance policy transfer within three months from the date of the death of the insured or until the expiry of the car insurance policy (whichever is sooner)
  - a. Death Certificate in respect of the insured
  - b. Proof of Title to the Vehicle
  - c. Original policy
5. Importance of Transferring Ownership of Vehicle of Deceased

One may think it is not important to transfer the ownership of a vehicle belonging to a deceased.

However, not only would this attract penalty by the concerned authority, but the legal heir driving the vehicle would not be able to get any motor insurance benefits. If the vehicle is involved in an accident, the legal heir will have to bear all related costs as well as pay fines for driving without valid vehicle insurance.

In case the person is gravely injured during the accident, he/she may not be eligible for any personal accident benefits either.

**c. Documents Required for Transfer of ownership if the owner of the vehicle is deceased:**

1. Form 31.
2. Registration certificate of the vehicle.
3. Insurance certificate of the vehicle.
4. Death certificate of the owner of the vehicle who is now deceased.
5. A certificate that verifies the pollution emitted by the vehicle being under control.
6. PAN card of the new owner of the vehicle and Form 60.
7. Copy of Aadhaar card (Date of Birth and Address Proof)
8. Passport size photographs (Two) of the new owner of the vehicle.
9. Legal heirship Certificate
10. Affidavits from the other legal heirs that they had relinquished their rights in favour of the applicant – these affidavits were on printed on stamp paper and notarized

**d. Documents Required for Selling the Vehicle in the Name of the deceased**

In addition to all the above documents the following additional documents are required

1. Succession certificate or legal heirship Certificate.
2. Clearance of Loan if any. NOC from the Bank or Financial institution to remove hypothecation clause from RC (Form 30 and 31 required)

**e. Provision of Nomination Facility for Vehicle Ownership**

The Ministry of Road Transport and Highways has made some amendments in the Central Motor Vehicles Rules, 1989 in order to facilitate those who want to nominate a person in their vehicle registration certificate.

This would be helpful if a motor vehicle will need to be transferred in the name of the nominee in case of death of the owner. As per the amended rules, an owner can put the name of a nominee at the time getting his/her vehicle registered. The nominee can also be added later with the help of an online application. The owner of the vehicle will have to submit identity proof of the nominee.

When the owner of a motor vehicle dies, the person nominated by the vehicle owner in the certificate of registration or the one who is succeeding to the

possession of the vehicle can use the vehicle as his/her own for a period of three months from the death of the owner.

For this, the person will have to inform the registering authority about the occurrence of the death of the owner within 30 days of the occurrence of death.

Further, to transfer the vehicle in his or her name, the nominee will have to apply in Form 31 within the period of three months from the death of the owner of the motor vehicle.

In cases where the owner wants to change the nominee of the motor vehicle in case of contingencies like divorce or division of property, s/he may change the nomination with an agreed Standard Operating Procedure (SOP).

### **III. Gas Connection Registered in the Name of the Deceased**

#### **A. Gas Transfer to Family Member**

IOC and other Gas Companies allow the transfer of the connection to any family member. To transfer the connection from the father who is the transferor to the son who is the transferee, the following documents have to be submitted to the nearest distributor of the relevant gas company.

- a. KYC of the transferee i.e., the son.
- b. The transferee has to also submit the identity and address proof documents.
- c. The transferee has to provide the SV voucher in his name. If he does not have the SV, an affidavit needs to be submitted.
- d. A declaration from the transferee stating the transfer of the connection.

After all the documents that have been submitted by the transferee have been verified, the Gas distributor will make the SV voucher in the name of the transferee.

## **B. Gas Transfer from Deceased Member to Transferee**

If the owner of the Gas connection is deceased suddenly, the connection can be transferred to the legal heir. The following documents need to be submitted:

- a. A declaration from the transferee stating the transfer of the connection.
- b. A copy of the death certificate of the deceased owner.
- c. KYC of the transferee i.e., the son.
- d. The transferee has to also submit the identity and address proof documents.



## Chapter 10. Inheritance by NRI/OCI/Foreign National Relative

### 1. How can a Non-resident Indian (NRI) and an Overseas Citizen of India (OCI) can acquire/inherit immovable property in India?

NRI/OCI can Purchase/acquire/inherit any immovable property in India as follows

- (i) Purchase (other than agricultural land/farmhouse/plantation etc.) from - Resident in India/NRI/OCI
- (ii) Acquire as Gift other than agricultural Land /farm house/plantation etc.) from - Resident/NRI/OCI who is a relative
- (iii) Acquire any immovable property as inheritance from-
  - a. From any person who has acquired it under laws in force (Sec 3c of FEMA)
  - b. Resident Indian.

### 2. How can a Non-resident Indian (NRI) and an Overseas Citizen of India (OCI) can sell /transfer the inherited immovable property in India? or any property in India in their name?

NRI/OCI can sell /Transfer any immovable property in India as follows

- (i) Sell (other than agricultural land/farmhouse/plantation etc.) to -Resident in India/NRI/OCI
- (ii) Sell agricultural Land to- Resident in India
- (iii) Gift other than agricultural Land to -Resident/NRI/OCI
- (iv) Gift agricultural Land to -Resident
- (v) Gift Residential /Commercial property to Resident/NRI/OCI.

#### **Note:**

NRI refers to a person resident outside India who is a citizen of India

Overseas Citizen of India (OCI) is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

Relative is as defined in section 2(77) of the Companies Act, 2013

### 3. Whether Foreign National Can acquire immovable property in India? What is the limit for remitting the proceeds abroad?

Foreign nationals of non-Indian origin resident outside India can acquire immovable property in India by way of inheritance from a resident.

Section 6(5) of FEMA states that a person resident outside India may hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

A person resident outside India (Foreign National) may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was inherited from a person who was resident in India.

May remit up to USD 1 Million in a financial year

**4. What is the limit of sending remittances outside India out of inherited amount?**

RBI approval is required if:

(i) Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year:

- a. on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
- b. by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

All remittances are subject to payment of taxes as applicable in India – Authorized Dealers are to convince themselves on this aspect.

**5. What is the procedure if the money required to be sent is above USD 1 million in a FY?**

Applicant should approach the designated Authorized Dealer/Concerned Bank Branch through which remittance has to be made. It must be noted that all such remittance in a FY should be routed through the same authorized dealer/Branch. The concerned AD Branch of the Bank would send their recommendation along with the application. Normally such remittance would be carried out by the AD bank branch mentioned in RBI approval.

**6. What are the RBI guidelines on sending remittance by NRI/PIO out of sale proceeds of immovable property?**

NRIs/ PIOs can remit the sale proceeds of immovable property (other than agricultural land/ farm house/ plantation property) in India subject to the following conditions:

- i. The immovable property was acquired in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2018;
- ii. The amount for acquisition of the property was paid in foreign exchange received through banking channels or out of the funds held in foreign currency non-resident account or out of the funds held in non-resident external account;
- iii. In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

India or inherited from a person who was resident in India.

**7. What are the RBI guidelines on sending remittance out of inheritance of Securities including immovable properties by Foreign National, NRI and PIO?**

**I. By a Non-Resident Foreign National**

As per Section 6(5) of FEMA, a person resident outside India (Foreign National) may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was inherited from a person who was resident in India.

- a. **A foreign national of non-Indian origin (other than Nepal/ Bhutan/ PIO) may remit such inherited assets up to USD 1 Million in a financial year**
- b. The person is a non-resident widow/ widower and has inherited assets from her/ his deceased spouse who was an Indian national resident in India. **May remits up to USD 1 Million in a financial year**

**II. By and NRI/PIO**

1. From the balances of NRO account – subject to declaration
2. Sale proceeds of assets.
3. Assets acquired from legacy/ inheritance/ deed of settlement.

**May remit up to USD 1 Million in a financial year**

\*Where the remittance is to be made from the balances held in the NRO account, the Authorised Dealer should obtain an undertaking from the account holder stating that “the said remittance is sought to be made out of the remitter’s balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA.”

**8. Which are the cases related to Remittance of Assets for which prior approval of RBI is to be sought for effecting the remittance?**

**Answer:** RBI approval is required if:

(i) Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year:

- a. on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
- b. by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

(ii) Hardship will be caused to a person if remittance from India is not made to such a person.

## **9. What are the Tax implications in respect of remittance of assets?**

All remittances are subject to payment of taxes as applicable in India – Authorised Dealers are to convince themselves on this aspect.

Unquote- To repatriate money outside India, the NRI should approach the Concerned Bank for sending remittance to comply with formalities. For that forms 15 CA and 15 CB may also be required. 15CB contains a certificate from a chartered accountant (CA) in India. The CA will issue certificate information or “Form 15CB” which can be downloaded from the Indian government tax website.

## Chapter 11. Income Tax Implications on Inheritance and Duty of Legal heirs in Tax Compliance

### I. Income Tax implications on Inheritance:

There is no income tax liability on any amount of inheritance. It should be shown as exempted income while filing IT returns.

