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UNCLAIMED FINANCIAL ASSETS ACT

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UNCLAIMED FINANCIAL ASSETS ACT

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NO. 40 OF 2011

UNCLAIMED FINANCIAL ASSETS ACT

[Date of assent: 2nd December, 2011.]

[Date of commencement: 16th December, 2011.]

An Act of Parliament to provide for the reporting and dealing with unclaimed financial assets; to establish the Unclaimed Financial Assets Authority and the Unclaimed Financial Assets Trust Fund and for connected purposes

[Act No. 40 of 2011.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Unclaimed Financial Assets Act, 2011.

2. Interpretation

In this Act, unless the context otherwise requires—

“**apparent owner**” means the person whose name appears on the records of the holder as the person entitled to assets held, issued, or owing by the holder;

“**assets**” means financial assets to which this Act applies and includes any income, dividend or interest thereon;

“**Authority**” means the Unclaimed Assets Authority established by section 39;

“**bank**” has the meaning assigned to it in the Banking Act (Cap. 488);

“**Board**” means the board of the Authority;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**chief executive officer**” means the chief executive officer of the Authority appointed under section 42;

“**financial institution**” has the meaning assigned to it in the Banking Act (Cap. 488);

“**Fund**” means the Unclaimed Assets Trust Fund established by section 44;

“**holder**” means any entity who, in respect to assets to which this 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;

“**insurance company**” has the meaning assigned to it in the Insurance Act (Cap. 487);

“**last known address**” means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail;

“**owner**” means a person having a legal or equitable interest in assets subject to this Act and includes the legal representative of the owner;

“unclaimed 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 assets under this Act;
- (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; and

“utility” means a person who carries on, the business of transmission, sale, delivery, or supply of electricity, water or other utility services.

PART II – DETERMINATION OF UNCLAIMED ASSETS

3. Unclaimed assets general requirements

Unless otherwise provided in this Act or by any other law, assets shall be subject to the custody of the Authority as unclaimed assets, if the conditions raising a presumption of abandonment under sections 4 to 18 are satisfied and one or more of the following requirements are met—

- (a) the records of the holder do not reflect the identity of the person entitled to the assets;
- (b) the holder has not previously paid or delivered the assets to the apparent owner or other person entitled to the assets;
- (c) 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.

4. Travellers cheques, money orders, etc.

(1) Subject to subsection (4), any sum payable in Kenya on a travellers cheque that is outstanding for more than two years after its issuance is presumed abandoned unless the owner, within the two years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a record prepared by the issuer.

(2) Subject to subsection (4), any sum payable in Kenya on a money order or similar written instrument that is outstanding for more than two years after its issuance is presumed abandoned unless the owner, within two years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a record prepared by the issuer.

(3) A holder shall not deduct from the amount of a travellers cheque or money order any charge imposed by reason of the failure to present the instrument for payment unless—

- (a) the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them; and
- (b) there is an enforceable written contract between the issuer and the owner of the instrument under which the issuer may impose a charge.

(4) A sum payable in Kenya on a travellers cheque, money order, or similar written instrument may not be subjected to the custody of the Authority as unclaimed assets unless one or more of the following requirements are met—

- (a) the records of the issuer show that the travellers cheque, money order or similar written instrument was purchased in Kenya;
- (b) the issuer has its principal place of business in Kenya and the records of the issuer do not show the country in which the travellers cheque, money order, or similar written instrument was purchased;
- (c) the issuer has its principal place of business in Kenya.

5. Cheques, drafts or similar instruments

(1) Any sum payable in Kenya on a cheque, draft, or similar instrument, on which a bank or financial institution is directly liable, including a banker's cheque, which is outstanding for more than two years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within the immediately preceding two years, has communicated in writing with the bank or financial institution concerning it or otherwise indicated an interest as evidenced by a record prepared by the bank or financial institution.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless—

- (a) the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them; and
- (b) there is an enforceable written contract between the issuer and the owner of the instrument under which the issuer may impose a charge.

