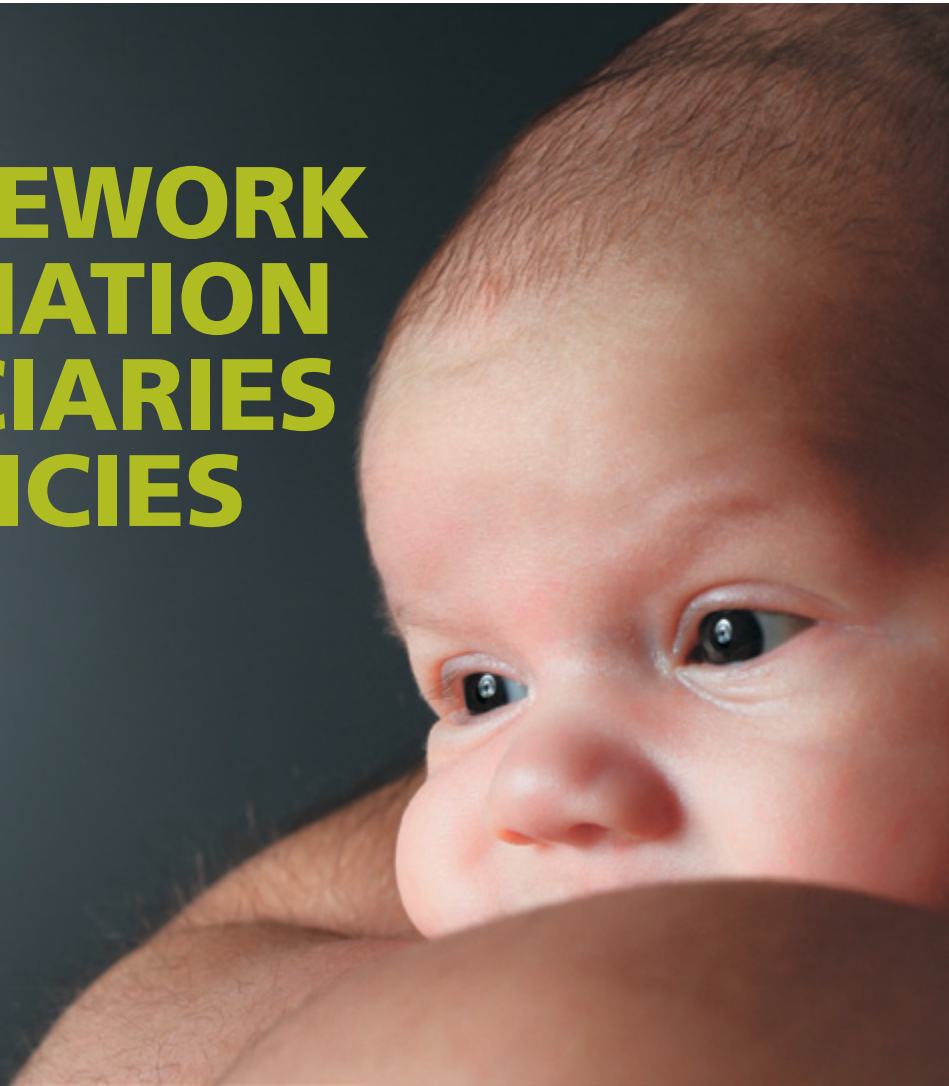




# NEW FRAMEWORK FOR NOMINATION OF BENEFICIARIES IN LIFE POLICIES

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**U**p until recently, most people assume that when they buy a life insurance policy, they can also nominate their designated beneficiaries who are then entitled to the policy proceeds upon the death of the life assured. Policy owners are under the impression that the position is the same as with CPF nominations, with respect to the moneys in their CPF accounts. The truth of the matter is that other than nominations under Section 45 of the Co-operative Societies Act and under Section 73 of the Conveyancing and Law of Property Act (CLPA), all other nominations are invalid in law.

In order to remove this confusion and to ensure uniformity in law, the Insurance (Amendment) Act 2009 was passed to introduce a new framework to regulate the nomination of beneficiaries. With effect from 1 September 2009, the only types of nominations that will be recognised in law are found in the new framework and no new nominations can be made under Section 45 of the Co-operative Societies Act and Section 73 of the Conveyancing and Law of Property Act.

In addition to introducing a new framework on the nomination of beneficiaries, the Insurance (Amendment) Act 2009 also impacts on Section 57 (Insurable Interest) and Section 61 (Payment of Policy Proceeds and Discharge of Insurer's Liability). There are also consequential amendments to the CPF Act, the Conveyancing and Law of Property Act, the Administration of Muslim Law Act and the Mental Capacity Act.



The new framework is found in the newly created Sections 49L and 49M of the Insurance Act. Broadly speaking, there are now two categories of nominations allowed in law. Section 49L deals with trust or irrevocable nominations, while Section 49M deals with revocable nominations.