Also, nothing will be charged to income tax including Stamp duty if any, in respect of immovable property received, (on or after 01/10/2009) without any consideration, even if the stamp duty value exceeds Rs. 50,000 in the following cases

- under a will/ by way of inheritance; or
- in contemplation of death of the payer or donor.

### II. Income Tax on LIC policy proceeds received by the nominee:

- a. **Income Tax on Policy Amount:** Income is fully exempted on Maturity/Death Claims proceeds under Section 10(10D).

As per Section 10(10D) of the Income Tax Act, 1961, any sum received under a Life Insurance Policy, including the sum allocated by way of bonus on such policy is exempt from tax where the sum is received as a death benefit

- b. **Income Tax Implications on Annuity Receipt:**

Annuity payment after the life of policy holder by the spouse – will be taxable as other income.

### III. Income Tax on retirement benefits received by the Nominee of the deceased Employee:

- a. **Gratuity payment to a widow or other legal heirs of any employee who dies in active service** shall be exempt from income tax (**Circular No. 573 dated 21.8.90**)
- b. **Gratuity received by the legal heir after retirement** - to be treated as other income. Exemption rules apply as in the case of retiring employees. Fully Exempt for Govt Employees. Other -**Maximum Rs20 lakhs.**( presently)
- c. **PF amount received by Nominee-Fully Exempt.**
- d. **Leave Encashment**
- Leave Encashment Arrears by the Legal heir of the deceased employee
  - Leave encashment received by Central or State Government employee at the time of retirement or resignation is fully exempt
  - Leave encashment received by legal heirs of deceased Govt employee is fully exempt
  - Leave encashment received by Non-Government employee is exempt up to a maximum of Rs 3 lakh and balance amount if any is taxable as 'income from salary'
- e. **Compensation Received by the legal heirs**-any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster, except the amount received or receivable to the extent such

individual or his legal heir has been allowed a deduction under this Act on account of any loss or damage caused by such disaster.

*Explanation.* —For the purposes of this clause, the expression "disaster" shall have the meaning assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005 (53 of 2005);

#### **IV. Income Tax Implications on Family Pension:**

- a. Family Pension is taxable as other income in the hands of the family pensioner. (Exception: family pension of Ex Servicemen who killed in action is fully exempted from Income Tax subject to conditions)
- b. Standard Deduction on Family Pension- No standard deduction, as Family Pension is treated as Other income.
- c. Income Tax Deduction on Family Pension: Under Sec57(iia) of Income Tax Act- in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or fifteen thousand rupees, whichever is less.

*Explanation.* —For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death;

#### **V. Filing Income Tax returns on behalf of the deceased:**

As per the income-tax rules of India, a deceased person's income-tax returns must be filed for the year in which the person died.

According to Section 159 of the Income Tax Act, 1961, if a person dies, the legal representative shall pay the tax due just like the deceased would have file it if he or she was alive.

In case of deceased Tax Payer One of the legal heirs have to register in e filing website of Income Tax India and file on behalf of the deceased person.

In general, the final individual income tax return of a decedent is prepared and filed in the same manner as when they were alive. All income up to the date of death must be reported and all credits and deductions to which the decedent is entitled may be claimed.

According to the laws, the legal heirs will be held responsible for the non-payment of dues of the deceased. There can be proceedings against them.

Legal heirs will also need to surrender the deceased PAN card after all Tax filing formalities are completed. For this, they need to write an application to the assessing officer (AO) under whose jurisdiction PAN is registered. The letter should contain reasons for surrender - the death of the holder, name, PAN, date of birth of the deceased, and a copy of the death certificate.

PAN card has to be surrendered only after completing other tasks like filing returns, closing bank accounts, and transferring other assets. PAN is a key identification document that legal heirs require along with the death certificate for every transaction.

The returns need to be filed in the name of the legal heir and the executor

Legal heir has to pay the income tax liability and file the returns within the due date to claim refund if any.

Documents required to be uploaded for Legal heir Registration:

All the following documents would also be required to be submitted at the time of registration of legal heir: -

1. Copy of Death Certificate
2. Copy of PAN Card of the deceased
3. Self-attested PAN Card copy of the legal heir
4. Legal Heir Certificate or Affidavit in the presence of a Notary public

For the purpose of Legal Heir Certificate, any of the following documents can be submitted as proof of Legal Heir Certificate: -

- The legal heir certificate issued by the Court of Law
- Surviving Member Certificate issued by the Local Authority
- The family pension certificate issued by the State/ Central Govt
- Letter issued by the Banking or Financial Institution on their letter head, with official seal and signature affixed stating that so and so holding PAN(s), was/were the nominee(s) of the deceased to the account/instrument(s) held in the name of the deceased with the institution and the same was not withdrawn till the death of the deceased

#### Other Relevant Points

1. There would be no other change in manner of computation of taxes or filing or ITR except from the ones mentioned above. The Return of the deceased would be required to be filed in the same format and at the same time as applicable to people who are alive.

2. The Penalty proceedings can also be initiated against the legal heirs. However, the liability of the legal heir would be limited to the extent of the assets inherited by him from the deceased.
3. If there is only 1 legal heir, he/she can act as a legal representative for the purpose of Income Tax.
4. If there is more than 1 legal heir, they should appoint any one of them as the legal heir for the purpose of filing of Income Tax Return. In case they all want to be registered as legal heir for the purpose of income tax – they can jointly file the income tax return; they should file the return in the capacity of AOP (Association of Persons) or BOI (Body of Individuals)



## Chapter 12. Claims and Legal Terms

### I. SETTLEMENT OF CLAIMS UNDER NOMINATION — DEPOSIT ACCOUNTS

On the death of the depositor nominee should approach the branch with death certificate along with identification document of the nominee. Claim form either can be obtained from the branch along with the check list of documents to be given or can be downloaded from the website of the bank.

In addition, the nominee must surrender the pass book and cheque book relating to the account or the deposit receipt as applicable. If the pass book, cheque book or deposit receipt is not available with the nominee and the branch is convinced about the bonafides of the nominee, the same can be waived under special circumstances.

An announcement of death in a newspaper, production of a death certificate or a report from a reliable person etc., is sufficient notice of death to act upon, subject to the obtainment of Death Certificate before settling the claim.

It is advisable to inform the branch concerned about the death of the depositor, before submission of necessary documents.

A claim made by a nominee in an account in respect of which he has been nominated will be settled only by closure of the account and payment of the balance together with interest, where applicable, to the nominee.

Such payments can be made in cash, only if the aggregate amount of the claim including interest is below Rupees Twenty thousand only. If the amount of claim is Rupees Twenty thousand and above, as per Section 269(T) of Income Tax Act, the payment will be made only by an Account Payee crossed Bankers Cheque or Demand Draft or by credit to a bank account of the nominee.

This would constitute full and valid discharge of the Bank's liability. The nominee is not entitled to operate the account of the deceased depositor(s) under any circumstance.

Similarly, no loan will be granted to the nominee against the security of the deposit in the name of the deceased customer.

Where the nominee is not a resident of India and it is sought to repatriate abroad the monies in the account of the deceased depositor (s) the following points should be kept in mind.

a) A non-resident nominee, of Indian nationality, of a deceased depositor(s) would be entitled to the right of repatriation abroad of funds. Subject to Foreign Exchange Management Act. The proceeds will be credited to the NRO account of the nominee. Repatriation from NRO, without RBI approval is permitted up to equivalent of USD one million per financial year (April-March)

b) However, a non-resident account holder has nominated a resident, no reference to Reserve Bank of India would be necessary for transferring the rupee funds to the resident nominee.

In all cases of claims by the nominee, the branch would request the nominee to produce the death certificate or any other acceptable proof of death of the depositor in respect of whose account the claim is being made.

Upon production of evidence of death of the customer as mentioned, the nominee will be provided with the Claim form. The same should be submitted duly completed. In order to ensure that the claims are genuine, the nominee must be identified by any of the following Officials:

- a) A Magistrate or a Judicial Officer
- b) An officer of the Central/State Government not below the rank of a Block Development Officer
- c) An officer of Reserve Bank of India or State Bank or a Public Sector Bank other than the Bank of the Customer. (Depends upon each Bank's guidelines)
- d) Any two respectable persons acceptable to the Bank.

The Claim Form duly completed above together with the death certificate and documents mentioned in above must be tendered by the nominee to the branch for settlement of the claim.

After verifying the documents submitted by the nominee, the branch will ensure that:

- a) the nomination in favour of the claimant is in force and there is no variation or cancellation.
- b) that there is no lien on the monies claimed and that there is no liability outstanding against the deceased customer that would necessitate the exercise of the Bank's right of set-off against the monies claimed.
- c) that no order of any court has been received restraining payment of the amount to the nominee.
- d) if the claim is for amounts lying in a Savings Bank Account of a deceased pensioner, branch would ensure that no pension payment has been made for the period subsequent to the death of the pensioner.