6. Demand, savings or matured time deposit

(1) Any demand, savings, or matured time deposit with a bank or financial institution, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a bank or financial institution is presumed abandoned unless the owner, within the immediately preceding five years, has met one or more of the following requirements—

- (a) in the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;
- (b) communicated, in writing, with the bank or financial institution concerning the assets;
- (c) otherwise indicated an interest in the assets as evidenced by a record prepared by the bank or financial institution;
- (d) had another relationship with the bank or financial institution concerning which the owner has met one or more of the following requirements—
 - (i) communicated, in writing, with the bank or financial institution;
 - (ii) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the bank or financial institution and unless the bank or financial institution communicates in writing with the owner with regard to the

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assets that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) A holder may not impose with respect to assets described in subsection (1) any charge due to dormancy or inactivity or cease payment of interest unless—

- (a) the holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the assets; and
- (b) there is an enforceable written contract between the holder and the owner of the assets providing that the holder may impose a charge or cease payment of interest.

(3) Any assets described in subsection (1) that are automatically renewable are matured for purposes of subsection (1) seven years after the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the bank or financial institution or otherwise indicating consent as evidenced by a record prepared by the holder, the assets is matured upon the expiration of the last time period for which consent was given.

(4) Where, at the time provided for delivery to the Authority under section 22, a penalty or forfeiture in the payment of interest would result from the delivery of the assets, the time for delivery shall be extended until the time when no penalty or forfeiture would result.

7. Life or endowment insurance policy or annuity contract

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than two years after the funds became due and payable as established from the records of the insurance company holding or owing the funds.

(2) Where a person other than the insured or annuitant is entitled to the funds referred to in subsection (1) and the address of the person is not known to the insurance company or it is uncertain from the records of the insurance company who is entitled to the funds, it shall be presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurance company.

(3) For purposes of this Act, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the insurance company shall be deemed matured and the proceeds due and payable if one or more of the following requirements are met—

- (a) the insurance company knows that the insured or annuitant has died;
- (b) the insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;
- (c) the policy was in force at the time the insured attained, or would have attained, the limiting age; and neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the insurance company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the, insurance company

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concerning the policy, or otherwise indicated an interest as evidenced by a record prepared by the insurance company.

(4) For purposes of this Act, the application of an automatic premium loan provision or other non-forfeiture provision contained in an insurance policy shall not prevent a policy from being matured or terminated under this section if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds of the policy before the depletion of the cash surrender value of the policy by the application of those provisions.

(5) Where any law or the terms of the life insurance policy require the insurance company to give notice to the insured or owner that an automatic premium loan provision or other non-forfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the insurance company is in Kenya, is undeliverable, the insurance company shall make a reasonable search to ascertain the policyholder's correct address to which the notice shall be delivered.

(6) Notwithstanding any other law, where the insurance company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurance company within sixty days after the death of the insured or annuitant, the insurance company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of Kenya shall request all of the following information—

- (a) the name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
- (b) the address of each beneficiary;
- (c) relationship of each beneficiary to the insured;
- (d) a copy of at least one identification document of each beneficiary, including a national identity card or passport.

8. Demutualization of insurance company, etc.

(1) Assets distributable in the course of the demutualization of an insurance company shall be presumed abandoned where—

- (a) in the case of any funds, two years after the date of the demutualization, the funds remain unclaimed and the owner has not otherwise communicated with the holder or its agent regarding the assets as evidenced by a record with the holder or its agent.
- (b) in the case of any stock, two years after the date of the demutualization, instruments or statements reflecting the distribution are either mailed to the owner and returned as undeliverable or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect and the owner has not otherwise communicated with the holder or its agent regarding the assets as evidenced by a memorandum or other record on file with the holder or its agent.

(2) A holder of unclaimed assets described in subsection (1) shall file an initial one-time report of unclaimed demutualization proceeds not later than six months after this Act comes into force.

(3) In this section, “**demutualization**” means the payment of consideration for the relinquishment of a mutual membership interest in a mutual insurance company, whether or not undertaken in conjunction with a plan of demutualization, liquidation, merger, or other form of reorganization.

9. Deposit for utility services

A deposit made by a subscriber with a utility to secure provision of services or any sum paid in advance for utility services to be furnished, that remains unclaimed by the owner for more than two years after termination of the services for which the deposit or advance payment was made shall be presumed abandoned.

