Common SOP for operation of accounts in case of an incapacitated investor

Applicable to Depositories and Mutual Funds

Background:

SEBI vide its Circulars dated January 10, 2025 and February 28, 2025 revised the norms for nomination for demat accounts and Mutual Fund (MF) folios in the Indian Securities Market.

In order to have uniformity in dealing with incapacitated investors and those with special needs or sick or old investors in the securities market, SEBI has mandated the Depositories and AMFI to put in place common Standard Operating Procedure (SOP). This SOP is intended to provide more clarity on the processes to be followed in alignment to the current regulatory guidelines and may undergo changes based on regulatory/statutory guidelines or due to other legal aspects from time to time. Please check the latest guidelines before reliance on the same.

A. **Operational guidelines to be followed by the registered intermediaries for operation of accounts in case of investors who are physically incapacitated, but are competent to contract:**

1. Operational procedures to appoint nominee to act on behalf of incapacitated Investors:

   The registered intermediaries shall provide the investors having single or joint holding in the account / folio, the option to:

   a) empower, any one of the nominees (excluding minor nominee) to operate the investor's account / folio, if the investor is physically incapacitated, but still has the capacity to contract,
   b) specify either the percentage or absolute value of assets in the account / folio that can be encashed by such nominee,
   c) change such nominee any number of times without any restriction.

   The above clause shall be applicable for an account / folio having multiple holders, irrespective of mode of holding and only in the event where all the holders are simultaneously incapacitated and having registered nominee/s.

2. Definition of Incapacitation:

   Incapacitation referred to here is the physical incapacitation but having capacity to enter into a contract in terms of section 11 of the Indian Contract Act, 1872. Hence, this SOP does not include investors who are otherwise incapacitated because of being in coma or are unconscious or in support of a ventilator.

3. Procedure to be followed by the registered intermediaries for operation of accounts in case of an incapacitated investor, after the person has become incapacitated:

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a) **Intimation of incapacitation** – An intimation by way of a written request (format attached *via* Annexure A) stating that the Client/investor is incapacitated to sign (specifying the reason therein and its tenure of Incapacitation), can be received by DP/AMC/RTA from an "empowered nominee" of the investor/Client (Empowered Nominee means a Nominee who has been given power by the investor to act on his/her behalf during incapacitation). The intimation of incapacitation request can be accepted from any other person as well.

b) In case there is no nominee registered, or Nominee Opt-out has been registered in the account/folio, investor has to first register nominee in the presence of DP/RTA/AMC personnel, followed by appointing him/her as "empowered nominee".

c) The empowered nominee or any other person shall provide a medical certificate issued by an appropriately qualified doctor which clearly states that the Client / investor is unable to sign, the reason for the same and period since the Client is unable to sign.

d) Upon receipt of written request accompanied with medical certificate regarding incapacitation of investor, a responsible officer of the DP / AMC / RTA shall visit the incapacitated investor in-person.

e) This officer shall first hand ascertain whether the investor has the capacity to contract in terms of section 11 of the Indian Contract Act, 1872 (i.e. to exclude investors who may be in ventilator, coma or are in an unconscious state).

f) Additional checks to be done by the officer include, (i) where the Client cannot put his/her signature, then is he/she in a position to put his/her thumb or toe impression or 'a mark' on his/her own, without the assistance of any other person, and (ii) whether the Client understands the consequence of putting his/her thumb impression on a document to facilitate a transaction or empower the nominee to carry out the transaction on his/her behalf.

g) Depending on the nature and degree of incapacitation, this officer shall obtain a thumb or toe impression or 'a mark' of the Client, as the case may be, on the written request allowing empowered nominee for transacting in the account / folio of the incapacitated investor, in the presence of an independent witness. (Independent witness shall be an individual who is not directly related to the Client or the intermediary)

h) This officer shall record his/her name, signature and suitable remarks to the effect that "Thumb impression / toe impression / mark affixed in my presence" on the written request.

i) POI document number of such nominee (which should match with details of Empowered Nominee as registered in the demat account/folio), who will act on behalf of incapacitated investor, shall be taken on record and capture the same against the said nominee in the Depository/AMC/RTA system.

j) Upon registration of incapacitation details in the depository/AMC/RTA system, DP/AMC/RTA shall intimate the client and empowered nominee about the same suitably.