Amounts held in Term Deposits may be paid to the nominee (after satisfying the above formalities for the claim) by foreclosing the deposit before maturity if the nominee so desires without applying the penalty applicable for premature closure. If the nominee wants the money to be paid on maturity, the branch will do so.

Interest on amounts held in term deposit accounts in the name(s) of the deceased depositor(s) may be paid to the nominee in the manner indicated below:

Interest on amounts held in term deposit accounts in the name of the deceased depositor(s) may be paid to the legal heirs/representatives of the deceased depositor in the manner indicated below:

- (a) at the contracted rate on maturity of the deposit;

(b) at the appropriate rate for the period for which the deposit has remained with the Bank, without charging penalty in the case of payments claimed before maturity date of the deposit;

(c) In the event of death of the depositor before the date of maturity of the deposit and the amount of deposit is claimed after the date of maturity, the interest should be paid at the contracted rate till the date of maturity. From the date of maturity to the date of payment, simple interest is to be paid at the applicable rate operative on the date of maturity, for the period for which the deposit remained with the bank beyond the date of maturity. However, in the case of death of the depositor after the date of maturity of the deposit, interest should be paid at Savings Deposit rate (operative on the date of maturity) from the date of maturity till the date of payment.

(d) In the case of FCNR and NRE deposits, where the deposit is claimed after the date of maturity of the deposit, interest should be paid at the contracted rate till the date of maturity. From the date of maturity till the date of settlement of the claim, interest as permissible under the directive of interest rate on FCNR/NRE deposits operative on the date of maturity of the deposit should be paid.

(e) Interest should be paid at the rate of interest applicable in respect of Savings Bank accounts, from the date of death till the date of settlement of claim in the following cases

- i) Credit balances lying in the Savings Bank accounts of individual depositors;
- ii) Credit balances lying in the current/cash credit accounts of individuals;

## **II. SETTLEMENT OF CLAIMS WHERE NOMINATION HAS NOT BEEN OBTAINED**

### **SETTLEMENT OF CLAIMS**

The disposal of the assets held on account of deceased constituents could be done by way of:

- a) Settlement of claims in favour of the nominee where Nomination has been obtained
- b) Settlement of claims against legal representation such as:
  - (i) Succession Certificate
  - (ii) Letters of administration
  - (iii) Probate of the Will of the deceased constituent
- c) Settlement of claims (not supported by legal representation) against indemnity.

Branches normally will not insist for production of Succession Certificate by the legal heirs of the deceased depositor irrespective of the amount involved for deposits and credit balances held in the name of the deceased depositors and can settle such deposits and credit balance, subject to the norms and satisfaction of the bank.

### **III. SETTLEMENT OF CLAIM WITHOUT LEGAL REPRESENTATION AND WITH LEGAL REPRESENTATION**

Each Bank Branch is vested with discretionary powers according to the grade of the branch Manager.

All the claims will be sanctioned at the appropriate level concerned. When the claim is supported by legal representation such as Succession Certificate, Letters of Administration, Probate of the Will of the deceased, etc., the concerned the Regional Office of the Bank or the Branch Manager has powers to admit the claim irrespective of the amount involved.

#### **III. a. CLAIMS SUPPORTED BY LEGAL REPRESENTATION**

- a) prescribed claim form to be submitted
- b) Legal representation in original or a true copy of it duly attested by the Branch Manager, who should personally compare the copy with the original before attesting it. Legal representation would mean any of the following:
  - i) Letters of Administration or
  - ii) Probate of the Will of the Deceased or
  - iii) Certificate issued by Administrator General or
  - iv) Succession Certificate
- c) Letter of Administration for gold ornaments held as security for loans, articles in safe custody, articles in safe deposit lockers.

Note- Whenever the claim is supported by legal representation, Banks will not insist upon production of death certificate, legal heirship certificate and affidavit.

#### **III.b. CLAIMS NOT SUPPORTED BY LEGAL REPRESENTATION**

WHERE THE CLAIM HAS BEEN MADE WITHOUT LEGAL REPRESENTATION BUT ON THE BASIS OF THE CLAIM PAPERS SUPPORTED BY INDEMNITY

In cases of waiver of legal representation, the following points/aspects will be verified by the Bank.

- a) What is the religion of the deceased - was he/she a Hindu, Christian, Mohammedan or a Parsi or belonging to any other religion?
- b) If the deceased was a Hindu, did he/she die leaving a Will or died intestate (i.e., without leaving a Will)?
- c) If there is no Will left by the deceased, then the legal heirs will be determined according to the law applicable to the religion of the deceased. Whether the claimants are entitled to make the claim is to be decided with reference to their being admitted as legal heirs by the applicable law.

#### IV. COMMON DOCUMENTS FOR ALL CLAIMS IRRESPECTIVE OF THE AMOUNT

- a. Claim form duly filled in and signed by the claimant(s)
- b. Death Certificate in original issued by Corporation/Municipality/Panchayat Union Office/ Village Munsiff/Village Administrative Officer.
- c. Consent letter from the legal heirs other than the claimant(s) authorising payment to be made to the claimant(s) as per prescribed format.
- d. Consent letter authorising the claimant(s) to receive the amount/articles on behalf of the executant(s).
- e. However, at the time of settling the claim, the Indemnity has to be signed by all the legal heirs including the claimant(s). To avoid this difficulty, the legal heirs other than the claimant(s), if they so desire, may give a consent letter - cum-Power of Attorney as per prescribed format for each Bank, so that the claimant(s) alone can sign the receipt and Indemnity for self and as Power of Attorney holder of other legal heirs executing the Power of Attorney.
- d. A letter from the guardian of a minor legal heir confirming utilisation of minor's share for the benefit of the minor in the prescribed format, if any minor's share is involved.
- e. Where the deceased was a Mohammedan. certificate from MUSLIM JAMA-I-ETH is required.
- f. Where the deceased was a Mohammedan and where the branch is definite beyond doubt about the genuineness of the claim, bonafides of the claimant(s) and details of all the legal heirs of the deceased, a Certificate from the MUSLIM JAMA-I-ETH in their letterhead, signed by the head of the institution to which the deceased was affiliated would be insisted upon.
- g. Such certificate should give details of subject, details of the legal heirs with their age. In case the deceased was a Mohammedan Male, a categorical certificate to the effect that the deceased had not married any woman other than the one(s) named in the list, should be obtained.
- h. Legal heirship certificate, where possible, should be obtained from concerned Revenue authorities within whose jurisdiction the deceased lived.
- i. Consent letter(s) from the other legal heirs to pay the amount/deliver jewels etc., to the claimant(s) are to be duly attested either by the Magistrate or Notary or a Gazetted officer of the Central/State Government or an advocate or by the Branch Manager if the executants are known to him/her.  
If the Branch Manager or Advocate or Gazetted Officer attests the consent letter, he/she should state that the signatories were present before him/her and signed in his/her presence

- j. Joint stamped receipt after settlement of claim by all legal heirs. In case if consent letter cum Power of Attorney as per prescribed format is obtained, claimant(s) alone can sign receipt.

## **V. CLAIMS SUPPORTED BY PROBATE/LETTER OF ADMINISTRATION**

**V. a.** Probate or Letter of Administration is legally mandatory to act upon the Will if the Will was executed by:

- (i) Indian Christians
  - (ii) Hindus, Buddhists, Sikhs, Jains and Parsis:
    - a) Within the provinces of Bengal, Bihar, Orissa and Assam or Within the city limits of Bombay, Madras and NCR of Delhi
- OR
- b) Outside the limits of those cities but relating to the immovable properties situate within the limits of those cities.

**V. b.** Probate or Letter of Administration is not legally mandatory to act upon the Will, if the Will was executed by:

- (i) Mohammedans
  - (ii) Hindus, Buddhists, Sikhs, Jains and Parsis
    - (a) Outside the provinces of Bengal, Bihar, Orissa and Assam or the city limits of Bombay and Madras
- Or
- (b) Outside the limits of those provinces and Outside the limits of those cities and relating to immovable properties situate outside the limits of those provinces and outside the limits of those cities.

## **VI. CLAIMS BASED ON WILL**

a) In case of claims based on Wills, branches will insist for a Letter of Administration / Probate irrespective of the amount involved in respect of claims based on a Will the probate of which is legally mandatory.

b) Branches normally will not insist for a Letter of Administration/Probate irrespective of the amount involved in respect of the claims based on a Will the Probate of which is not legally mandatory.

c) In respect of claims based on Will - Banks will

(i) Obtain a consent cum no objection letter to be executed before a Notary Public from all the legal heirs irrespective of the fact whether the deposit/ credit balance is bequeathed to any one or more or to all the legal heirs or to any person(s)/ who is(are) not legal heir(s) and recommend for settlement of claim based on the Will waiving Letter of Administration or Probate.

