



# Unclaimed Financial Assets : Implications for Auditors

**WEBINAR**

Tuesday 7th July 2020  
Time 16:00-18:00 Hrs

**1.5**  
CPD HOURS

**Mandatory Training for Practitioners**

**Facilitator**



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# UNCLAIMED FINANCIAL ASSETS

Presentation by:



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Tuesday, 7<sup>th</sup> July 2020

# Presentation Agenda



- ❑ Overview of Unclaimed Financial Assets (UFA) Act No. 40 of 2011.
- ❑ Unclaimed Financial Assets Authority (UFAA) - mandate & role.
- ❑ Highlight benefits and consequences of compliance(or non compliance) with UFA Act, 2011.
- ❑ Authority's expectation of the third party auditors to undertake holders' audits.

# UFAA mandate & role



- ❑ The Unclaimed Financial Assets Authority (UFAA) is a statutory organization established under the National Treasury pursuant to the Unclaimed Financial Assets (UFA) Act No. 40 of 2011.
- ❑ The primary mandate of the Authority is to obtain unclaimed financial assets from holders of such assets, safeguard and reunite the assets to their rightful owners.

# Objects and functions of the Authority



- ☐ Receiving of payments in respect of unclaimed assets.
- ☐ Maintenance of a Trust Fund and Investment of the funds of the Authority.
- ☐ Making payments out of the Trust Fund to identified owners of the declared assets.
- ☐ Undertake examination of the records of the holder(s) upon reasonable notice to determine the extent of compliance.
- ☐ Advising the Cabinet Secretary on pertinent issues regarding unclaimed financial assets.

# Background



- ❑ Unclaimed Financial Assets are a phenomenon of a market economy.
- ❑ Best practice requires:
  - Holders – identify and report unclaimed financial assets.
- ❑ Owners – perpetual right to reunification.
- ❑ Communication to the claimants/beneficiaries by both the holders and Authority.
- ❑ Examination of holders records to ascertain compliance.

# Identifying unclaimed assets



“unclaimed financial assets” means assets that—

- (a) have been presumed abandoned and have become unclaimed assets under the provisions of this Act;
- (b) have been transferred to the Authority as unclaimed financial assets;
- (c) have been deemed under any other law to be unclaimed assets and payable to the Authority, and includes all income, dividend or interest thereon but excludes any lawful charges thereon;

# How assets become unclaimed



One or more of the following three requirements must be satisfied for an asset to become unclaimed asset:

- ☐ the records of the holder do not reflect the identity of the person entitled to the assets.
- ☐ the holder has not previously paid or delivered the assets to the apparent owner or other person entitled to the assets.



# How assets become unclaimed...cont.



- ❑ the last known address, as shown on the records of the holder, of the apparent owner is in a country that does not provide by law for the escheat or custodial taking of the assets or its escheat or unclaimed assets law is not applicable to the assets and the holder is domiciled in Kenya.

# Other causes of unclaimed financial assets



- ☐ Death
- ☐ Forgetfulness
- ☐ Poor record keeping
- ☐ Relocation
- ☐ Ignorance
- ☐ Negligence, etc.

# Asset classes vs. period of abandonment



## Asset

## Period

Travelers cheques, money orders, and other related instruments

2 Years

Cheques, drafts or similar instruments

2 Years

Demand, savings or matured time deposits.

5 Years

Life endowment insurance policies or annuity contract

2 Years

Demutualization of insurance company

2 Years

Deposit for utility services

2 Years

Determination or Order by Court of refund by holder

2 Years

Ownership interest (shares and dividends)

3 Years

# Asset classes vs. period of abandonment...cont.



Asset	Period
Assets from dissolved Business entity	2 Years
Assets held in fiduciary capacity	2 Years
Gift certificates or credit memos	5 Years
Unpaid wages	1 Year
Assets held in safe deposit boxes	2 Years
Assets held by court or Government department	1 Year

The CS, National Treasury may prescribe further categories of UFA through Gazette notice and respective qualifying criteria.

# UFA Regulations, 2016



- ❑ The Authority developed UFA Regulations, 2016 to operationalize the UFA Act, 2011. The Regulations cover mainly the holders reporting process and the claims process by use of various Forms.
- ❑ The claimants are expected to fill various forms e.g. 4A or, 4B or, 4C or, 4D, and Form 5 in addition to the prescribed support documentation.
- ❑ These support documentation include identity details, holders' written remittance confirmation among others to enable the Authority to process the claims.

