

UNCLAIMED FINANCIAL ASSETS

What the public Need to Know About Unclaimed Financial Assets

- Are you a bank customer who has not updated your contact information and has not operated your bank account for more than a year?
- Do you have shareholdings in a listed company and are yet to claim your dividend cheques?
- Are you a beneficiary of an insurance policy of which funds became due and payable over two years ago?
- Are you an employee who has unpaid wages in the form of unrepresented payroll cheques?

If you answered YES to any of these questions, then you are the owner of an Unclaimed Financial Asset.

These assets which are held by institutions will soon need to be transferred to the Unclaimed Financial Assets Authority in accordance with the Unclaimed Financial Assets Act (2011).

The Kenya Bankers Association (KBA) therefore would like to give you some basic information as the institutions prepare to comply with this law.

BACKGROUND

The Unclaimed Financial Assets Act (No. 40 of 2011) provides a legislative framework for dealing with unclaimed financial assets, which are defined as: financial assets which include any income, dividend or interest.

A financial asset is considered unclaimed when no claims have been made, no transactions have been performed or no instructions have been given with respect to the asset for a period of time.

This Act is aimed at establishing a dedicated mechanism and resources to help locate property owners and/or beneficiaries to facilitate claims.

The Act provides for:

- How institutions should report and deal with unclaimed financial assets;
- The establishment of a new regulator called the "Unclaimed Financial Assets Authority"; and
- The establishment of the Unclaimed Financial Assets Trust Fund.

DETERMINATION OF UNCLAIMED FINANCIAL ASSETS

While regulations are still being developed to guide the Authority, below are the conditions outlined in the Act that are required for an asset to be presumed as being unclaimed.

| ASSET | DURATION OF ABANDONMENT | CONDITIONS |
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| 1. Traveller's cheque 2. Money order or similar written financial/ monetary instrument | 2 years from the date of issuance | <ul style="list-style-type: none"> • Owner has not communicated in writing to the issuer concerning it • Must have been purchased in Kenya; or • Issuer has its principal place of business in Kenya and the records of the issuer do not show the country in which the financial/monetary instrument was purchased; or • The issuer (e.g. bank / financial institution) has its principal place of business in Kenya |
| 3. Cheques, drafts or similar instruments | Outstanding for more than 2 years after it was payable or after its issuance | <ul style="list-style-type: none"> • Bank or financial institution must be directly liable; • Owner has not communicated in writing to the issuer or indicated an interest within the preceding two years; • Holder cannot deduct any charge unless imposed by a written contract |
| 4. Demand, savings, matured time deposit, funds paid towards the purchase of a share, mutual investment certificate, any other interest in a financial institution | 5 years | <ul style="list-style-type: none"> • Owner has not increased or decreased the amount of the deposit or presented a statement of the account (or passbook) or other evidence of the deposit; or • Owner has not communicated in writing with the financial institution concerning the assets; • Owner has not indicated an interest in the assets; or • Owner has not had another relationship with another financial institution |
| 5. Life or endowment Insurance policy or annuity contract | 2 years after the funds become due and payable | <ul style="list-style-type: none"> • Policy must have matured or terminated |
| 6. Assets as a result of demutualization of an insurance company | 2 years after the date of the demutualization | <ul style="list-style-type: none"> • The funds remain unclaimed; • Owner has not communicated with the holder (bank/ financial institution) or agent |
| 7. Deposit for utility services e.g. electricity, water, etc. | 2 years after termination of the services | <ul style="list-style-type: none"> • Deposit unclaimed for more than two years after termination |
| 8. Order by a court for refund by holder | 2 years after it became payable according to the order | <ul style="list-style-type: none"> • Sum remains unclaimed by the owner for more than two years after the sum became payable |
| 9. Ownership interest | 3 years | <ul style="list-style-type: none"> • Interest in the entity is owned by a person who has not claimed a dividend, distribution or other sum payable as a result of the interest; • Has not communicated with the entity regarding the interest or dividend, distribution or other sum payable; • The entity does not know the whereabouts of the owner at the end of the three year period |
| 10. Assets from dissolved business entity | 2 years | <ul style="list-style-type: none"> • Assets distributable in the course of dissolution of a business entity remain unclaimed by the owner for more than two years after the date specified |

