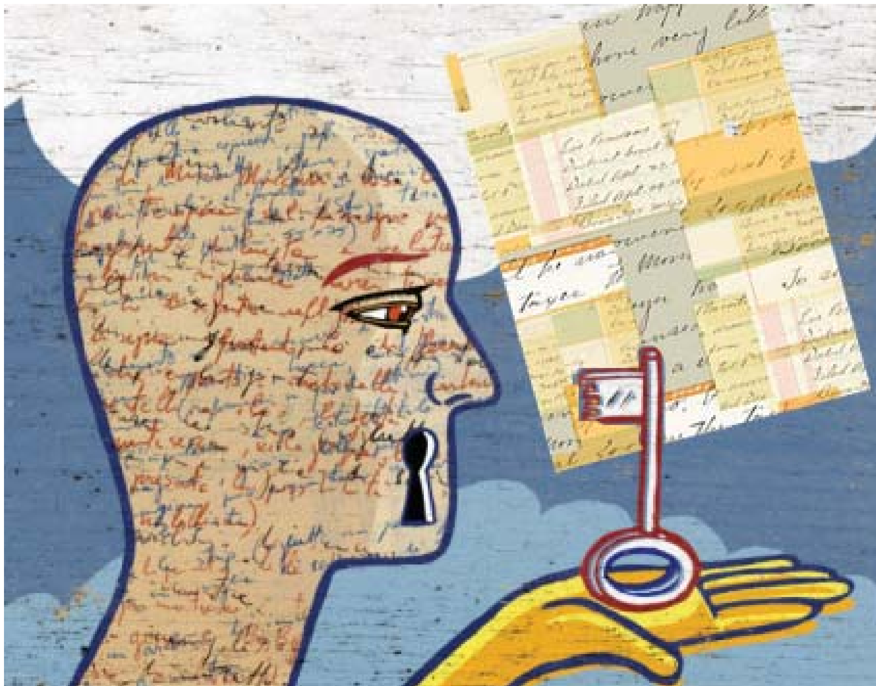

Investment Strategy

Where there is a will

The rights of a nominee depends on the asset that is being inherited: insurance plans or shares

A person has no choice over the timing and manner of his death. But he has an option to arrange his affairs in a manner that causes minimal inconvenience to his family members. If a person dies without nominating anyone, the legal heirs may have to run from pillar to post and produce all kinds of certificates including succession certificate to claim the assets left behind by the deceased. If nomination exists, then there are no such hassles as the bank or insurance company can easily hand over the entitlement to the nominee without incurring any liability. The bank or insurance company gets out of the picture as soon as the payment is made to the nominee and, thereafter, the matter has to be settled between the nominee and the legal heirs of the deceased.

Every coin has two sides. Nomination is quite helpful but it does not solve the problem completely because, according to the law, a nominee is a trustee and not the owner of assets of the deceased. In other words, he is only caretaker of the deceased's assets. The nominee is legally bound to transfer it to the legal heirs of the deceased.

If the nominee does not become the sole owner then what is the use of the nomination facility? The answer is pretty simple. When a person dies, it is necessary that the proceeds from the insurance company, units of mutual fund or equity shares, debentures or bonds get out of the control of the concerned company or bank into the hands of someone whom the deceased trusted during his lifetime. The nominee is expected to pass on the assets to the legal heirs of the deceased. Thus, the nominee acts as a conduit between the insurance company or bank and the legal heirs of the deceased.

Section 39 of the Insurance Act, 1938, provides that the nominee be paid by the insurance company although he may not be the legal heir. A legal heir is a person whose name is mentioned in the will. If the deceased has not written a will, then the legal heirs are decided in accordance with the succession laws, which clearly define the structure who is to get how much proportion of the deceased's assets. The liability of the insurance company comes to an end after handing over the policy amount to the nominee. It is the duty of the nominee to ensure that the amount received from the insurance policy is held in trust and handed over to the rightful owners. Thus, it is necessary that an investor or policy holder not only appoints a nominee whenever he makes any new investment but also prepares a will, where he can describe his wish as to who shall receive how much share of his property after his demise.

Many investors are afraid of making nomination due to lack of proper knowledge. Investors should to know that the right of a nominee is only to receive the property for which he or she has been nominated and that too only after the death of the person who has nominated him. Mere nomination does not give any personal right or interest in the property. In fact, unless otherwise entitled under a will or succession laws, the role of a nominee is purely in the nature of a trustee, who has to hold the property for the benefit of and in trust for the legal heirs of the deceased.

Most investors think that they are investing in shares for short-term gain and need not stress their mind on inheritance issue. However, this is not correct as it is important to ensure that investment in shares is also passed on to the legal heirs without any hassles. Till a decade back, there was no provision in the Companies Act, 1956, for appointing nominee for shares or debentures. A shareholder or debenture holder could have joint holders but no nominees. However, the situation underwent a change from 31 October 1998 when Section 109A was inserted in the Companies Act. According to this section, every holder of shares or debentures can nominate a person who will own the shares or debentures after the shareholders' death.