# UFA Reporting Timelines



- ❑ The Act requires that the report shall be filed on or before the first day of November of each year for the twelve-month period ending on the immediately preceding thirtieth day of June.
- ❑ Authority may extend the filing date for up to 60 days after the deadline **IF an estimated payment is paid** on or before the deadline for the twelve - month period ending on the immediately preceding thirtieth of June.
- Note: A request for extension of time to file the report shall not be deemed a request for an extension of time to remit the payments.

# The Role of the Holders



- ❑ The Act defines a holder as any entity who, in respect of assets to which the Act applies, holds such assets on behalf of an owner, is in possession of assets belonging to another, is indebted to another on an obligation or is a trustee.
- ❑ The Act requires all holders of UFA to perform an act of due diligence. That is, make reasonable efforts to locate the owner and notify the owner about those assets. The Authority has sole discretion to determine the period duration to be allowed in making a reasonable effort by the holder.

# The Role of the Holders...cont.



- ❑ The holder in possession of unclaimed assets under the Act shall send **WRITTEN** notice to the apparent owner at his/her last known address informing him/her that the holder is in possession of assets subject to the Act, before remitting the assets to the Authority.
- ❑ A holder is required to maintain a record of the report submitted to the Authority for 10 years after the assets become reportable, except to the extent that a shorter time is provided.



# Filing reports to the Authority



- ❑ The Act, bestows the holder with responsibility of filing Unclaimed Financial Assets reports to the Authority, in both soft and hard copies.
- ❑ Specifically, the Act requires that all the report(s) filed with the Authority be signed off by the Chief Executive Officer/MD.
- ❑ The Act requires that the report should include;
  - The name, if known.
  - Last known address if any, of each person appearing from the records of the holder to be the owner of the asset presumed abandoned.

# Filing reports to the Authority...cont.



- ❑ The holders are expected to remit unclaimed financial assets in their records to the Authority's Unclaimed Assets Trust Fund account at the Central Bank of Kenya and provide a soft and a hard copy of the report(s) of the remitted unclaimed assets to the Authority.
- ❑ Soft copy reports are filed online using the formats prescribed in UFA Regulations, 2016.
- ❑ The Act is retrospective in effect, and applies to all assets classified as unclaimed financial assets prior to 2011 (since the holder's inception).

# Authority's Powers on Reporting and enforcing compliance



- ❑ The Authority has powers to require a person who has not filed a report as required by section 20 or a person who has filed an incomplete, or false report, to file a Certified Report.
- ❑ The Certified Reports shall state whether the person is holding any unclaimed assets reportable or deliverable under the Act, describe the unclaimed assets not previously reported or as to which the Authority has made inquiry, and specifically identify and state the amounts of assets that may be in issue.

# Authority's Powers on Reporting and enforcing compliance...cont.



- ❑ The Authority has powers to request a person who it reasonably believes is a holder of assets to provide such information to the Authority as may be required, within such time or at such intervals as may be specified in the request.
- ❑ The Authority has powers which it can from time to time exercise to ensure full compliance, including the power to examine the records of a holder to determine whether the person has complied with the Act.

# Authority's Powers on Reporting and enforcing compliance...cont.



- ☐ The Authority has powers to enter into contract with any other person to conduct the examination the Act on behalf of the Authority.
- ☐ The Authority has powers to assess the cost of the audit/examination of holders records against the holder.

# Authority's Powers on Reporting and enforcing compliance...cont.



- ❑ The cost of examination of holders records shall be imposed only against the holder.
- ❑ Where a holder fails to maintain the records required by the Act, and the records of the holder available for the periods subject to the Act are insufficient to permit the preparation of a report, the Authority has powers to require the holder to report and pay an amount as may reasonably be estimated from any available records.

# UFAA Compliance Audits



As part of its Receive mandate, the Authority carries out compliance audits to assess the level of compliance by various holders.

The Authority competitively selects and contracts Audit firms to carry out compliance audits on its behalf in accordance with the Public Procurement and Assets Disposal Act 2015.

Some of the mandatory requirements when procuring audit firms include;

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# Requirements for CPAs to undertake UFAA Audits



Serial No.	Mandatory Requirements (MR)
1	Valid tax compliance certificate for the firm.
2	A valid practising certificate from ICPAK for the firm.
3	A valid certificate of good standing from ICPAK for the audit firm or a relevant professional body for the audit team, including the partners.
4	Form of tender duly filled, signed and stamped in the format provided.
5	Submission of original & copy of tender document properly Tape Bound and Paginated
6	Anti-corruption Pledge duly signed and stamped in the format provided.
7	Original Tender Security from a reputable bank in the form of a Banker's guarantee or an Insurance
8	A duly executed Joint Venture / Consortium agreement witnessed by ICPAK where two or more audit firms would wish to pool and bid jointly for capacity purposes.