10. Determination or order by court of refund by holder

Except to the extent otherwise ordered by a court, any sum that a holder has been ordered to refund by a court that remains unclaimed by the owner for more than two years after it became payable in accordance with the final determination providing for the refund, whether or not the final determination requires any person entitled to a refund to make a claim for the refund, is presumed abandoned.

11. Ownership interest, etc.

(1) Any stock, share, or other intangible ownership interest in a business entity, the existence of which is evidenced by records available to the entity, is presumed abandoned and, with respect to the interest, the entity is the holder, if both of the following apply—

- (a) the interest in the entity is owned by a person who for more than three years has not claimed a dividend, distribution, or other sum payable as a result of the interest, or who has not communicated with the entity regarding the interest or a dividend, distribution, or other sum payable as the result of the interest, as evidenced by a memorandum or other record on file with the entity prepared by the entity;
- (b) the entity does not know the whereabouts of the owner at the end of the three year period.

(2) The return of official shareholder notifications or communications as undeliverable is evidence that the entity does not know the location of the owner.

(3) This section applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible ownership interest of which the business entity is in possession of the certificate or other evidence or indication of ownership, and to the stock, share, or other ownership interest of dividend and non-dividend paying business entities whether or not the interest is represented by a certificate.

(4) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, shall be presumed abandoned.

12. Assets from dissolved business entity

Assets distributable in the course of dissolution of a business entity that remain unclaimed by the owner for more than two years after the date specified for final distribution is presumed abandoned.

13. Assets held in fiduciary capacity

(1) Assets held in a fiduciary capacity for the benefit of another person are presumed abandoned unless the owner, within two years after they have become payable or distributable, has increased or decreased, the principal, accepted any payment in respect thereof, communicated concerning the assets, or otherwise indicated any other interest as evidenced by a record prepared by the fiduciary.

(2) For the purposes of this Act, a person who is deemed to hold assets in a fiduciary capacity for a business entity alone is the holder of the assets only insofar as the interest of the business entity in the assets is concerned, and the business entity is the holder of the assets insofar as the interest of any other person in the assets is concerned.

14. Gift certificate or credit memo

(1) Except as provided in subsection (4), a gift certificate, gift card, or credit memo is presumed abandoned if either of the following apply—

- (a) the certificate, card, or memo is not claimed or used for a period of five years after becoming payable or distributable;
- (b) the certificate, card, or memo was used or claimed one or more times without exhausting its full value, but subsequently was not claimed or used for an uninterrupted period of five years.

(2) For purposes of subsection (1), a gift certificate or gift card is considered to have been claimed or used if there is any transaction processing activity on the gift certificate or gift card including, but not limited to, redeeming, refunding, or adding value to the certificate or card.

(3) Activity initiated by the issuer of the certificate or card, including, but not limited to, assessing inactivity fees or similar service fees, does not constitute transaction processing activity for purposes of subsection (2).

(4) In the case of a gift certificate or gift card, the owner is presumed to be a recipient of the gift certificate or gift card, and the amount presumed abandoned is the price paid by the purchaser for the gift certificate or gift card, less the total of any purchases or fees assessed against the certificate or card.

(5) In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(6) This Act does not apply to a gift certificate that is issued for retail goods or services by a person engaged in the retail sale of goods or services.

15. Unpaid wages

Unpaid wages including wages represented by unrepresented payroll cheques, allowances, bonuses and terminal benefits owing in the ordinary course, of the holder's business that remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

16. Assets held in safe deposit box or repository

Assets that by their nature may lawfully be sold, held in a safe deposit box or any other safekeeping repository in Kenya in the ordinary course of the holder's business, and proceeds resulting from the sale of the assets, that remain unclaimed by the owner for more than two years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

17. Assets held by court or Government department

Assets held for the owner by a court or a Government department that remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

18. Cabinet Secretary to prescribe further classes of assets etc.

(1) Subject to this Act, the Cabinet Secretary may by order in the *Gazette* prescribe such further class of assets and such further class of holders to be assets and holders respectively to which this Act applies.

