



**2nd Asset Management Seminar - Kisumu, Kenya;
28th – 30th September, 2016**

**DEVELOPMENTS IN UNCLAIMED
FINANCIAL ASSETS REGULATIONS**



Facilitator's Bio – Jacob Owade



Jacob O. Owade

*Lead - Unclaimed Financial
Assets Practice*

- Experienced Unclaimed Financial Assets Specialist
- Honours Graduate - City University of New York's (CUNY) Bernard M. Baruch College with a Bachelor's Degree in Accounting and also holds an Associate Degree in Accounting from the State University of New York's (SUNY) Westchester Community College.
- Specialty
 - ✓ Unclaimed assets compliance,
 - ✓ Audit assistance,
 - ✓ Risk assessment,
 - ✓ Policies and procedures development,
 - ✓ Asset return/recovery,
 - ✓ Stakeholder education and training and
 - ✓ Voluntary disclosure agreements (VDAs).
- Served mainly Fortune 500 clients in industries including financial services, energy and resources, technology and media, consumer business and retail.
- Prior to joining *OneSource Financial Services Ltd*, worked for Deloitte & Touché LLP in the United States as an Unclaimed Property Consultant. Previous clients include Exxon Mobil, Cablevision, Bank of America, Bank of New York Mellon (U.S.A), Unclaimed Financial Assets Authority, Kenya Bankers Association, Association of Kenya Insurers and Kenya Power (Kenya).
- Jacob has been featured on NTV, KBC TV and CNBC Africa, Ramogi Radio and published articles in the Kenya Bankers Association (KBA) Newsletter – Vanguard and ICPAK's Journal - The Accountant as an expert on unclaimed financial assets.

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What Are Unclaimed Financial Assets?

Jacob Owade - OneSource Financial Services Limited



History and Background

Origins in British Common Law

ESCHEAT

Traditional

Custodial

KENYAN SITUATION

Initial Advocacy & Lobbying by individuals & interest groups

Taskforce

Authority

Purpose of the Law

- ❖ Protect the interests and property rights of the lost owner
- ❖ Reunite the asset with its rightful owner
- ❖ Indemnifies the holders from the expense and liability associated with the asset
- ❖ Transfers custody and liability to the Authority
- ❖ Ensure that any economic windfalls benefit the public, not an individual holder

Common Definitions

Unclaimed Financial Asset: Intangible property that has gone unclaimed by its rightful owner.

Activity: Action taken on an asset *by the owner* which may include making a deposit, a withdrawal, a written memorandum to the holder, or any action that the Act deems adequate.

Custodian: An individual or entity who holds the assets until it is delivered to the rightful owner.

Common Definitions

Due Diligence: The degree of effort required by law that a holder must perform to find the rightful owner before remitting the property to the Authority.

Dormancy Period: The period of inactivity after which an asset is considered “presumed abandoned”.

Dormancy Date/Date of Last Activity: The date of last contact by the owner as evidenced by the records of the holder.

Escheat: A transfer of property that makes the Authority the legal owner of the transferred asset.

Common Definitions

Holder: The entity that is in possession of, or controls, the asset until it is transferred to the Authority on behalf of the lost owner.

Indemnification: An agreement that protects a party from loss by transferring the responsibilities to a third party.

Intangible Personal Property: Property that has no intrinsic value but is merely representative or evidence of value. Examples include royalty payments, securities, accounts receivables, gift items and deposit accounts.

Rightful Owner: A person/entity who has the legal right to the asset.

Examples of Unclaimed Financial Assets

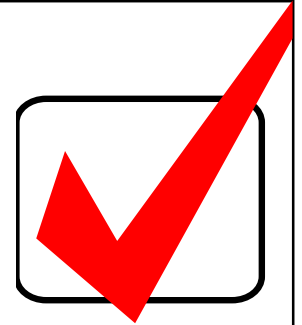
- ❖ Deposit accounts
- ❖ Money orders, travelers cheques
- ❖ Uncashed cheques
- ❖ Matured insurance proceeds
- ❖ Utility deposits
- ❖ Securities & related property
- ❖ Payroll, commissions
- ❖ Court awards
- ❖ Assets held by government departments
- ❖ Accounts receivable credit balances & refunds
- ❖ Loyalty points & rebates
- ❖ Gift Certificate
- ❖ Safe deposit box contents

Determining Abandonment

An asset is presumed abandoned / unclaimed when there has been no action or communication initiated by the owner after a specified period of time.