# Benefits of Compliance by Holders



The benefits of compliance are:

- ☐ The Authority assumes custody and safekeeping of reported unclaimed assets.
- ☐ Anyone who remits Unclaimed Assets to the UFAA in good faith shall be relieved of all liability to the extent of the value of assets paid or delivered to the Authority.
- ☐ Where the holder pays or delivers assets to the Authority in good faith, then the Authority shall defend the holder against the claim and indemnify the holder against any liability on the claim.

# Benefits of Compliance...cont.



- ☐ Enhances shareholder/customer relations;
- ☐ Minimizes corporate “deadwood”;
- ☐ Reunites and reactivates missing owners with their assets and clients with their deposits;
- ☐ Reduces operating expense/overhead;
- ☐ Eliminates regulatory/non-compliance risks;
- ☐ Reduces risk of operational fraud, in addition to class action suits given the assertive, and increasingly litigious nature of the Kenyan consumer;
- ☐ Obviates embarrassing and awkward questions.

# Consequences for Non Compliance



Penalties that can be instituted are:

- ☐ The holder shall pay to the Authority interest at the current monthly rate of 1% above the adjusted prime rate per annum per month on the assets or value of the assets from the date the assets should have been paid or delivered.
- ☐ The adjusted prime rate shall be based on the Central bank of Kenya average rate during the twelve-month period ending thirtieth day of September.

# Consequences for Non Compliance...cont.



- ❑ A person who wilfully fails to render any report or perform other duties required under the Act shall be liable to pay penalty of between Sh7,000 and Sh50,000 for each day the report is withheld or the duty is not performed.
- ❑ A person who wilfully fails to pay or deliver assets to the Authority as required under the Act shall be liable to pay a penalty equal to 25% of the value of the Assets that should have been paid or delivered.

# Consequences for Non Compliance...cont.



- ❑ These penalties are recoverable as a civil debt summarily.
- ❑ Authority has powers to assess the cost of the examination/audit against the holder.
- ❑ Where a body corporate commits an offence under the Act, an employee, officer, director or agent of the corporation who authorises, permits or acquiesces in the commission of the offence commits an offence.

# Consequences for Non Compliance...cont.



- ❑ A person who wilfully refuses after written demand by the Authority to pay or deliver assets to the Authority as required under this Act commits an offence.
- ❑ A person Convicted of an offence under the Act, shall be liable to a fine of not less than fifty thousand shillings and not more than one million shillings or to imprisonment for not more than one year, or to both.

# Illustration of sample Penalties in the Act



<b>PENALTIES: Illustration of a sample case</b>				
Amount assessed as unclaimed financial assets - Kes.			<b>2,000,000</b>	
<b>Where:</b>	First compliance cycle		01 November 2014	
	Last compliance cycle ( date of audit)		01 November 2017	
		<b>Days overdue</b>	<b>1,096</b>	<b>(36 Months)</b>
<b>Section</b>	<b>Type of Penalty</b>	<b>Penalty Kes.</b>		
Sec. 31(1) <sup>1</sup>	Interests (CBR +1 %) per month	7,920,000		
Sec. 31(4) <sup>2</sup>	Daily penalty between 7,000-50,000	54,800,000		
Sec. 31(5) <sup>3</sup>	25% of assets held	500,000		
<b>Total Penalties<sup>4</sup></b>		<b>63,220,000</b>		
	<b>Total dues</b>	<b>65,220,000</b>	Excludes cost of audit	
<b>The UFA Act, 2011</b>				
Sec. 31(1) <sup>1</sup>	Adjusted prime rate per annum (assumed at 10%)per month on the assets or value.			
Sec. 31(4) <sup>2</sup>	Assumed Max - 50,000 shillings for each day the report is withheld or the duty is not performed.			
Sec. 31(5) <sup>3</sup>	Liable to pay a penalty equal to 25% of the value of the assets that should have been paid or delivered.			
Total Penalties <sup>4</sup>	Section 31(7) cost of audit / examination shall be assessed against the holder			



# Challenges faced by the Authority



- Limited Awareness
- Low levels of Compliance
- Incomplete records by holders
- Legislative/Reporting inconsistencies
- No recognition of UFA in IFRS & IAS
- Inadequate capacity by CPAs to undertake UFAA compliance audits

# Role of Auditors



- Risk Assessment - Identify compliance issues and areas of potential exposure relating to UFA law
- Quantification of Actual Liability - By Asset class and Retrospectively
- Voluntary Disclosures – Comply and Endeavour to resolve any outstanding compliance issues with UFAA
- Build capacity to undertake holders compliance audits on behalf of the Authority
- Continue to create awareness about the mandate of the Authority

# Interactive Session