(ii) However, if all or any one of the legal heirs refuse to give such a consent cum no objection letter, branches would insist for a Probate or Letter of Administration irrespective of the amount involved. This Notarised consent cum no objection letter should be obtained in addition to regular claim papers such as Indemnity, prescribed Claim form, Consent letter etc.

Branches are at liberty to insist on production of Succession Certificate, Letter of Administration or probate from legal heirs of the deceased depositors for settlement of deposits and credit balance, articles in safe custody/ safe deposit lockers and

pledged jewels held as security, irrespective of the amount involved, whether the claim is based on Will or not, where there are disputes among the legal heirs/ claimants or all the legal heirs do not join in indemnifying bank by executing indemnity bond.

In some cases, the amount mentioned in the court orders, viz. Succession Certificate/Letter of Administration /Probate, may be lesser than the amount to be paid to the claimant(s). If the difference is only due to the accrual of interest, the claimant is entitled to such portion of interest also and banks may include the same in the claim amount to be settled.

However, in case, certain deposits amounts only are mentioned in these documents and the other deposit amounts held by the deceased depositor are left out, bank would settle only the amount mentioned in the Court order with interest and call for an extension certificate in respect of the amounts left out.

## **VII. ARTICLES IN SAFE CUSTODY / SAFE DEPOSIT LOCKER AND PLEDGED JEWELS**

In the case of jewels under pledge/articles in safe custody/Safe Deposit, the proper form of legal representation is either Letter of Administration or a Probate where there is a Will.

This is so under Section 370 of the Indian Succession Act. A Succession Certificate can be granted only in respect of debts and securities and not for any kind of property. It cannot be granted in respect of ornaments pledged by the deceased with the Bank by way of security for the debt which the bank had advanced as it is not the debt due from the bank and for articles entrusted with bank for safe custody/safe deposit locker. Normally Banks may not insist On Letter of Administration or Probate to release articles in safe custody / safe deposit lockers and pledged jewels to the extent of the value not exceeding Rupees Twenty-five thousand. (This Limit depends upon the Bank and as per extant guidelines).

For obtaining Letter of Administration/ Probate or for submission of claim papers for admittance of claim without production of legal representation an Inventory of the articles in Safe Custody and Safe Deposit Lockers would be made by the Manager in the presence of the legal heirs, two independent witnesses and the bank officials.

In doing so, any sealed packets would not be opened and should be noted in the inventory list as such.

## **VIII. IMPORTANT POINTS**

Upon the death of the sole depositor in the case of deposit in the name of an individual, or upon the death of one or all of the depositors in a deposit in the names of two or more individuals, the name(s) of the deceased depositor(s) in the deposit cannot be substituted by the name of the nominee. The name of the nominee cannot also be added to the name(s) of the surviving depositor(s). In other words, under no circumstance, can a branch permit the nominee to become the depositor under the same account. The role of the nominee is only to receive the proceeds of the deposit in the event of death of all the depositor(s).

Similarly, granting of a loan to a nominee against the deposit standing in the name of the deceased.

By making payment of the deposit amount to the nominee, the bank gets a good and valid discharge. It is entirely the responsibility of the nominee to account the money with the legal heir(s) of the deceased and bank is in no way concerned with it.

If the nominee so desires, a deposit can be accepted from him/her, even though such deposit may be made by the nominee out of the proceeds of the deposit of the deceased customer, after the claim has been settled in favour of the nominee. Such deposits should not be construed as the funds of the deceased depositor and hence loans can be granted by the bank against the security of such deposits in the name of the nominee, (now turned depositor).

## **IX. LEGAL HEIRS**

The legal heirs and their order of priority for settlement of claims under each religion viz. Hinduism, Christianity, Islam, Zoroastrianism (Parsi) or any other religion are given below

If the deceased was a male Hindu who died intestate the following are the legal heirs in the order of preference:

### **CLASS I LEGAL HEIRS**

“Son; daughter; widow, mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son.”

### **CLASS II LEGAL HEIRS - (In the absence of Class I Legal Heirs)**

- Entry 1. Father.
- Entry 2. a) Son's daughter's son (b) Son's daughter's daughter c) brother (d) sister
- Entry 3. a) daughter's son's son (b) daughter's son's daughter c) daughter's daughter's son (d) daughter's daughter's daughter
- Entry 4. a) brother's son (b) sister's son c) brother's daughter (d) sister's daughter
- Entry 5. a) father's father (b) father's mother
- Entry 6. a) father's widow (b) brother's widow
- Entry 7. a) father's brother (b) father's sister
- Entry 8. a) mother's father (b) mother's mother
- Entry 9. a) mother's brother (b) mother's sister

NOTE: The heirs in class I shall take simultaneously to the exclusion of all others and those in the first entry in class II shall be preferred to those in the second entry and so on in succession.

If the deceased was a female Hindu, the following are the legal heirs if she was married, in the order of priority;

- a. Sons and daughters (including the children of any predeceased son or daughter) and the husband
- b. Heirs of the husband
- c. Mother and father
- d. Heirs of the father
- e. Heirs of the mother.



Any property inherited by a female Hindu from her father or mother shall devolve in the absence of any son or daughter, upon the heirs of the father. On the other hand if any property inherited by a female Hindu from her husband or father-in-law shall devolve in the absence of any son or daughter, upon the heirs of her husband.

If the deceased was a Hindu female spinster, the following are her legal heirs in order of preference.

- a. Mother and father
- b. Heirs of the father
- c. Heirs of the mother

If the deceased was a Christian, the intestate succession is governed by Indian Succession Act, in terms of which the following legal heirs take the shares:

- a). If the intestate has left a widow, one third shall belong to the widow and the remaining two-thirds shall go to the lineal descendants (sons and daughters) in equal shares.
- b). If the intestate has left no lineal descendants, one half shall go to the widow, and other half shall go to the kindred in the order mentioned below:
- c). If the intestate has left no widow, his property shall go to his lineal descendants in equal shares.

The order of succession among the kindred is as follows:

1. If the intestate's father is living, he shall succeed to the property.
2. If the intestate's father is dead but intestate's mother is living and there are brother(s) and sister(s), the mother and each living brother(s) and sister(s) shall succeed to the property in equal shares.
3. If the intestate's father is dead and there is neither brother nor sister nor child/children of any predeceased brother(s)/sister(s), the property shall belong to the mother in such a case.
4. If the intestate is not survived by parents the property shall be divided equally among the brother(s) and sister(s) including child/children of any predeceased brother or sister.

Note: 1. A husband surviving his wife has the same right as a widow has.

2. The child/children of any predeceased son/daughter/brother/sister shall succeed only to the share of such predeceased son/daughter/brother/sister in the property of the intestate.

3. Those in one entry are preferred to those in the subsequent entries.

If the deceased was a Parsi intestate, his property shall be divided as follows:

I. (a) Where he dies leaving a widow and children, among the widow and children, so that the share of each son and of the widow shall be double the share of each daughter

or

(b) Where he dies leaving children but no widow, among the children, so that the share of each son shall be double the share of each daughter.

II. Where a male Parsi dies leaving one or both parents in addition to children or a widow and children, the property of which he dies intestate shall be divided so that the father shall receive a share equal to half the share of a son and the mother shall receive a share equal to half the share of a daughter.

The property of a female Parsi dying intestate shall be divided as follows:

a) Where she dies leaving a widower and children among the widower and children so that the widower and each child receive equal shares

or

b) Where she dies leaving children but no widower, among the children in equal shares.

If the deceased was a Mohammedan, male or female, succession in the absence of a will is governed by the law of the Sect, Sunny or Shia to which the deceased belonged. The shares which each legal heir would get would vary according to the sect to which the deceased belonged and the number of legal heirs available. As the demarcation of relative share of a legal heir is difficult to ascertain in the absence of thorough knowledge of the law of the Sect and full details of all legal heirs available, we normally insist upon a succession certificate unless the amount involved is small and bonafides of claimants are beyond all doubt.

## **Chapter 13. Characteristics of a Will and common Legal Terms**

### **What is A Will?**

A Will is a document which divides and transfers property after one's death to the people or institutions chosen in the document. It is generally made to distribute the property and assets of the person. A will can also be made in case where there are children (minor), and the question of their guardianship comes up.

A Will is a document, considered as a legal declaration of the intention of a Testator about the distribution / disposal of his possessions / assets / properties etc. after his death. The Will would specifically have details of all considerations that the Testator has in mind, to carry out his wish in this regard, after his death.

### **Who can write a Will?**

- A person who has assets and desire those assets to be inherited by certain specific persons, can write a will;
- He / She should be a Major i.e., 18 years of age or more;
- Should have a sound disposing mind; & Should not otherwise be debarred from making a Will by any competent authority.