(2) The order referred to subsection (1) shall include such other requirements as the Cabinet Secretary may deem necessary, including the period after which assets referred to in subsection (1) may be presumed abandoned and deemed unclaimed assets.

PART III – DEALING WITH UNCLAIMED ASSETS, DUTIES OF
HOLDERS AND CERTAIN POWERS OF THE AUTHORITY, ETC

19. Duty to locate and notify owners of assets

(1) A holder of assets to which this Act applies shall make all reasonable efforts to locate the owner and to notify the owner about those assets.

(2) The reasonable efforts required under subsection (1) shall be made in such manner and within such period as the Authority may prescribe.

(3) Without prejudice to the generality of subsections (1) and (2), within a period not less than sixty days and not more than one year before filing the report required by section 20, the holder in possession of assets presumed abandoned and subject to the Authority's custody as unclaimed assets under this Act shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of assets subject to this Act where the holder has in its records an address of the apparent owner.

20. Report of presumed abandoned assets; duties of assets holder

(1) A person holding assets presumed abandoned and subject to the custody of the Authority as unclaimed assets under this Act shall make a report concerning the assets to the Authority as provided in this section.

(2) The report referred to in subsection (1) shall be certified by the chief executive officer of the holder and shall include all of the following—

- (a) the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of assets presumed abandoned under this Act;
- (b) in the case of unclaimed assets held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the assets;
- (c) in the case of the contents of a safe deposit box or other safekeeping repository or of other tangible assets, a description of the assets and the place where they are held and may be inspected by the Authority and any amounts owing to the holder;

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- (d) the nature and identifying number, if any, or description of the assets and the amount appearing from the records to be due;
- (e) the date the assets became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the assets;
- (f) other information the Authority may lawfully require.

(3) Where the person holding assets presumed abandoned and subject to the Authority's custody as unclaimed assets under this Act is a successor to other persons who previously held the assets for the apparent owner, or the holder has changed its name while holding the assets, the holder shall file with the report all known names, addresses and any other particulars of each previous holder of the assets.

(4) Except as otherwise provided in this section, the report referred to in subsection (1) 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.

(5) The Authority may extend the filing date provided for in subsection (4) for up to sixty 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 day of June.

(6) A request for extension of time to file the report shall not be deemed a request for an extension of time to remit payments.

(7) The Authority shall determine how estimated payments are to be remitted to it by a holder under this Act.

21. Authority may request for information

For the purposes of this Act, the Authority may request a person who the Authority reasonably believes is a holder of assets to provide such information to the Authority as the Authority may require, within such time or at such intervals as may be specified in the request.

22. Payment or delivery of abandoned assets to Authority

A person who is required to file a report under section 20 shall at the time of filing the report pay or deliver to, or hold to the order of the Authority all abandoned assets that are required to be reported under that section or any balance owing if an estimated payment was earlier made to the Authority.

23. Authority to assume custody; rights of assets holder, etc.

(1) Upon the payment or delivery of assets to the Authority, the Authority shall assume custody and responsibility for the safekeeping of the assets.

(2) A person who pays or delivers assets to the Authority in good faith shall be relieved of all liability to the extent of the value of the assets paid or delivered for any claim then existing or which may arise or be made in respect to the assets after the payment or delivery to the Authority.

(3) Where the holder pays or delivers assets to the Authority in good faith and another person claims the assets from the holder or another country claims the money or assets under its laws relating to escheat or abandoned or unclaimed assets, the Authority, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

- (4) For the purposes of this section, “**good faith**” means—
- (a) that payment or delivery was made in a reasonable attempt to comply with this Act;
 - (b) that the person delivering the assets was not a fiduciary then in breach of trust in respect to the assets and had a reasonable basis for believing, based on the facts then known to him, that the assets was abandoned for the purposes of this Act; and
 - (c) that there is no indication that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(5) Assets removed from a safe deposit box or other safekeeping repository shall be received by the Authority subject to the holder’s right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges.

(6) The Authority shall reimburse or pay the holder out of the proceeds remaining after deducting the Authority’s selling cost of an asset under this Act.