k) Empowered Nominee should intimate the respective broker/trading member/DP/AMC/MFD/RTA through whom transactions are going to be performed during incapacitation of Client. This has been included in the letter for intimating incapacitation under the heading 'Declaration from Empowered Nominee'.

l) Upon receipt of the instruction from such Empowered Nominee, DP/AMC/RTA shall match the signature, as available on the record, against such Empowered Nominee. If the signature is matched, DP/AMC/RTA shall execute the instruction in the Depository/DP/RTA/AMC system for such incapacitated investor/ Beneficiary Owner (BO). If the signature does not match, DP/AMC/RTA shall not execute the instruction and shall inform the Empowered Nominee accordingly, clearly stating the reason for non-execution of instruction. DP/AMC/RTA shall also inform such nominee to submit fresh instruction with the proper signature.

m) The Empowered Nominee can only be one of the registered nominees. No third party including legal heirs can be allowed, if they are not registered as nominee. In case of court appointed nominee, it will overrule the existing nominee. Further, in case where the investor does not have the capacity to contract (for eg.: investor is on ventilator support or in coma or in unconscious state or is of unsound mind), operation of the account / folio shall be as per the norms under the applicable laws.

n) The Empowered Nominee shall require to be KYC compliant before carrying out transaction on behalf of the incapacitated investor/s (not at the time of nomination).

o) The registered intermediaries shall upload the details of mobile number and email address of Empowered Nominee on the KRA system. It shall be ensured that the mobile no. / email addresses of their employees / authorized persons, distributors etc. are not uploaded on behalf of Empowered Nominee.

4. Further, the DP / RTA / AMC are advised to ensure the following:

a) Take into account, the available transaction limits flagged off to the Empowered Nominee dealing on behalf of incapacitated investor.

b) DP/AMC/RTA shall inform the investor and empowered nominee regarding the transaction threshold limit along with the utilised and un-utilised limit suitably, as and when transaction is processed. After the expiry of a cooling off period of 48 hours post updation of such incapacitation, DP/RTA/AMC shall permit the transactions in those account(s) – offline and online mode, if it is signed or initiated by the Empowered nominee, subject to limit specified by the investor in amount or percentage* on the date of updation of incapacitation status in depository/AMC/RTA systems. Further, on the date of updation of incapacitation status in depository/AMC/RTA systems, the percentage limit of the holding would be converted to the absolute limit value based on last available price/NAV. This will remain static throughout incapacitation period and will not be undergoing any change owing to market movement or

subsequent investments. In case of mutual funds, Percentage / value limit will be for the PAN, encompassing all folios under the PAN, where incapacitated investor is the first holder and covering all transactions made by the Empowered Nominee during incapacitation.

c) If any partial transaction limits are available, transactions should be settled with the available transaction limits.
d) If at the time of settlement of transactions e.g. traded on exchange at "X" value and at the time of settlement, value is "X +/- 5 %" of the available limits in depository systems, such transactions up to + / - 5 % value would be allowed for settlements to avoid any failure of transactions / loss to the incapacitated investors.
e) In case of demat account, the transaction limits will be applicable for all market transfer instructions initiated through physical / POA / DDPI / online.
f) In case of mutual fund transactions, redemption / switch-out shall be allowed subject to 95% of the transaction limit only at the time of acceptance, as NAV for the day may go up or down.
g) Any credit transaction such as fresh purchase/SIP/IDCW reinvestment etc., will be allowed during the incapacitation period, subject to existing regulations such as third party etc. However, fresh pledge creation (includes the margin pledge) would not be allowed.
h) In case of investments in Mutual Funds, funds should be received from the investor's bank account and not from empowered nominee's bank account and MF/RTA/CC is able to validate the same independently at their end.
i) Any encashment by such Empowered Nominee shall be credited only to the bank account linked to the account / folio of the incapacitated investor.
j) DP / RTA/ AMC shall not allow any service request, including change in bank account, email address, mobile number etc. by such Empowered nominee.
k) Initially, after the expiry of a cooling-off period of 48 hours post updation of incapacitation, the DP / RTA / AMC shall allow empowered nominee to carry out online transactions on behalf of the incapacitated investor, using the investor's login credentials (i.e. using registered email ID and mobile number of incapacitated investor), subject to the transaction limit specified by the investor. Going forward, the DP / RTA / AMC shall put in place necessary system changes to allow empowered nominee to operate the account / folio of incapacitated investor using his / her own login credentials (i.e. using registered email ID and mobile number of empowered nominee), after completing KYC process of such nominee, subject to the limit specified by the investor. This facility shall be revoked once the investor recovers from incapacitation.
l) The requisite system changes allowing empowered nominee to operate the account / folio of incapacitated investor using own login credentials shall be put in place by the DPs and AMCs / their RTAs together after deliberation and go live at the same time, in order to have uniformity across demat accounts and MF folios.