### **What is meant by Probate of a will?**

It is the certified copy will under the seal of competent court allowing the administration of the estate of the maker.

According to Section 2 of the Indian Succession Act, 1925, Probate means "the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration of the estate of the testator".

It is nothing but a decree passed by a competent court declaring the legality/correctness and genuineness of the Will of the deceased

The legal process that takes place after a person has died, to pay his lawful creditors and to transfer his assets to his beneficiaries is called probate.

Generally, a probate is advisable in all cases and is necessary in cases of will dealing with immovable property.

### **Is probate of will is mandatory?**

A probate is mandatory when a Will is made in the State of West Bengal, Bihar, Orissa, Assam, NCR of Delhi and municipal limits of metro cities of Chennai and Mumbai, respectively.

Wills that are made outside these territories but where the property is situated in these territories also require a probate.

Under Section 212(2) of the Indian Succession Act, 1925, Hindus, Muslims, etc. are not bound to apply for letters of administration (Probate). It is optional and not mandatory for these persons to seek probate of the Will.

So, unless covered by any of the above cases, a probate of a Will is not mandatory.

However, there is no restriction in law to get a probate of a Will, even if it is not mandatory.

Obtaining a probate is advisable, in cases where there is a probability of the validity of the Will being contested in future on any ground.

A probate, though it takes time to obtain and may cost a tiny percentage of the inheritance (court fees + the lawyer's fees), is essential, if there are multiple assets to handle, and those immovable properties are present in various states.

Also, a probate, a completely fool-proof way of the handling high-value properties.

### **Is it necessary to Register the Will? Is unregistered will is valid?**

All wills need not be registered. Registration of a will simply means that the maker of the will and the witnesses have appeared before the registering authorities and that their identity has been verified.

Registration of instruments is governed by the Registration Act, 1908. Under this Act, a will is not needed to be registered, and an unregistered will is also valid.

Though Registration of a Will is not mandatory, it is advisable to register the Will at the Sub Registrar office to add to its authenticity.

There is no stamp duty payable on Registration of the Will. However, applicable registration charges have to be paid

Both registered and unregistered will can be probated.

### **When and how to get the will probated?**

The probates are granted to the executor or executors (in succession, in case more than one is named), by the High Court, with a copy of the will attached.

One can apply for a probate after seven days of the death of the Testator. (or the person who makes the will and also the owner of the property to be distributed).

The application for probate, need to make with the help of a lawyer or an advocate, to the High Court, under whose jurisdiction the property might fall.

### **What are the characteristics of a Will and its requirements?**

The Will document should have:

- All necessary identifiers of the Testator should be mentioned in the Will. This includes but not limited to Name, Age, Religion, Address etc.
- A declaration made by Testator to the effect that the present Will is his/her last Will and all other earlier Wills and Codicils are hereby revoked.

- Clear information about who are the beneficiaries and what is their relationship with the Testator as well as what assets will be given in what proportion to which beneficiary.
- Specific special clauses which will make a specific beneficiary eligible or non-eligible to inherit the share of the assets of the person (Testator) and conditions, qualifications for the same.
- Mention about the Will to take effect after the death of the Testator and if necessary, also mention about who will be responsible for the execution of the Will (Executor's name).
- A Will must be attested by minimum two persons as witnesses who shall put their signatures in presence of the Testator  
And the Testator should sign the Will in the presence of the witnesses. Beneficiaries cannot be the witness.
- Will can be modified or altered at any time and any number of times by the Testator during his life time.
- Will is revocable during the lifetime of the Testator. As long as a Testator is living, he may, at any moment, cancel his Will and make a totally different disposition of his properties.

### **Who are the parties to a Will?**

- Testator is the person who declares his wish in the Will regarding the disposal of his properties after his demise.
- Executor/s is/are appointed by the Testator, to ensure that the assets are distributed as desired by him/her in the Will. (Optional)
- Beneficiary/ies is / are the person/s to whom the benefits are passed through the Will.
- Witnesses—Two persons.

### **Who can be a witness to the Will?**

Witness to the Will can be anyone who is/ are above 18 years of age and of sound mind and capable to enter into a Contract. It is recommended that the beneficiary/ies should not be the witness to the Will.

### **How many witnesses are required?**

There should be minimum Two witnesses to the Will.

### **What all assets can be covered under the Will?**

All movable as well as immovable assets including Real Estate, Fixed Deposits, Money in Bank Account(s) Securities, Bonds, proceedings of Insurance Policies, Retirement benefits, Art, precious metals (Gold, Silver etc.), Brands, Goodwill, digital assets (photographs, sketches, blogs, websites, email accounts such as Gmail, yahoo etc. and with social websites such as Facebook, Twitter etc.) and Intellectual Property Rights etc. including what they are and the method and manner of their storage, can be covered under the Will. In short, any assets that the Testator has in his ownership, at the time of his death can be included and distributed as per the desire of the person.

### **Who all can be included as beneficiaries to the Will?**

All the Testator's loved ones who may include the Testator's spouse, children, step-children, parents, grandparents, grandchildren, friends, relatives and/or any institution like School/s, Temple/s, Community Trust/s, Charitable Trust/s, etc. to whom the Testator wishes to pass on any benefit can be included as the beneficiary/ies in the Will document.

### **Do I need to sign my Will in front of the doctor?**

No. However, it is advised that you attach a fitness certificate from your family doctor along with the Will attesting the soundness of mind.

### **Is Will required to be printed on a stamp paper?**

No; the Will can be written on plain paper of any convenient size. It is also not necessary that Will has to be written on legal size paper. In addition, the Will can be hand written and is not necessary to be in typed form. However, for clear legibility and avoid any ambiguity arising due to hand writing, typing in a font size which is naturally readable, is recommended.

### **Can the Testator bequeath/mention the ancestral Immovable Properties (Assets) situated in India?**

The Testator should not bequeath/mention any ancestral property /assets not owned by him, unless such property or a share in such property has devolved upon him / come to his possession legally by following due process of law.

### **Can the Testator bequeath /mention the Immovable Properties (Assets) situated outside India?**

No, Testator cannot bequeath/mention the details of the Immovable properties (assets) held outside India. The properties held and owned outside India are governed by the laws of that country where the property is situated and hence, it is advisable to prepare a separate Will for the assets held outside India in accordance with the laws applicable in that country

## **Who can be appointed as an Executor to a Will?**

Anyone who is / are above 18 years of age and of sound mind and capable to enter into a Contract, can be appointed as an Executor/s to the Will.

One can appoint multiple Executors, one as a primary executor and others as alternate executors.

The Testator has the option to appoint any of his relatives or friends as Executor and mention it in the Will Document.

If the Testator chooses to appoint a professional agency as an Executor, these services are separately availed and paid for as per the terms of the agency who is appointed as an Executor.

Executor is appointed in will. To act as Executor, will has to be probated.

If a person dies intestate or there is no Executor appointed in will, Court will grant letter of Administration, to deal with the estate of the deceased.

## **Common Terms associated with the Will writing process**

### **Intestate:**

A person who dies without leaving a “Will” is said to have died intestate; as per the applicable personal law of the deceased, all his legal heirs, are entitled to the assets of the deceased.

### **Testator:**

A person who makes and executes a Will is called the Testator

### **Will / Testament:**

A written statement of Testator’s wishes providing for the disposition of his / her property after his/her demise.

### **Beneficiary:**

A person, who is entitled to the asset under a “Will” is called a beneficiary. Any person can be a beneficiary, including a Charitable organization or even a public or a private Trust.

### **Minor:**

(i) any person, subject to the Indian Majority Act (Section 9), 1875 who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years;

(ii) a person who person or property, or both, a guardian under the Code of Civil Procedure, 1908 has been declared or appointed, then he shall be deemed to have attained his majority on completion of his age of 21 years and not before;

(iii) and “minority” means the status of any such person.

**Attestation of / attesting a Will:**

Attestation means signing a document for the purpose of testifying the signature of the Testator

**Executor:**

A person, who is appointed to look after, administrate and distribute the assets of the Testator, upon his demise, is called an Executor.

**Probate:**

It is a process to establish that a "Will" is valid. It is understood as an order given by the Hon'ble Court, certifying the "Will" as valid.

**Letters of Administration:**

A letter of administration is an order granted by the Court to a person appointed to settle deceased persons affairs in accordance with a Will where the Testator has failed to appoint an Executor under a Will or where the Executor is appointed under a Will refuses to act or has died before or after proving the Will but before administration of the estate or in case of intestacy.

**Codicil:**

A codicil is a document that is executed by a person who had previously made his or her Will, to modify, delete, qualify, or revoke provisions contained in it.

A Codicil is a part of the existing Will similar to an addendum but is not a new Will.

**Succession Certificate:**

An Order issued by an Hon'ble Court certifying the person(s) entitled to the estate of a deceased person and extent thereof.