24. Authorised deductions by the Authority

(1) Before making any deposit to the credit of the Fund, the Authority may deduct any of the following—

- (a) costs in connection with the sale of abandoned assets;
- (b) costs of mailing and publication in connection with any abandoned assets;
- (c) reasonable service charges;
- (d) costs incurred in examining records of holders of assets and in collecting the assets from those holders.

(2) The Authority shall ensure that the costs and charges deducted pursuant to subsection (1) are reasonable and in accordance with the best market value available.

(3) Notwithstanding subsection (2), the charges deducted under subsection (1) (c) shall not exceed one per cent of the gross value of the asset in question.

25. Dividends, interest or other income

Where assets other than money is delivered to the Authority under this Act, the owner shall be entitled to receive from the Authority any dividends, interest, or other income realized or accruing on the assets at or before liquidation or conversion of the assets into money.

26. Sale of unclaimed assets

(1) Except as provided in this section, the Authority, not later than three years after the receipt of the abandoned assets referred to in section 25, shall sell such assets, subject to a reserve price, to the highest bidder at a public auction.

(2) Any sale held under this section 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.

(3) Securities listed on a stock exchange shall be sold by the Authority at prices prevailing at the time of sale on the exchange.

(4) Securities not listed on a stock exchange may be sold over the counter at prices prevailing at, the time of sale or by any such other method as the Authority may consider appropriate.

(5) Unless the Authority considers it to be in the best interest of the Fund to do otherwise, all securities presumed abandoned under this Act and delivered to the Authority shall be sold within one year of the receipt of the securities.

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

(7) The Authority shall execute all documents necessary to complete the transfer of ownership to the purchaser.

27. Availability of information to the public

The Authority shall, upon payment of such inspection fee as the Authority may from time to time determine; make available for public inspection at all business hours, only the name of the owner or apparent owner and a general description of the assets delivered to it under this Act.

28. Claims on assets

(1) A person claiming an interest in any assets paid or delivered to the Authority under this Act, may file with the Authority a claim on such form as may be prescribed for that purpose by the Authority.

(2) The Authority shall consider each claim referred to subsection (1) within ninety days after it is filed and shall give written notice to the claimant of its decision.

(3) The notice under subsection (2) may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent.

(4) Where no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim.

(5) 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.

29. Action to establish claim in court

(1) A person who is aggrieved by a decision of the Authority or whose claim has not been acted upon within ninety days after its filing may bring an action in court against the Authority.

(2) The action shall be brought within ninety days after the decision of the Authority or within one hundred and eighty days after the filing of the claim where the Authority has failed to Act on a claim.

30. Expiration of time period specified by contract, statute of court order

The expiration, before or after the commencement of this Act, of any period of time specified by contract, statute, or court order, during which a claim for assets can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover assets, shall not prevent the assets from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned assets to the Authority as required by this Act and such assets shall be delivered to the Authority and dealt with as unclaimed assets under this Act.

31. Report of unclaimed assets; examination of records, etc.

(1) The Authority shall have powers to require a person who has not filed a report as required by section 20 or a person who the Authority believes has filed an incomplete, or false report, to file a certified report in a form specified by the Authority.

(2) The report under section (1) shall state whether the person is holding any unclaimed assets reportable or deliverable under this Act, describe 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.

(3) The Authority shall have powers to, at reasonable times and upon reasonable notice, examine the records of a person to determine whether the person has complied with this Act.

(4) The Authority shall have powers to conduct the examination referred to in subsection (3) whether or not the person believes he or she is not in possession of any assets reportable or deliverable under this Act.

(5) The Authority shall have powers to enter into contract with any other person to conduct the examination under this section on behalf of the Authority.

(6) Where an examination of the records of a person results in the disclosure of assets reportable and deliverable under this Act, the Authority shall have powers to assess the cost of the examination against the holder at such daily rate as the Cabinet Secretary may determine provided that the charges shall not exceed the value of the assets found to be reportable and deliverable.

(7) The cost of examination made pursuant to subsection (3) shall be imposed only against the holder.

(8) Where after this Act comes into force, a holder fails to maintain the records required by section 31 and the records of the holder available for the periods subject to this Act are insufficient to permit the preparation of a report, the Authority shall have powers to require the holder to report and pay an amount as may reasonably be estimated from any available records.