Non-individuals including a society, trust, body corporate, partnership firm, karta of Hindu undivided family and holder of a power of attorney cannot nominate. For nomination of shares held in physical form, the shareholder has to submit a nomination form, Form 2B, duly filled in duplicate and signed. There is no need to send the share certificates or photocopy along with the nomination form. If the shares are held in joint names, all the joint holders have to sign the nomination form. The prescribed Form 2B only provides for the name and address of the nominee. Since Section 109B(1) of

A tedious task

The procedure followed for transmission of shares may vary from company to company

● **Transmission of shares in physical form:** One of the lesser known but widely experienced problems with share certificates is transmission of shares. The Companies Act, 1956, distinguishes transmission of shares from the transfer of shares. While transfer of shares is the result of a voluntary act of the shareholder, transmission is brought about by the operation of law. 'Transmission' means devolution of title to the shares otherwise than by way of transfer. For example, devolution by death, succession, inheritance and bankruptcy. While transfer of shares is brought about by delivery of a proper instrument of transfer (i.e., share transfer deed) duly stamped and executed, transmission of shares is done by forwarding the necessary documents to the company.

If a shareholder holding shares in his sole name dies without making a will, his legal heirs (either husband, wife, son or daughter) can get the shares transmitted in their name(s) by proving the ownership to the estate of the deceased member, which can be achieved by submitting the following documents: ● Request letter for transmission of shares. ● Attested copy of the death certificate. ● Attested copy of either probate or letter of administration obtained from the court or of the succession certificate, as the case may be. ● Title claim, if required. ● No-objection certificate of other legal heirs.

In some special circumstances, companies may also allow transmission of shares without obtaining probate or succession certificate, provided the shareholder furnishes a letter of indemnity and an affidavit on stamp papers of requisite value. After transmission of shares, the person becomes the shareholder of the company and is entitled to exercise all the rights and is also subject to all liabilities of a shareholder.

If the deceased was holding shares in number of companies, then the legal heirs have to send the relevant documents along with the original share certificates separately to all the companies. This means placing heavy reliance on the postal system. Extensive follow-up is also required with the companies. Not only this, every company has its own format of letter of indemnity and affidavit. The procedure followed for transmission of shares may also vary from company to company to some extent. All this would consume considerable time and effort in getting the shares in physical form transmitted in favour of the legal heirs of the deceased.

Transmission of shares in the depository system: In the depository system, the problems are mitigated to a great extent as the shares are account balances in the electronic form. The process of transmission of dematerialised shares is not only simple but also much faster than the shares held in physical form. This is because the successor has to deal with only one entity, which is the depository participant (DP), with whom the deceased was maintaining his demat account. Once the DP is convinced as to the title of the legal heir (s) and does the needful, all the shares lying in the demat account are transferred to the demat account of the legal heir (s) of the deceased.

If the deceased was one of the joint holders then the surviving holder has to request the DP, through a form called the 'transmission form' along with a notarised copy of death certificate, to transmit the securities lying in the demat account of the deceased to his demat account. For this purpose, the surviving holder must have a demat account, either with the same DP or with some other DP.

However, in case the deceased had no joint holder then the legal heir(s) of the deceased must request the DP to transmit the balances lying in the demat account of the deceased to their demat account. For this, the legal heir(s) have to submit an instruction called the transmission form along with the following documents: ● Notarised copy of the death certificate. ● Notarised copy of the succession certificate or an order of a court of competent jurisdiction, if the deceased had not made a will; or ● A copy of the probate or letter of administration, duly notarised.

If the legal heir(s) express their inability to produce the probate or letter of administration or the succession certificate, and the aggregate market value of the securities held in each demat account of the deceased as on the date of application for transmission does not exceed Rs 1 lakh, then as an alternative the DP can process the transmission request, on receipt of the following documents: ● Transmission form. ● Notarised copy of the death certificate. ● Letter of Indemnity duly supported by a guarantee of an independent surety acceptable to the DP on non-judicial stamp paper of requisite value. ● An affidavit on non-judicial stamp paper. l No objection certificate(s) from all the other legal heir(s).

After effecting the transmission of shares, the DP closes the demat account of the deceased.

Transmission of dematerialised securities in case of nomination: Transmission of demat shares in favour of nominee is quite simple. On the death of the sole holder or the death of all the joint holders, the nominee has to request the DP in writing along with an attested copy of the death certificate and transmission form to transmit the securities covered by the nomination to his demat account. After ensuring the completeness of the transmission form and the authenticity of the signatures of the nominee, the DP executes the transmission request. Thus transmission of shares, debentures and bonds, where nomination has been made, not only saves time but also eliminates the need to follow cumbersome procedure and furnish legal documents such as probate, succession certificate.

the Act provides that the board of directors may require the nominee to provide such evidence as it may think necessary to prove his identity, the shareholder or debenture holder has to provide the specimen signature of the nominee along with Form 2B to avoid any problem in future.