The new law on the nomination of beneficiaries only applies if the policy falls within the definition of a 'relevant policy' defined under Section 49K of the Insurance Act. A 'relevant policy' is a life policy or accident and health policy, whether issued before, on or after 1 September 2009, which

- a) is issued by a registered insurer;
- b) is governed by Singapore law;
- c) provides death benefits;
- d) is effected by the policy owner on his own life;
- e) is not the subject of any Section 73, CLPA trust; and
- f) is not an annuity purchased with the minimum sum under the CPF Act.

## TRUST NOMINATION – SECTION 49L

Trust nominations or irrevocable nominations under Section 49L are not applicable to

- a) policies bought under the Dependents' Protection Insurance Scheme established by CPF Board; or
- b) policies bought as investments with funds from CPF or the Supplementary Retirement Scheme (SRS).

Section 49L allows a policy owner who must be 18 years old or older to nominate his spouse, children, or spouse and children, or any of them to be the beneficiaries under a relevant policy, and who expresses an intention in the nomination to create a trust of the policy moneys in favour of the nominee(s), and who indicates clearly each nominee's portion. The nomination then creates a trust of the policy moneys in favour of the nominee(s).

All policy moneys must be disposed of under the nomination; if not, the nomination is invalid. The policy moneys will not form part of the estate of the policy owner or be subject to his debts. If it can be proven that the policy was effected and the premiums were paid to defraud the creditors of the policy owner, then the creditors shall be entitled to a sum equal to the amount of premiums paid. On the death of the nominee, the nominee's interest in the policy moneys shall form part of the nominee's estate.

A policy owner may revoke a nomination under Section 49L, if and only if, prior written consent to the revocation has been obtained from

- a) the trustee (if more than one, then any one trustee) of the policy moneys who is other than the policy owner;
- b) the nominee himself (if he is more than 18 years old); if under 18 years old, then a parent or legal guardian (not being the policy owner himself); and
- c) in any other case, as may be prescribed by the Authority.

The effects of the revocation of the nomination are that the trust is deemed revoked and the policy owner may make a new nomination. Section 49L also allows a relevant policy under a trust nomination to be varied, if consent is obtained from the persons listed above.

**Once a Section 49L trust has been created over a relevant policy, the policy shall vest in the trustee(s) in trust for the nominees provided the registered insurer has been given notice of the appointment.**

## REVOCABLE NOMINATION – SECTION 49M

Section 49M lays down the framework for revocable nominations. Once a trust nomination has been made to a relevant policy, no nomination under Section 49M can be made.

Section 49M allows a policy owner who is at least 18 years old to nominate any person to be a beneficiary of the relevant policy. Who does 'any person' refer to? It can be an individual, a trust, a society or a private limited company.

The nomination must dispose of the whole of the death benefits under the relevant policy. The nomination is invalid if it does not provide for the disposal of all death benefits. During the lifetime of the life assured, living benefits under the policy are still paid over to the policy owner. Only the death benefits, upon the death of the life assured, are paid over to the beneficiaries.

Section 49M allows a nomination to be revoked at any time and there is no necessity to seek the prior consent of any person.

As a Section 49M nomination does not create an immediate trust in favour of the nominee, the sequence of who dies first becomes very important. If the policy owner dies before the nominee(s), then the death benefits will be distributed amongst all the nominees in the proportion stated by the policy owner.

However, what happens if the nominee dies before the policy owner? Section 49M states that if there is only one nominee and he dies before the policy owner, then the nomination is deemed revoked.



If there are two nominees and one dies before the policy owner, then the surviving nominee will receive all the death benefits. If there is more than one surviving nominee, then each nominee will receive a pro-rated portion of the deceased nominee's portion of death benefits, unless the policy owner changes or varies the nomination.

**In cases where both the policy owner and one or more of the nominees die in circumstances rendering it uncertain which of them survived the other or others, then in the absence of any court order, Section 49M states that the younger shall be deemed to have survived the elder.**

A Section 49M nomination is deemed revoked if

- a)** the policy owner assigns, encumbers or otherwise deals with the relevant policy or any interest under the policy; or
- b)** the policy owner makes a will subsequent to the nomination providing for the disposition of all death benefits and specifying such particulars of the relevant policy;
- c)** the policy owner makes a subsequent nomination under Section 49M or Section 49L.