## Chapter 14. Check List for Legal heirs

After the initial shock of sudden loss of the family member and after the grief period the legal heirs have to accept the reality and should move forward to fulfil the desire of the deceased duly upholding the cherished values of the deceased. Though it may look unpleasant or little bit awkward to discuss financial issues, it is better to realize that certain things cannot be postponed forever. Also, it will be difficult to get the assembly of legal heirs or other stake holders to discuss, sort out and execute certain documents. The important to do list is as follows

1. If the spouse of the deceased is alive, it is the first and foremost duty of the Son/Daughter, Children to give comfort and assurance that they will stand by the parent to take care of their interest
2. At any cost, please avoid confrontation or discussion as who has to look after the parent in the changed circumstances.
3. Try to sort out financial issues amicably.
4. Get the death certificate of the deceased. Check the name, age and other particulars are correct, try to incorporate Aadhaar number in death certificate if possible. Also, it is better to get the correct cause of death mentioned in the death certificate. This is important in case of Serving employees who died due to Covid 19. Front line Workers and employees of certain organizations can get insurance benefits and other special compensation, if the death is due to pandemic illness. Get as many copies of Death Certificates (original) depending upon the need, the number of legal heirs, Investments in the name of the deceased.
5. If the parent is capable of handling financial issues, just support him/her to deal with the financial assets left by the deceased.
6. In case both parents are not alive, entrust the task of gathering information of financial assets and other documents either to the elder in the family or the heir who is living in the place of deceased and capable of getting things done.
7. If there is any Will and it needs to be probated take the help of a legal counsel.
8. Take action to get the legal heirship Certificate.
9. If there is Vehicle in the name of the deceased-it requires priority in action. Inform Concerned RTO about the death of the vehicle owner.
10. Inform the Ex-employer of the deceased.
11. Certain organizations reimburse funeral expenses. Check and comply with the requirements.
12. Inform the Banks where the deceased was having account. If the deceased took Group Life Insurance linked to Bank account, check and claim the same within the stipulated period.
13. In case of accidental death, check and Bank account linked group accidental death cover is available.
14. Also, for accidental deaths, Cover is available in Certain debit and credit cards. Check and apply for the same.
15. For death occurred due to accident on road or involving Motor Vehicles, make claim under Motor Vehicles Amendment Act. (2019)

16. Check the number of insurance policies of the deceased and take action to claim the policy benefits under each policy. Check for any annuity policy and claim pension benefits on that. Inform the Insurance Companies about the death of the policy holder.
17. If the spouse is eligible for family pension apply for the same.
18. Have a discussion and plan as how to apportion the assets of the late individual.
19. In case some of the legal heirs are likely to go abroad and may not be available for execution of certain documents it is preferable to get a Registered Power of Attorney favouring the local legal heir. This will help in settling Bank Accounts and other dues.
20. Make sure to comply with income Tax provisions. For inheritance though the income is exempted, documentary evidence needs to be kept. If the deceased was income assessee take action to comply with Income Tax formalities like remittance of tax and filing ITR on behalf of the deceased.

**Annexure -I**

**Important Medical Information: Name.....Updated on.....**

1	Name	
2	Age	
3	DOB	
4	Address	
a	Permanent	
b	Local	
5	Contact Numbers	
a	Mobile	
	Spouse	
	Son	
	Daughter	
	House	
	DIL/SIL	
	Close Friend	
6	Blood Group	
7	Existing Health Issues	

	Important Medical Information	Name-
8	Known Allergic Medicines	
9	Surgeries Underwent	
10	Current Medication	
	SOS	
11	Family Doctor	Name-Contact No
12	Doctors Treating/Treated	Name-Contact No

## **Annexure II- Some Important RBI guidelines on Bank Accounts**

### **I. Repayment of Term/Fixed Deposits in Banks**

#### **A. Joint accounts-E or S clause**

Some banks insist on the signatures of both the depositors to allow repayment of money in fixed/term deposits, though the deposit account is opened with operating instructions (sometimes called 'repayment instructions'), 'Either or Survivor' or 'Former or Survivor'. Such insistence on the signatures of both the depositors has the effect of making the mandate given by the depositors redundant. This, in turn, results in unjustified delays and allegations of poor customer service.

1. It is clarified that if fixed/term deposit accounts are opened with operating instructions 'Either or Survivor', the signatures of both the depositors need not be obtained for payment of the amount of the deposits on maturity. However, the signatures of both the depositors may have to be obtained, in case the deposit is to be paid before maturity. 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 on maturity.

2. In case the mandate is 'Former or Survivor', the 'Former' alone can operate/withdraw the matured amount of the fixed/term deposit, when both the depositors are alive. However, the signature of both the depositors may have to be obtained, in case the deposit is to be paid before maturity. If the former expires before the maturity of the fixed/term deposit, the 'Survivor' can withdraw the deposit on maturity. Premature withdrawal would however require the consent of both the parties, when both of them are alive, and that of the surviving depositor and the legal heirs of the deceased in case of death of one of the depositors.

3. If the joint depositors prefer to allow premature withdrawals of fixed/term deposits also in accordance with the mandate of 'Either or Survivor' or 'Former or Survivor', as the case may be, it would be open to banks to do so, provided they have taken a specific joint mandate from the depositors for the said purpose. In other words, in case of term deposits with "Either or Survivor" or "Former or Survivor" mandate, banks are permitted to allow premature withdrawal of the deposit by the surviving joint depositor on the death of the other, only if, there is a joint mandate from the joint depositors to this effect.

4. It has come to our notice that many of the banks have neither incorporated such a clause in the account opening form nor have they taken adequate measures to make the customers aware of the facility of such mandate, thereby putting the "surviving" deposit account holder(s) to unnecessary inconvenience. Banks are, therefore, advised to invariably incorporate the aforesaid clause in the account opening form and also inform their existing as well as future term deposit holders about the availability of such an option.

5. The joint deposit holders may be permitted to give the mandate either at the time of placing fixed deposit or anytime subsequently during the term / tenure of the deposit. If such a mandate is obtained, banks can allow premature withdrawal of term / fixed deposits by the surviving depositor without seeking the concurrence of the legal heirs of the deceased joint deposit holder. It is also reiterated that such premature withdrawal would not attract any penal charge.

6. When a fixed deposit account is opened in the joint names of two depositors on 'Either or Survivor' basis and the said joint depositors already have a savings bank account in their names jointly on 'Either or Survivor' instructions, on maturity of the fixed deposit, proceeds of the matured fixed deposit can be credited to the joint savings bank account already opened in the bank. There is no need for opening a separate savings bank account in the name of the first depositor for crediting the proceeds of the fixed deposit.

## **B. Accounts with Survivor/Nominee clause**

In the case of deposit accounts where the depositor had utilized the nomination facility and made a valid nomination or where the account was opened with the survivorship clause ("either or survivor", or "anyone or survivor", or "former or survivor" or "latter or survivor"), the payment of the balance in the deposit account to the survivor(s)/nominee of a deceased deposit account holder represents a valid discharge of the bank's liability provided:

- a. the bank has exercised due care and caution in establishing the identity of the survivor(s) / nominee and the fact of death of the account holder, through appropriate documentary evidence;
- b. there is no order from the competent court restraining the bank from making the payment from the account of the deceased; and
- c. it has been made clear to the survivor(s) / nominee that he would be receiving the payment from the bank as a trustee of the legal heirs of the deceased depositor, i.e., such payment to him shall not affect the right or claim which any person may have against the survivor(s) / nominee to whom the payment is made.

It may be noted that since payment made to the survivor(s) / nominee, subject to the foregoing conditions, would constitute a full discharge of the bank's liability, insistence on production of legal representation is superfluous and unwarranted and only serves to cause entirely avoidable inconvenience to the survivor(s) / nominee and would, therefore, invite serious supervisory disapproval. In such case, therefore, while making payment to the survivor(s) / nominee of the deceased depositor, the banks should desist from insisting on production of succession certificate, letter of administration or probate, etc., or obtain any bond of indemnity or surety from the survivor(s)/nominee, **irrespective of the amount** standing to the credit of the deceased account holder.

### **C. Accounts without the survivor / nominee clause**

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 required 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.

### **D. Interest payable on the deposit account of deceased depositor**

In the case of a term deposit standing in the name/s of

- i. a deceased individual depositor, or
- ii. two or more joint depositors, where one of the depositors has died,

the criterion for payment of interest on matured deposits in the event of death of the depositor in the above cases has been left to the discretion of individual banks subject to their Board laying down a transparent policy in this regard.

In the case of balances lying in current account standing in the name of a deceased individual depositor/sole proprietorship concern, interest should be paid only from 1st May, 1983, or from the date of death of the depositor, whichever is later, till the date of repayment to the claimant/s at the rate of interest applicable to savings deposit as on the date of payment.