32. Maintenance of records; required time periods

(1) A holder required to file a report under section 20, as to any assets for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for ten years after the assets becomes reportable, except to the extent that a shorter time is provided in subsection (2) or by the Authority.

(2) An entity that sells in Kenya its travellers cheques, money orders, or other similar written instruments on which the business entity is directly liable, or that provides those instruments to others for sale in Kenya, shall maintain a record of those instruments while they remain outstanding, indicating the country and date of issue for three years after the date the assets are reportable.

33. Failure to pay or deliver assets and penalties

(1) A person who fails to pay or deliver assets within the time prescribed by this Act shall pay to the Authority interest at the current monthly rate of one percentage point 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.

(2) The adjusted prime rate shall be based on the Central Bank of Kenya average rate during the twelve-month period ending on thirtieth day of September.

(3) The resulting current monthly interest rate based on the twelve-month period ending thirtieth day of September shall become effective on the first day of January of the following year.

(4) A person who willfully fails to render any report or perform other duties required under this Act shall be liable to pay penalty of seven thousand shillings but not more than fifty thousand shillings for each day the report is withheld or the duty is not performed.

(5) A person who willfully fails to pay or deliver assets to the Authority as required under this Act shall be liable to pay a penalty equal to twenty-five percent of the value of the assets that should have been paid or delivered.

(6) A penalty payable under subsections (1), (4) and (5) of this section shall be recoverable as civil debt summarily.

34. Assets deemed unclaimed before this Act came into force

(1) This Act shall, on coming into force, apply to all assets that would, but for the absence of this Act, be deemed unclaimed assets under the provisions of this Act as if this Act had been in force at that earlier date on which the assets would have become unclaimed assets under this Act.

(2) The initial report filed under this Act for assets that are subject to this Act shall include all assets that would have been presumed abandoned before this Act came into force as if this Act had been in effect during that period and such assets shall be dealt with under the provisions of this Act.

35. Duty to locate and notify owners of assets

(1) The Authority shall make reasonable efforts to locate the owner of assets in the custody of the Authority and notify him in accordance with this Act.

(2) In notifying an owner as required by subsection (1), the Authority shall determine the most cost effective manner of making the notification depending on the respective value of the assets concerned.

36. Unclaimed assets database

The Authority shall—

- (a) maintain an electronic or other database of all unclaimed assets submitted to it under this Act;
- (b) include in the database the prescribed particulars for each unclaimed asset;
- (c) make the database available to the public, subject to any restrictions imposed for purposes of protecting the privacy of owners.

37. Responsibility of regulatory authorities

(1) Any regulatory authority responsible for the supervision of a holder shall assist the Authority in the enforcement of the provisions of this Act and generally ensure that the objectives of this Act are achieved.

(2) Subject to section 3, where there is conflict between the provisions of this Act and the provisions of any other law on any matter concerning unclaimed assets, the provisions of this Act shall prevail.

38. Access to information and retention of records by the Authority

(1) Subject to any other written law to the contrary, the Authority shall have the right to any information that is in the custody or control of a public body if that information can reasonably be expected to assist the Authority in locating the owner, or determining the correct owner, of an unclaimed asset for the purposes of this Act.

(2) A public body that has custody or control of information to which the Authority is entitled under subsection (1) shall disclose that information to the Authority on request.

(3) Each public body shall meet the standards, as may be set by regulation, with respect to—

- (a) the collection and recording of information concerning any assets that become unclaimed assets; and
- (b) retention of records containing that information.

PART IV – THE UNCLAIMED FINANCIAL ASSETS AUTHORITY**39. Establishment of the Unclaimed Financial Assets Authority**

(1) There shall be an authority to be known as the Unclaimed Financial Assets Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Authority shall perform the functions assigned to the Authority under this Act.