Holder Obligations Under the Act

- ❖ Duty to identify potential unclaimed financial assets
- ❖ Duty to perform due diligence
- ❖ Duty to file an annual report and remit the assets to the Authority
- ❖ Duty to maintain copies of the reports and supporting documentation
- ❖ Duty to protect the funds until reported and transferred to the Authority



The Authority's Responsibility

- ❖ Release & indemnify the holder from liability
- ❖ Secure the funds in a custodial capacity
- ❖ Make efforts to locate the owners
- ❖ Pay claims





The Unclaimed Financial Assets Act (2011) & Regulations (2016)

Jacob Owade - OneSource Financial Services Limited



The Unclaimed Financial Assets Act & Regulations

❖ THE LAW

- PART I - Preliminary
- PART II - Determination of Unclaimed Assets
- PART III - Dealing with Unclaimed Assets, Duties of Holders, and Certain Powers of the Authority, ETC.
- PART IV - The Unclaimed Financial Assets Authority
- PART V - The Unclaimed Financial Assets Trust Fund
- PART VI - Miscellaneous

The Unclaimed Financial Assets Act (2011) & Regulations (2016)

❖ PART II - Determination of Unclaimed Assets

- Section 3: Unclaimed assets general requirements.
- Section 4: Travellers cheques, money orders, etc.
- Section 5: Cheques, drafts or similar instruments.
- Section 6: Demand, savings or matured time deposit.
- Section 7: Life or endowment insurance policy or annuity contract.
- Section 8: Demutualization of insurance company, etc.
- Section 9: Deposit for utility services.
- Section 10: Determination or order by court of refund by holder.
- Section 11: Ownership interest, etc.

The Unclaimed Financial Assets Act & Regulations

❖ PART II - Determination of Unclaimed Assets

- **Section 12:** Assets from dissolved business entity.
- **Section 13:** Assets held in fiduciary capacity.
- **Section 14:** Gift certificate or credit memo.
- **Section 15:** Unpaid wages.
- **Section 16:** Assets held in safe deposit box or repository.
- **Section 17:** Assets held by court or Government department.
- **Section 18:** Cabinet Secretary to prescribe further classes of assets etc.

The Unclaimed Financial Assets Act & Regulations

❖ PART III – Dealing With Unclaimed Assets, Duties of Holders and Certain Powers of the Authority, ETC

- **Section 19: Duty to locate and notify owners of assets.**
- **Section 20: Report of presumed abandoned assets; duties of assets holder.**
- **Section 21: Authority may request for information.**
- **Section 22: Payment or delivery of abandoned assets to Authority**
- **Section 23: Authority to assume custody; rights of assets holder, etc.**
- **Section 24: Authorised deductions by the Authority.**
- **Section 25: Dividends, interest or other income.**

The Unclaimed Financial Assets Act & Regulations

❖ PART III – Dealing With Unclaimed Assets, Duties of Holders and Certain Powers of the Authority, ETC

- **Section 26: Sale of unclaimed assets.**
Section 27: Availability of information to the public.
- Section 28: Claims on assets.
- Section 29: Action to establish claim in court.
- **Section 30: Expiration of time period specified by contract, statute of court order.**
- **Section 31: Report of unclaimed assets; examination of records, etc.**
- Section 32: Maintenance of records; required time periods.

The Unclaimed Financial Assets Act & Regulations

❖ PART III – Dealing With Unclaimed Assets, Duties of Holders and Certain Powers of the Authority, ETC

- Section 33: Failure to pay or deliver assets and penalties.
- **Section 34: Assets deemed unclaimed before this Act came into force.**
- Section 35: Duty to locate and notify owners of assets.
- Section 36: Unclaimed assets database.
- Section 37: Responsibility of regulatory authorities.
- Section 38: Access to information and retention of records by the Authority.