## **II. Treatment of flows in the name of the deceased depositor**

In order to avoid hardship to the survivor(s) / nominee of a deposit account, banks should obtain appropriate agreement / authorization from the survivor(s) / nominee with regard to the treatment of pipeline flows in the name of the deceased account holder. In this regard, banks could consider adopting either of the following two approaches:

The bank could be authorized by the survivor(s) / nominee of a deceased account holder to open an account styled as 'Estate of Shri \_\_\_\_\_, the Deceased' where all the pipeline flows in the name of the deceased account holder could be allowed to be credited, provided no withdrawals are made.

OR

The bank could be authorized by the survivor(s) / nominee to return the pipeline flows to the remitter with the remark "Account holder deceased" and to intimate the survivor(s) / nominee accordingly. The survivor(s) / nominee / legal heir(s) could then approach the remitter to effect payment through a negotiable instrument or through ECS transfer in the name of the appropriate beneficiary.

### III. Inoperative Accounts: How to claim the balance standing in the name of the deceased depositor? -RBI guidelines

In cases of Inoperative and Unclaimed Deposits if any standing in the name of the deceased depositor, the nominee or legal heirs can approach the Bank with the relative passbook/Deposit receipts and submit the claim form with id documents to claim back the money lying in Inoperative/Unclaimed deposits account.

The following are RBI guidelines

#### **In operative accounts/Unclaimed Deposits**

A savings as well as current account should be treated as inoperative / dormant if there are no transactions in the account for over a period of two years.

The account should be treated as operative account as long as the interest on Fixed Deposit account and/or dividend on shares is credited to the Savings Bank account. The Savings Bank account can be treated as inoperative account only after two years from the date of the last credit entry of the interest on Fixed Deposit account and/or dividend on shares, whichever is later, provided there is no other customer induced transaction.

There should not be any charge for activation of inoperative account.

Interest on savings bank accounts should be credited on regular basis whether the account is operative or not. If a Fixed Deposit Receipt matures and proceeds are unpaid, the amount left unclaimed with the bank will attract savings bank rate of interest.

The amount to the credit of any account in India with any bank which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years shall be credited to **The Depositor Education and Awareness Fund** . within a period of three months from the expiry of the said period of ten years.

The depositor/Legal heir would, however, be entitled to claim from the bank her deposit or any other unclaimed amount or operate her account after the expiry of ten years, even after such amount has been transferred to the Fund. The bank would be liable to pay the amount to the depositor/claimant and claim refund of such amount from the Fund.

**Display list of Inoperative Accounts:** Banks should display the list of unclaimed deposits/inoperative accounts which are inactive / inoperative for ten years or more on their respective websites.

Banks should also give on the same website, the information on the process of claiming the unclaimed deposit/activating the inoperative account and the necessary



forms and documents for claiming the same. Banks are required to have adequate operational safeguards to ensure that the claimants are genuine.

#### **IV. Interest payable on the deposit account of deceased depositor**

In the case of a term deposit standing in the name/s of

- i. a deceased individual depositor, or
- ii. two or more joint depositors, where one of the depositors has died,

the criterion for payment of interest on matured deposits in the event of death of the depositor in the above cases has been left to the discretion of individual banks subject to their Board laying down a transparent policy in this regard.

In the case of balances lying in current account standing in the name of a deceased individual depositor/sole proprietorship concern, interest should be paid only from 1st May, 1983, or from the date of death of the depositor, whichever is later, till the date of repayment to the claimant/s at the rate of interest applicable to savings deposit as on the date of payment.

#### **V. RBI guidelines on Nomination in Safe Deposit Lockers**

As regards lockers hired jointly, on the death of any one of the joint hirers, the contents of the locker are only allowed to be removed jointly by the nominees and the survivor(s) after an inventory was taken in the prescribed manner. In such a case, after such removal preceded by an inventory, the nominee and surviving hirer(s) may still keep the entire contents with the same bank, if they so desire, by entering into a fresh contract of hiring a locker

#### **Access to the safe deposit lockers / Return of safe custody articles to Survivor(s) / Nominee(s) / Legal heir(s)**

For dealing with the requests from the nominee(s) of the deceased locker-hirer / depositors of the safe-custody articles (where such a nomination had been made) or by the survivor(s) of the deceased (where the locker / safe custody article was accessible under the survivorship clause), for access to the contents of the locker / safe custody article on the death of a locker hirer / depositor of the article, the banks are advised to adopt generally the foregoing approach, mutatis mutandis, as indicated for the deposit accounts.

Detailed guidelines in this regard are, however, as follows:

1. Access to Safe Deposit Lockers (With Survivor/Nominee Clause)  
If the sole locker hirer nominates a person, banks should give to such nominee access of the locker and liberty to remove the contents of the locker in the event of the death of the sole locker hirer.
2. In case the locker was hired jointly with the instructions to operate it under joint signatures, and the locker hirer(s) nominates person(s), in the event of death of

- any of the locker hirers, the bank should give access of the locker and the liberty to remove the contents jointly to the survivor(s) and the nominee(s).
3. In case the locker was hired jointly with survivorship clause and the hirers instructed that the access of the locker should be given over to "either or survivor", "anyone or survivor" or "former or survivor" or according to any other survivorship clause, banks should follow the mandate in the event of the death of one or more of the locker-hirers.
  4. However, banks should take the following precautions before handing over the contents:
    - a) Banks should exercise due care and caution in establishing the identity of the survivor(s) / nominee(s) and the fact of death of the locker hirer by obtaining appropriate documentary evidence;
    - b) Banks should make diligent effort to find out if there is any order from a competent court restraining the bank from giving access to the locker of the deceased; and
    - c) Banks should make it clear to the survivor(s) / nominee(s) that access to locker / safe custody articles is given to them only as a trustee of the legal heirs of the deceased locker hirer i.e., such access given to him shall not affect the right or claim which any person may have against the survivor(s) / nominee(s) to whom the access is given. Similar procedure should be followed for return of articles placed in the safe custody of the bank. Banks should note that the facility of nomination is not available in case of deposit of safe custody articles by more than one person.
    - d) Banks should note that since the access given to the survivor(s) / nominee(s), subject to the foregoing conditions, would constitute a full discharge of the bank's liability, insistence on production of legal representation is superfluous and unwarranted and only serves to cause entirely avoidable inconvenience to the survivor(s) / nominee(s) and would, therefore, invite serious supervisory disapproval.
    - e) In such case, therefore, while giving access to the survivor(s) / nominee(s) of the deceased locker hirer / depositor of the safe custody articles, the banks should desist from insisting on production of succession certificate, letter of administration or probate, etc., or obtain any bond of indemnity or surety from the survivor(s)/nominee(s).

#### **Access to the safe deposit lockers / return of safe custody articles (without survivor/nominee clause)**

There is an imperative need to avoid inconvenience and undue hardship to legal heir(s) of the locker hirer(s). In case where the deceased locker hirer had not made any nomination or where the joint hirers had not given any mandate that the access may be given to one or more of the survivors by a clear survivorship clause, banks are advised to adopt a customer-friendly procedure drawn up in consultation with their legal advisers for giving access to legal heir(s) / legal representative of the deceased locker hirer. Similar procedure should be followed for the articles under safe custody of the bank.

## **Preparing Inventory**

Banks should prepare an inventory before returning articles left in safe custody / before permitting removal of the contents of a safe deposit locker as per extant guidelines. The inventory shall be in the appropriate Forms.

Banks are not required to open sealed/closed packets left with them for safe custody or found in locker while releasing them to the nominee(s) and surviving locker hirers / depositor of safe custody article.

Further, in case the nominee(s) / survivor(s) / legal heir(s) wishes to continue with the locker, banks may enter into a fresh contract with nominee(s) / survivor(s) / legal heir(s) and also adhere to KYC norms in respect of the nominee(s) / legal heir(s).

## **VI. Release of other assets of the deceased borrowers to their legal heirs**

Banks had represented that the principle of not obtaining succession certificates etc., could be extended for settlement of claims in respect of other assets of deceased customers including securities held against advances after adjustment thereof. Banks are advised not to insist upon legal representation for release of other assets of deceased customers irrespective of the amount involved.

Banks may, however, call for succession certificates from legal heirs of deceased borrowers in cases where there are disputes and all legal heirs do not join in indemnifying the bank or in certain other exceptional cases where the bank has a reasonable doubt about the genuineness of the claimant/s being the only legal heir/s of the borrower.

## **VII. Operation of Accounts by Old & Incapacitated Persons-RBI guidelines**

### **1. Facility to sick/old/incapacitated non-pension account holders**

The facilities offered to pension account holders should be extended to the non-pension account holders also who are sick / old / incapacitated and are not willing to open and operate joint accounts.