40. Composition of the Board

(1) The Board of the Authority shall comprise—

- (a) five persons not being public officers appointed by the Cabinet Secretary of whom—
 - (i) one shall be appointed by virtue of his knowledge and experience in matters relating to banking and investment;
 - (ii) one shall be appointed by virtue of his knowledge and experience in matters relating to insurance;
 - (iii) one shall be appointed by virtue of his knowledge and experience in matters relating to accounting and auditing, law, corporate or business management; and
 - (iv) one shall be appointed by virtue of his knowledge in matters relating to unclaimed assets;

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- (v) one shall be appointed to represent the interest of consumers of financial services;
 - (b) the permanent secretary to the Treasury;
 - (c) the chief executive officer.
- (2) The members of the Board shall, at their first meeting, elect a chairperson from amongst the members of the Board appointed under subsection (1)(a).
- (3) No person shall be appointed as a member of the Board under subsection (1)(a) if such person—
- (a) has been convicted of an offence by a court of competent jurisdiction and sentenced to imprisonment for a term of six months or more;
 - (b) is adjudged bankrupt or has entered into a composition scheme or arrangement with his creditors; or
 - (c) is disqualified under the provisions of any other written law from appointment as such.
- (4) A member of the Board shall hold office for a period of three years, but shall be eligible for re-appointment.
- (5) A member of the Board under subsection (1)(a) may—
- (a) at any time resign from office by notice in writing to the Cabinet Secretary; or
 - (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) subject to paragraph (iii), is convicted of a criminal offence and sentenced to imprisonment for a term of six months or more;
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) is otherwise unable or unfit to discharge his functions.
- (6) The quorum for any meeting of the Board shall be three.
- (7) All questions proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of equality of votes, the chairperson or the person presiding shall have a casting vote in addition to the deliberative vote.
- (8) The Board may act notwithstanding any vacancy among the membership.
- (9) Subject to this Act, the Board may make rules for regulating the procedure at its meetings.
- (10) The seal of the Authority shall be authenticated by the signature of the chairperson of the Board and the Chief Executive Officer and any document not required by law to be under seal and all decisions of the Board may be authenticated by the chairperson and the Chief Executive Officer:
- Provided that the Board shall, in the absence of either the chairperson or the Chief Executive Officer, in any particular case or for any particular matter, nominate one of their own, in the particular case or matter in respect of which he is nominated, authenticate the seal of the Board on behalf of either the chairperson or the Chief Executive Officer.

41. Objects and functions of the Board

The objects and functions of the Authority shall be to—

- (a) enforce, and generally administer, the provisions of this Act;
- (b) act as the Trustee to the Fund in accordance with Part V of this Act;
- (c) receive all payments required by this Act to be made to the Fund;
- (d) make payments out of the Fund to the rightful owners in accordance with the provisions of this Act;
- (e) manage and invest the funds of the Authority;
- (f) advise the Cabinet Secretary on the national policy to be followed with regard to unclaimed assets and to implement all government policies relating to it; and
- (g) perform such other functions as are conferred on it by this Act or by any other written law.

42. Appointment of the chief executive officer, etc.

(1) The Board shall, through a competitive process, appoint a chief executive officer who shall hold office on such terms and conditions of service as may be specified in the instrument of appointment.

(2) The Chief Executive Officer shall be the managing trustee of the Fund.

(3) The Chief Executive Officer shall be responsible to the Board for the management of the day to day affairs of the Authority.

(4) The Board shall have power to appoint on such terms and conditions of service as it may determine, such other officers, servants and agents of the Fund as may be necessary for the efficient administration of the Fund and the Board shall exercise disciplinary control over such officers, servants and agents.

(5) The Board may, subject to such Conditions as the Board may think fit, by directions in writing, delegate any of its powers under subsection (4) to any one or more of the members of the Board or to the Chief Executive Officer or other officer of the Fund.

43. Exemption from stamp duty

No duty shall be chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by any person on behalf of or in favour of the Fund or in respect of the payment of any benefit or the refunding of any amount under this Act in any case where, but for this exemption, the Fund or any person acting on behalf of the Authority.

PART V – THE UNCLAIMED FINANCIAL ASSETS TRUST FUND**44. Establishment of the Trust Fund**

(1) There shall be a Fund known as the Unclaimed Assets Trust Fund which shall vest in, and be operated and managed by, the Authority.