The company's registrar and share transfer agent verifies the nomination form. If it is found in order, a registration number is allotted to the nomination. The duplicate copy of the form is returned to the shareholder with an endorsement indicating the registration number and date. Only one nomination can be made for each folio. Folios with different sequence of names of shareholders require separate nominations. Nomination can even be made in favour of a minor. In such a case, the name and address of the guardian needs to be filled up in the nomination form.

If the shares are held in dematerialised form, the nomination has to be recorded by the depository participant (DP) maintaining the demat account. If the investor had not provided the details of nominee at the time of opening of the demat account or if he subsequently wants to change the nominee for an existing demat account, he can furnish the requisite details to his DP. If an investor is not sure whether he had submitted the details of nominee while opening the demat account, he may ask for a copy of client master sheet from his DP. The client master sheet contains all the details of the demat account including residential address, residential status, particulars of the bank account to which dividend amount is to be credited and particulars of nominee.

There is a misconception that if there is a joint holder of shares then a nominee cannot be appointed. But this is not true. This is because joint holder(s) are not nominees but holders with joint rights on the shares held by them. In the event of death of one of the joint holders, the shares are transmitted in favour of the surviving holder. The death of one of the joint holders does not rescind the nomination. Nominee gets the title to the shares or debentures on the death of all the joint holders.

Nomination under the Companies Act, is quite different from nomination for insurance policies and other financial products. A peculiar aspect of nomination under the Companies Act is that, on the death of the registered holder(s), the nominee to the exclusion of all the legal heirs or beneficiaries is the only person in whom the shares shall vest. In the recently decided case Harsha Nitin Kokate v Saraswat Co-Operative Bank, it was contended by the widow of the deceased that she was entitled to the ownership of the shares, held by her deceased husband in dematerialised form with Saraswat Co-Operative Bank as DP, as she was the legal heir to his property as Kokate had died without preparing a will. Kokate had, however, appointed his nephew as nominee for the shares held in the demat account.

After careful consideration of Section 109A of the Companies Act, the Bombay High Court (HC) delivered its judgement on 20 April 2010. The court held that on the death of a shareholder, the shares would vest in the nominee since Section 109A of the Companies Act provides that the nominee is entitled to all the rights attached to the shares to the exclusion of all others regardless of anything else stated in any other disposition, testamentary or otherwise. Therefore, regardless of what is stated in privately executed wills, a company or DP will have to only deal with the nominee as a person exercising the rights of the deceased shareholder. Depositories have also made bye-laws under the Depositories Act, 1996, which are substantive reproduction of Section 109A of the Companies Act. Therefore, the nominee's rights over the securities held in the demat account also override the rights of the legal heirs to whom the property of the deceased is bequeathed.

What a person disposes in his will has no meaning if he has already made a nomination of the shares in favour of someone other than the legal heirs mentioned in the will. The judgement is in sharp contrast to the established position laid down by the Supreme Court (SC), which held in the case of Sarbati Devi v Usha Devi that although the insurance company would pay the amount due on death to the nominee, such amount could be claimed by the legal heirs to whom the property of the deceased has been bequeathed. This judgement was delivered by SC based on Section 39 of the Insurance Act, 1938, which provides that the nomination entails payment by the insurance company to the nominee to obtain complete discharge. Thus, once the insurance proceeds are paid to the nominee, he has to hold it in trust or the estate because under the Insurance Act, there is no legislative provision stating that the nominee would obtain any other right.

On death of the sole holder or of both the joint shareholders, as the case may be, the nominee has to furnish the following documents to the company, to get the shares registered in his name: ● Request letter for registering the shares in his name. ● Attested copy of death certificate of the deceased shareholder(s). ● Proof of his identity. ● His attested specimen signatures. ● Proof of his residential address. ● Proof of his date of birth. ● An affidavit/declaration declaring his rights. ● Original share certificate(s).

After scrutiny of the documents submitted by the nominee, the shares are transmitted in his favour and the share certificates, duly endorsed, are returned to him.

In view of the judgement of Bombay HC, the shareholders need to change their nomination every time they change their will. Nomination of shares held in dematerialised form is a very useful facility provided by the depositories as it saves the legal heirs from the cumbersome legal formalities involved in transmission of shares. But the million-dollar question is: what should be done if an investor has number of securities in a demat account and he wants to ensure that these are equally divided among his children? The solution to such a problem can be to open multiple demat accounts and transfer the shares to the new accounts in the manner in which he wants to transmit the shares to his different legal heirs. After this, the investor will have to make separate nominations for every demat account.

Investors ought to be careful not only while making investments but also ensuring that their investments pass on to their legal heirs without any hassles.

— Rajesh Relan