### **2. Types of sick / old / incapacitated account holders**

The cases of sick / old / incapacitated account holders fall into following categories:

(a) An account holder who is too ill to sign a cheque / cannot be physically present in the bank to withdraw money from his bank account but can put his/her thumb impression on the cheque/withdrawal form;

An account holder who is not only unable to be physically present in the bank but is also not even able to put his/her thumb impression on the cheque/withdrawal form due to certain physical incapacity.

### **3. Operational Procedure**

With a view to enabling the old / sick account holders operate their bank accounts, banks may follow the procedure as under: -

- a. Wherever thumb or toe impression of the sick/old/incapacitated account holder is obtained, it should be identified by two independent witnesses known to the bank, one of whom should be a responsible bank official.
- b. Where the customer cannot even put his / her thumb impression and also would not be able to be physically present in the bank, a mark can be obtained on the cheque / withdrawal form which should be identified by two independent witnesses, one of whom should be a responsible bank official.
- c. The customer may also be asked to indicate to the bank as to who would withdraw the amount from the bank on the basis of cheque / withdrawal form as obtained above and that person should be identified by two independent witnesses. The person who would be actually drawing the money from the bank should be asked to furnish his signature to the bank.

### **4. Opinion of IBA in case of a person who cannot sign due to loss of both hands**

Opinion obtained by the Indian Banks' Association from their consultant on the question of opening of a bank account of a person who has lost both his hands and could not sign the cheque / withdrawal form is as under:

“In terms of the General Clauses Act, the term “Sign” with its grammatical variations and cognate expressions, shall with reference to a person who is unable to write his name, include “mark” with its grammatical variations and cognate expressions. The Supreme Court has held in AIR 1950 – Supreme Court, 265 that there must be physical contact between the person who is to sign and the signature can be by means of a mark. This mark can be placed by the person in any manner. It could be the toe impression, as suggested. It can be by means of mark which anybody can put on behalf of the person who has to sign, the mark being put by an instrument which has had a physical contact with the person who has to sign”.

**Annexure-III-Simple Will Format**

**LAST WILL AND TESTAMENT Of .....**

**S/O..... residing**

**at.....**

**Entered On**

**PREAMBLE**

I ..... S/O.....  
(Religion)..... age..... years,  
presently resident

..... of  
being of sound mind and memory declare that the following is my last Will and Testament.

I do hereby revoke any and all former wills and codicils that I have previously made, particularly My will dated..... Codicil dated.....

I ask all my relatives, friends, and others, to honor my right to make this will. I ask them to honor the spirit and letter of this document and not to try to obstruct or change it in any way. Let them see to it that my properties are divided as I wanted them to be divided. I ordain that under no circumstances should the contents of this will be changed voluntarily.

**ARTICLE I: MY IMMEDIATE FAMILY**

1. I am happily married to Smt..... D/O.....  
Sri ....., age.....years, resident of  
.....  
and all references in this will to my wife are to her.

2. I am the proud father of our Son/Sons, Daughter/Daughters, whose name/s is/are given below.

a. ....age..... Residing at..... Married  
to.....

b. ....age..... Residing at..... Married  
to.....

c. ....age..... Residing at..... Married  
to.....

**SIGNATURE OF TESTATOR**

They are proud parents of our grandchildren as mentioned below

1. .... S/O.....
2. .... D/O.....
3. ....S/O, D/O .....

## ARTICLE II: EXECUTOR AND BENEFICIARY

1. I hereby state that all my estate all self-acquired: Immovable Properties and Movable properties like cash, bank accounts, Shares, Mutual Fund Investments, Life Insurance Investments, Jewels, and any other property not mentioned in this will, are self-acquired.
2. I am possessed of and absolutely entitled to movable and immovable properties, which are described in the schedules I to VI attached herein. Any mistake in the description or omission therefrom will not affect the dispositions hereby made and this will deed will apply to all my properties of whatsoever nature and wherever situated and whether standing in my name alone or jointly with anybody else, if any name is first mentioned.
3. I have given a brief description of my estate both movable and immovable acquired by me in Schedule I to VI. Whatever the estate, properties, Assets that I have mentioned and omitted to mention and acquired by me in future will be bequeathed according to Article III given below.
4. I ordain that the executor of this will be ..... S/O..... He shall act as an executor to serve without bond, to distribute it according to my will.
5. I direct that the executor takes all actions legally permissible to have the probate of my estate done as simply and as expeditiously as possible.
6. I give my executor power to settle any claim for or against my estate.

## ARTICLE III: WILL

1. After my death my wife/husband Mrs./Mr. ....is entitled to the amounts lying in my Bank account/various Bank accounts in my name, specifically mentioned in **Schedule I** attached to this will. This bequeath shall have priority over all other bequests and dispositions.
2. I bequeath my immovable property(is) situate at .....and..... Centres specifically mentioned as item no.....in **Schedule II** attached to this will to my..... Shri/Smt.....and item no.....in **Schedule II** to my ..... Shri/Smt/Ms..... absolutely.
3. I bequeath Gold and Silver ornaments/Jewellery /Gold Coins mentioned in **Schedule III** to my..... Shri/Smt/Ms..... absolutely.

SIGNATURE OF TESTATOR

4. I bequeath Share and Securities, Mutual Fund, PPF, SCSS specifically described in **Schedule IV** to my .....  
Shri/Smt/Ms..... and  
Shri/Smt/Ms.....
5. I hold Insurance Policies for Self/Family for Life cover as also property which is spelt out in **Schedule V** to my will. I bequeath all my properties which are not mentioned in this will to my..... Shri/Smt/Ms.....  
and my ..... Shri/Smt/Ms.....
6. I bequeath my miscellaneous assets in **Schedule VI**, as per details given there in to  
my..... Shri/Smt/Ms.....

**ARTICLE IV: SEPARABILITY**

I direct that no part of this will be invalidated by a court. If any part of this will is determined invalid by a court the other parts shall remain valid and enforceable.  
I subscribe my name to this will this day <sup>th</sup> of ....., at .....,  
,..... and do hereby declare that I sign and execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am of the age of majority or otherwise legally empowered to make a will, and under no constraint or undue influence. I have made this will while I am in sound health and of good understanding.

<b>Name</b>	<b>Testator Signature</b>	<b>Date</b>
-------------	---------------------------	-------------

SIGNED BY THE TESTATOR IN THE PRESENCE OF TWO WITNESSES

**Witness 1.**

<b>Signature</b>	Date	Name and Address
------------------	------	------------------

**Witness 2.**

<b>Signature</b>	Date	Name and address
------------------	------	------------------

## Note

1. This is a specimen format provided for information purpose only. To be suitably modified as per requirement.
2. All pages of Will including Schedules to be signed.
3. Signature of two witness is a must.
4. Applicable for self-acquired properties.
5. The will can be registered or unregistered. The advantage of registered will is that in case of disputes, it can be proved easily.
6. The will deed can be made out on plain paper.
7. Will registration cost will be very less
8. The original copy of the executed will can be kept in a safe and secured place.
9. Codicil means an instrument made in relation to a will and explains, alters or adds to the dispositions and is deemed to be a part of the original will.

\*\*\*\*\*



**Enclosures/Schedules to Will dated.....**

**Schedule I (Deposits)** -Mention here brief details of Deposits like Bank, Branch, account No, Type of Account, Names of account holders.

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**Schedule II (Immovable property/ies)**-Mention here the details of the property, area, Location, and registration details etc.,)

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SIGNATURE OF TESTATOR

**Schedule III (jewellery)-** Mention here Details of Gold, Diamond jewellery, Gold Coins, Ornaments which are in Locker.in Use by Wife, Daughters

Bangles-----(. . . . . grams approx.) Earrings-----(. . . . . Grams Approx.) Necklace-----  
(. . . . . grams approx.) Manglasutra/Thirumangalyam. . . . . (. . . Grams) Rings. . . . . (. . . . .  
Grams), Bracelets. . . . . ( . . . . . Grams), Chains. . . . . (. . . . . grams)  
Gold Coins. . . . . (. . . . . Grams)

.....  
.....  
.....

.....  
Silver ornaments /Plates and other items weighing ..... Held in Bank Locker or in  
use

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.....  
.....

**Schedule IV – (Shares, MFS, PPF, SCSS etc.)-**Mention details of Shares held in Demat account, Mutual Fund accounts, Securities held with the Company, PPF account, SCSS details

.....  
.....  
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SIGNATURE OF TESTATOR

**Schedule V- (Insurance Policies Etc.)**-Mention here Details of Policies, Beneficiaries, Sum assured, Due date and Name of Insurer etc.

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**Schedule VI (Miscellaneous Assets Etc.)**-Mention here details of other movable assets like Vehicle, Electronic Goods, Furniture etc. Not specifically covered in the will deed above.

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PLACE

SIGNATURE OF TESTATOR

DATE

**IN THE PRESENCE OF TWO WITNESSES**

Witness 1.

Signature

Date

Name and Address

Witness 2. Signature

Date

Name and address