m) IDCW payout/Cash Corporate Action process can be allowed and paid to the investor's bank account only.

n) Procedure as specified above in Para 3 shall be followed in case the investor recovers from incapacitation and the incapacitation flag / date in the demat account/folio shall be removed, and the signature of the empowered nominee shall be removed from the depository/AMC/RTA system.
Post removal of incapacitation flag / date, if any change (non-financial transactions including nominee registration, change of empowered nominee to transact on investor's behalf, etc.) is initiated by the investor after recording such incapacitation, then appropriate due diligence has to be made before allowing such updates/changes.

Request format for Incapacitation intimation refer Annexure -A

B. Specialized Doorstep Support for Senior Citizens, investors with special needs or sick investors may be provided by DP / RTA / AMC.

SEBI envisages that specialized doorstep support needs to be facilitated for Senior Citizens, investors with special needs or sick investors, not only related to incapacitation but also for other services like;

a) collection of transaction requests, service request including nomination registration/changes thereto, registration of empowered nominee, etc., subject to the availability of the nearest branches, distance between branch and investor location, based on the specific request with relevant proofs thereof for sick investors and investors with special needs.

a) For Senior Citizens, based on the age as per records, such specialized services may be facilitated.

Disclaimer:

Compliance with the SOP does not substitute compliance with applicable laws. Accordingly, while following the SOP, compliance with laws, as may be applicable, shall also be met.

Letter for intimating Incapacitation of the investor and relevant authorization

Date:

To: _____ (Name of the Intermediary)

Location/ City Name: _____

Sub: **Intimation about Incapacitation of the investor and Authorization letter**

PAN of the Incapacitated investor															
Demat Account / Folio No.															

I/We hereby wish to inform you that the above referred investor has become incapacitated from __ /__ /____ to ___ / ___ / _____ (tentatively) for reason_____ due to which he is unable to transact though having the capacity to contract. Refer the medical certificate from our doctor indicating the same.

I/We request you to record the same in your records and approve the transactions only if the same is initiated by the person(s) authorized by him and is within the limits prescribed, if any. I/We also hereby authorize you/your team to independently validate the above incapacitation by visiting the incapacitated investor (tick appropriately / provide information as requested), take appropriate thumb / toe impression or complete any other prescribed processes and procedures as mandated by the regulator(s).

- at the registered address (or)
- at the address where investor stays now (specify)_____
- at the hospital specify the details _____
- Contact Number(s): _____ to fix appointment (if required).

Documentary Proof enclosed (tick as applicable):

- Original Medical certificate indicating incapacitation.
- Self-attested PAN card copy / Masked Aadhaar copy of the incapacitated investor.
- Copy of the court order or letter from the competent authority (where applicable).
- ID Document number of authorized nominee (which should match with details of registered nominee)

I/We extend all support and cooperation to complete the processes and tag the account as Incapacitation wherever the above referred PAN / Folio(s).

Declaration from Empowered Nominee

I hereby confirm my understanding and the responsibility that I own for limited purpose transaction as per the wish of the investor(s) in the above referred account/folio and help your esteemed organization with all the required information/documentary proof and support as required from time to time.

Signatures:

Holder	Name	Signature
First holder		
Joint Holder1		
Joint Holder2		
Authorized Nominee		

Letter for intimating Incapacitation of the investor and relevant authorization

For Office Use only to be filled only by Regulated Entity employee

I, _____ Emp No. _____, DP/AMC/RTA Name _____ visited the above address/hospital and met the incapacitated investor and noted the incapacitation and obtain the following:

Date of Visit	Thumb Impression*	Toe Impression	Marks noted

*Signature of Witness:

Name of the Witness:

Address of the Witness:

Signature of the DP/AMC/RTA employee: _____