(2) There shall be paid—

- (a) into the Fund, all moneys that become or are deemed to be unclaimed assets and other payments required by this Act or by any other written law to be paid into the Fund; and

- (b) out of the Fund—
 - (i) payment due and payable to owners out of the Fund under the Act;
 - (ii) such amounts as may be approved by the Cabinet Secretary to defray costs associated with the administration of the Authority and performance of its functions under this Act.

45. Payment of claims

(1) Where the Authority is satisfied that a person is the owner of all or part of the assets that became unclaimed assets and paid into the Fund, the Authority may pay out of the Fund to the owner an amount equal to the value of that assets or part of that assets as the case may be.

(2) No interest or other earning accrues or is payable to an owner in respect of the period after assets becomes unclaimed assets and delivered to the Authority under this Act.

(3) A payment under this section to an owner shall discharge the Authority from liability to the owner in respect of the assets that became unclaimed assets and were actually paid into the Fund.

46. Accounts and audit

(1) The Authority shall cause to be kept all proper books of account and other books and records in relation to the Fund and to all the undertakings, funds, investments, activities and property of the Fund as the Authority may deem necessary.

(2) Within a period of three months after the end of each financial year, the Authority shall prepare, sign and transmit to the Auditor-General or to an auditor appointed under subsection (3)—

- (a) a balance sheet showing in detail the assets and liabilities of the Fund;
- (b) a statement of income and expenditure of the Fund; and
- (c) such other statements of account as the Authority may deem necessary.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003), by the Auditor-General, or by an auditor appointed by the Authority under the authority of the Auditor-General.

(4) The Authority shall cause the audited accounts of the Fund to be published in the *Gazette* and in at least two newspapers with national circulation.

47. Penalties payable to the Fund

(1) The Court before whom any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any other sum, together with any interest or penalty thereon, found to be due from such person to the Fund, and any sum so ordered shall be recoverable as a fine and paid into the Fund.

(2) All sums due to the Fund shall be recoverable as debts due to the Authority and without prejudice to any other remedy shall be a civil debt recoverable summarily.

48. Investment of funds

(1) All moneys in the Fund which are not for the time being required to be applied for the purposes of the Fund shall be invested in such investments, being investments in which any trust fund (or part thereof) is permitted by the Trustee Act Cap. 167 to be invested, as may be determined by the Authority with the approval of the Cabinet Secretary.

(2) All investments made under this section shall be held for and on behalf of the Fund in the name of the Authority.

PART VI – MISCELLANEOUS**49. Authority to appoint agents, etc.**

The Authority may appoint or license such agents and service providers as it may deem necessary for the carrying out of the objects of this Act and may in that respect and without prejudice to the foregoing appoint custodians, fund managers and reunification agents to assist in the reunification of the assets with the owners.

50. Authority may institute proceedings in court

All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by Authority and, where the proceedings are instituted or brought in a court, an officer of the Authority authorised by the Board in that behalf may prosecute or conduct the proceedings.

51. Powers of the Authority to enter, etc.

(1) The Authority shall, for the purpose of ascertaining whether this Act is being or has been complied with by any person, have power to enter any premises or place at all reasonable times.

(2) An institution liable to inspection under this Act, and any employee, shall furnish the Authority all such information and produce for inspection all such documents as the Authority may reasonably require for the purpose of performing its functions under this Act.

52. Offences and penalty

(1) A holder who—

- (a) fails to maintain a record required under this Act or the Regulations made thereunder;
- (b) in a record required or submitted, or in information provided, under this Act or the Regulations, makes a statement that—
 - (i) is false or misleading with respect to a material particular; or
 - (ii) omits to state a material fact, the omission of which makes the statement false or misleading, commits an offence.

(2) A person is not guilty of an offence under subsection (1)(b) if the person did not know that the statement was false or misleading and, with the exercise of reasonable diligence, could not have known that the statement was false or misleading.

(3) Where a body corporate commits an offence under this section, an employee, officer, director or agent of the corporation who authorises, permits or acquiesces in the commission of the offence commits an offence.

(4) Subsection (3) shall apply whether or not the body corporate is prosecuted for the offence.

(5) 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.

(6) A person convicted of an offence under this section 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.

53. Regulations

The Cabinet Secretary may, on the recommendation of the Board, make regulations necessary to carry out the provisions of this Act.