	<b>TRUST NOMINATION Section 49L</b>	<b>REVOCABLE NOMINATION Section 49M</b>
<b>CPF MIN SUM ANNUITY</b>	No	No
<b>DPS / CPFIS / SRS</b>	No	Yes
<b>BENEFICIARY</b>	Only spouse / children	Anyone
<b>REVOCABLE</b>	Only with prior written consent of trustee / nominee / parent / legal guardian	Anytime
<b>WILL MADE SUBSEQUENT TO NOMINATION</b>	No impact on nomination	Nomination deemed revoked, if applicable
<b>DEATH OF NOMINEE(S) BEFORE POLICY OWNER</b>	Policy proceeds form part of nominee's estate	If sole nominee dies, nomination deemed revoked; if there are surviving nominees, to share proportionally
<b>LIVING BENEFITS / DEATH BENEFITS</b>	Both applicable	Only applicable to Death Benefits
<b>APPOINTMENT OF TRUSTEES</b>	Required	Not applicable
<b>NOMINATION BY MUSLIMS</b>	Yes	Depends on school of Muslim law

TABLE A:  
**DIFFERENCES BETWEEN TRUST (SECTION 49L) AND REVOCABLE NOMINATIONS (SECTION 49M)**

## PRESCRIBED FORMS

Under the new framework, there are prescribed forms to be used when making the nominations as well as revoking such nominations. The forms are as follows:

- a)** Form 1 – Trust nomination under Section 49L
- b)** Form 2 – Revocation of trust nomination
- c)** Form 3 – Appointment or revocation of appointment of trustee of policy moneys
- d)** Form 4 – Revocable nomination under Section 49M
- e)** Form 5 – Revocation of revocable nomination
- f)** Form 6 – Notice of revocation of revocable nomination

The prescribed forms are relatively straightforward. The headings of the forms are self-explanatory. The Monetary Authority of Singapore has clarified as to the difference between Form 5 and Form 6. Form 6 is used to give notice that a revocable nomination is to be revoked by way of having been over-ridden by an assignment, encumbrance or will. Conversely, Form 5 is to be used for revocation per se of a revocable nomination.

Policy owners are required to notify insurers whenever they revoke a revocable nomination, whether this is done by way of a revocation per se or through having been over-ridden by an assignment, encumbrance or will. (As stated earlier, a third way would be via the making of another trust or revocable nomination.)

For revocation alone, only Form 5 should be used. If an assignment, encumbrance or will has been made, however, policy owners have the choice to submit either (i) Form 6 or (ii) a cover letter and certified true copy of the assignment, encumbrance or will to their insurers.



## IMPACT OF NEW FRAMEWORK ON WILLS

The implementation of the new framework will affect how wills are to be drafted. Before the new framework was introduced, some people state in their wills as to how they would like their policy proceeds to be distributed. They can either distribute to their preferred beneficiaries by mentioning the specific policies in their wills or in the case where the policies are not specifically mentioned, the policy proceeds will pass to their preferred beneficiaries via the residue clause in their wills.

Under the new framework, in order to ensure that the will is effective to distribute the policy proceeds to a named beneficiary, the will must specify:

- a) the name of the insurer;
- b) the policy number;
- c) the name, NRIC/Passport No., address and date of birth of each beneficiary; and
- d) the portion of the death benefits to be distributed to the beneficiary or beneficiaries (all portions to add up to 100%).

Under the new framework, in cases where no nomination is made under a policy and nothing specific is mentioned in the will, the residue clause in the will will continue to cover that particular policy. If there is no will, then the Intestate Succession Act will apply.

Hence, under the new framework, the sequence will be as follows:

1. If there is a nomination, check and see if the nomination has been revoked or deemed revoked.
2. If it has not been revoked or deemed revoked, then the nominee is entitled to the policy payout.
3. If it has been revoked or deemed revoked, then if there is a will, check to see if the will has been revoked or deemed revoked.
4. If the will has not been revoked or deemed revoked, then the persons entitled to the policy proceeds will be according to the terms of the will.
5. If the will has been revoked or deemed revoked, then the persons entitled are as set out in the Intestate Succession Act.

Section 61 has also been amended, together with the amendments in the Insurance (Amendment) Act 2009. This section previously allows payout by the insurer of up to S\$150,000, without production of the grant of letters of administration or probate. The new amendments have expanded the scope of Section 61 under the new framework.

Where the policy owner has made a valid nomination under Section 49L, Section 49M or a valid will of which notice (in Form 6 or letter enclosing a certified true copy of the will) has been given to the insurer, the policy proceeds can be paid to the trustee, nominee, the parent/legal guardian or the executor, as the case may be, without production of the grant of letters of administration or probate and without any limit on the amount paid out.

Where there is no nomination, no will (or there is a will but no notice of it was given to the insurer) or in certain circumstances (not specified in the Act), payment of the policy proceeds can be made to the proper claimant not exceeding S\$150,000 without the production of the grant of letters of administration or probate. 'Proper claimant' refers to the executor, widower, widow, parent, child, brother, sister, nephew or niece of the deceased policy owner.



## MOVING FORWARD

The implementation of the new framework on the nomination of beneficiaries is timely. There is now no doubt as to whether a nomination can be made under a life policy, who can make or revoke the nomination, as well as to whom the insurer can make payment of the policy proceeds. It remains to be seen as to whether the amendments are sufficient. As the amendments are not retrospective, statutory trusts created knowingly or unknowingly under Section 73 of the Conveyancing and Law of Property Act still remain. It is pertinent therefore to note that the problems created by Section 73 will be with us for another generation or so.

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