The Unclaimed Financial Assets Act & Regulations

❖ PART IV – The Unclaimed Financial Assets Authority

- Section 39: Establishment of the Unclaimed Financial Assets Authority.
- **Section 40: Composition of the Board.**
- Section 41: Objects and functions of the Board.
- Section 42: Appointment of the chief executive officer, etc.
- Section 43: Exemption from stamp duty.

The Unclaimed Financial Assets Act & Regulations

❖ PART V – The Unclaimed Financial Assets Trust Fund

- Section 44: Establishment of the Trust Fund.
- Section 45: Payment of claims.
- Section 46: Accounts and audit.
- Section 47: Penalties payable to the Fund.
- Section 48: Investment of funds.

The Unclaimed Financial Assets Act & Regulations

❖ PART VI – Miscellaneous

- Section 49: Authority to appoint agents, etc.
- Section 50: Authority may institute proceedings in court.
- **Section 51: Powers of the Authority to enter, etc.**
- Section 53 : Regulations

The Unclaimed Financial Assets Act & Regulations

REVIEW OF THE ACT ALONGSIDE OTHER RELEVANT KENYAN LAWS

The Unclaimed Financial Assets Act & Regulations

- ❖ Kenyan laws that may affect the objectives, application, enforcement, and compliance of UFAA
 - National Payment System Act, 2011
 - Banking Act ,Cap 488
 - Companies Act, 2015
 - **Insolvency Act, 2015**
 - Capital Markets Act, Cap 485A
 - The Retirement Benefits Act, 1997
 - Microfinance Act, 2006
 - Sacco Societies Act, 2008

The Unclaimed Financial Assets Act & Regulations

- ❖ Kenyan laws that may affect the objectives, application, enforcement, and compliance of UFAA
 - Central Bank of Kenya Act, Cap 491
 - Co-operative Societies Act, 1997
- ❖ There are other laws whose subject matter invariably weights in on the application of the Act. These are,
 - Trustee Act, Cap 167
 - **The Law of Succession Act, Cap 160**
 - Employment Act, Cap 226
 - Advocates Act, Cap 16



The Unclaimed Financial Assets Report

Jacob Owade, OneSource Financial Services Limited



The Basics – 4Ws & H

- ❖ Why
- ❖ What
- ❖ Where
- ❖ When
- ❖ How

Why

❖ It's the law

Unclaimed financial assets compliance is mandatory, not voluntary

What

❖ Identify where potential unclaimed assets could come from

- Cheques, drafts, deposits, interest, dividends
- Credit balances, customer overpayments, security deposits, unpaid wages, refunds, unidentified remittances
- Stocks and other intangible ownership interests
- Money deposited to redeem stock, bonds and other securities
- Amounts due and payable under the terms of insurance policies
- Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, insurance or similar benefits

Where

Follow the Unclaimed Financial Assets Law and escheat assets to Unclaimed Financial Assets Authority's Trust Fund at the Central Bank of Kenya

When

- ❖ Due Diligence – the degree of effort required by law that a holder must make to attempt to find the an owner prior to reporting an asset to the Authority
- ❖ Dormancy period is the length of time which must elapse before an assets is considered unclaimed
- ❖ Reporting deadline
 - November 1st
 - Cut off of June 30th

How

❖ Did the Holder follow instructions?

- Where do I file the report?
- Where do I remit the payment?
- Who must sign the report?

❖ Does the report, include among other information;

- Holder contact information?
- Holder PIN/VAT number?
- Owner contact information?
- Property types?
- Report year?

**Burden of proof is on the
HOLDER
to refute the presumption
of abandonment**

Fines & Penalties



- ❖ Failure to report/remit the assets
- ❖ Failure to comply with the Act
 - Interest charges on past due liabilities – 1% above APR per month
 - Penalty charges of between Kshs 7,000 and 50,000 per day
 - 25% penalty on the value of the assets that should have been delivered to the Authority

Additional Considerations

❖ Non-compliant holders could also be subjected to:

- Civil/criminal penalties for failure to report/remit/deliver or file fraudulent report
- Assessments sizeable enough to impact on cash flow and earnings
- Material misstatement under financial reporting
- Audit costs
- Adverse publicity
- Litigation risk - class action law suits
- Embezzlement by staff or fraudulent claims by individuals outside the organization

Questions...





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