| ASSET | DURATION OF ABANDONMENT | CONDITIONS |
|--|---|---|
| 11. Assets held in a fiduciary capacity | 2 years after they become payable | <ul style="list-style-type: none"> • Assets held for the benefit of another person; • Owner not increased the deposit or accepted any payment in that respect, within 2 years after they have become payable; • Owner has not communicated concerning the assets or indicated any interest |
| 12. Gift certificate, gift card or credit memo/note | 5 years | <ul style="list-style-type: none"> • The certificate, card or memo is not claimed or used for a period of five years after becoming payable or distributable; • The certificate, card or memo was used or claimed one or more times without exhausting its full value, but was not subsequently claimed or used for an uninterrupted period of five years |
| 13. Unpaid wages | 1 year after they become payable | <ul style="list-style-type: none"> • Unrepresented payroll cheques, allowances, bonuses and terminal benefits owing in the ordinary course of the holder's business |
| 14. Assets held in safe deposit box or repository | 2 years after the lease or rental period on the box or repository has expired | <ul style="list-style-type: none"> • Lease of rental period on the box or other repository lapses |
| 15. Assets held by a court or a Government department. | 1 year after they become payable or distributable | <ul style="list-style-type: none"> • Assets held for the owner for more than one year are presumed abandoned. |
| 16. Further classes of assets | To be prescribed by the Cabinet Secretary | <ul style="list-style-type: none"> • May include such other requirements as the Cabinet Secretary may deem necessary |

CONSEQUENCES OF NOT CLAIMING FINANCIAL ASSETS

1. Deductions will be made by the Authority against the asset. The law provides the Authority with the right to deduct:

- Costs related to the sale of the abandoned assets;
- Costs of mailing and publication in connection with the abandoned assets;
- Reasonable service charges;
- Costs incurred in examining records of holders of assets and in collecting the assets from the holders.

The owner is entitled to receive from the Authority any dividends, interest or other income realized from the assets at or before liquidation or conversion of the assets into money.

2. Sale of the assets by the Authority

The Authority is empowered to sell the abandoned assets not later than three years after receipt of the abandoned assets to the highest bidder at a public auction. The sale shall be preceded by at least one publication of notice at least three weeks in advance of sale in at least one newspaper of national circulation.

All securities presumed abandoned and delivered to the Authority shall be sold within one year (no later than three years) of their receipt unless the Authority otherwise decides.

The purchaser of the assets at a sale conducted by the Authority shall take the assets free of all claims of the owner or previous holder of the assets and all persons claiming through or under the owner or previous holder.

PROCEDURE FOR FILING A CLAIM

A person claiming an interest in any assets paid or delivered by their financial service provider to the Authority may file with the Authority a claim on as prescribed by the Authority.

The Authority shall consider each claim within 90 days after it is filed and shall give a written notice to the claimant of its decision.

Where a claim is allowed, the Authority shall pay over or deliver to the claimant the assets or the amount the Authority actually received or the net proceeds if it has been sold by the Authority. Visit www.ufaa.go.ke for more information and to initiate a search.

GOOD FINANCIAL PRACTICE FOR BANK CUSTOMERS

Banks require their customers to routinely update their records as a matter of basic good financial practice. This up-to-date contact record enables your bank to communicate to you about important matters associated with your bank account. At a minimum, your bank should have you:

- Current cell phone number
- Current mailing address (post office box)
- Email address that you check regularly
- Current residential address and permanent address information

In addition, banks expect customers to transact on the accounts which they own. This ensures that the accounts do not fall dormant and in accordance with the new Unclaimed Financial Assets Act would be transferred to the Unclaimed Financial Assets Authority.

To keep your financial assets from being deemed unclaimed:

- Check your bank statements regularly
- Promptly notify your bank/brokerage firm/insurance provider about changes in your contacts (phone, email & postal address)
- Routinely check with your bank/brokerage firm or insurance provider on the status of paid out dividends/ premiums
- Officially advise your financial service provider about your next of kin

This message is sponsored by the Kenya Bankers Association (KBA) on behalf of its members. Please contact your bank for more information. To download the Unclaimed Financial Assets Act, 2011 visit the Kenya Bankers Association Website at www.kba.co.ke