

*Draft Unclaimed Financial Assets Policy
(Draft for Public Exposure -25th March 2019)*



DRAFT COMPREHENSIVE POLICY ON UNCLAIMED FINANCIAL ASSETS

FOR PUBLIC EXPOSURE

25th March, 2019

COMPREHENSIVE NATIONAL POLICY ON UNCLAIMED FINANCIAL ASSETS

25th March, 2019

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The law shall empower and require the Authority to appoint or license agents and service providers as it may deem necessary for the carrying out functions of the Authority. These may include custodians, fund managers and reunification agents to assisting the reunification of the assets with the owners. 24

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**DRAFT COMPREHENSIVE POLICY ON UNCLAIMED FINANCIAL ASSETS
MARCH, 2019**

ABBREVIATIONS AND ACRONYMS USED

CS	Cabinet Secretary, the National Treasury and Planning
CEO	Chief Executive Officer
GOK	Government of Kenya
IFRS	International Financial Reporting Standards
ICT	Information Communication Technology
KYC	Know Your Customer
MDAs	Ministries, Departments and Agencies
PS	Principal Secretary
UFA	Unclaimed Financial Assets
UFAA	Unclaimed Financial Assets Authority

DEFINITION OF TERMS

“Act” means the Unclaimed Financial Assets Act, 2011

“Authority” means the Unclaimed Financial Assets Authority established under section 39 of the Act

“Fund/Trust Fund” means the Unclaimed Financial Assets Fund established under section 44 of the Act

“Pillars” refers to the, integral and fundamental ideas supporting the UFA regime;

“Principles” refers to the fundamental rules or values for the UFA regime;

“Reunification” refers to the process of uniting unclaimed financial asset with its rightful owner.

FOREWORD

Kenya has come a long way in the development of strong governance frameworks for the various subsectors in the larger financial services industry. Specifically, with regard to the unclaimed financial assets regime, the regulatory framework conceived seven years ago has witnessed tremendous achievements that are now reflected in the work of the UFAA. These achievements, however, need to be accompanied by a robust reunification strategy that is the most important pillar of the unclaimed financial assets regime. During the period of implementation of the Act a lot of valuable lessons have been learnt and gaps identified in the original idea reflected in the architecture of the Act. It is against this backdrop that the Government has adopted this policy.

This policy is intended to guide further review and possible amendments to the existing legal and regulatory framework on unclaimed financial assets regime in Kenya.

The development of this policy entailed structured engagement and consultations with stakeholders. This process sought to ensure wide and inclusive participation of all stakeholders.

This policy has benefited from, and has been informed by –

- (a) Analysis of the Constitution of Kenya 2010, particularly Article 6 on access to public services; Article 40 on protection of the right to property; Article 43 on social and economic rights; and, Article 46 on the protection of consumers' economic interests' all of which deemed very core and relevant for this task;
- (b) Desk review and study of international best practices;
- (c) Review of lessons from the six years of the implementation of the Act.

The Government of Kenya is confident that this document will enable proper and effective management of unclaimed assets leading to a more robust consumer protection regime in the financial services sector.

Henry K. Rotich
Cabinet Secretary,
The National Treasury and Planning
Nairobi, Kenya

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background and Rationale of the Policy

On 19th March, 2008, the Government of Kenya appointed a taskforce to ascertain the nature, extent and value of unclaimed financial assets in Kenya. It was also tasked to make recommendations for an appropriate policy, legal, regulatory, and institutional regime to govern unclaimed financial assets.

The report noted that the obtaining situation in Kenya at that time contrasted sharply with the international best practice. There was no local framework to deal with unclaimed financial assets and no hope of reunifying the assets with their rightful owners or beneficiaries. This was despite the fact that, at that time, it was estimated by the Task Force on UFA that the overall universe of unclaimed financial assets in the financial system, the corporate sector and other institutions, including utilities, was worth over KSh.50 billion.

Reasons for lack of reunification of these assets with their rightful owners were identified by the Task Force on UFA as including passage of time, death of owners, missing records, lack of asset tracking mechanisms and the absence of legal and regulatory provisions for holding institutions to declare the unclaimed financial assets in their records.

Subsequent to the report of the taskforce, the government adopted a legislative framework currently in place. This framework, the Unclaimed Financial Assets Act, 2011 established the *Unclaimed Financial Assets Authority (UFAA) as a Government Agency* tasked with enforcing and regulating the UFA regime in Kenya, holding and investing UFA as a trustee and paying these out to rightful owners and/or beneficiaries. UFAA is also tasked with advising the government on the national policy regarding UFA.

The current legislative framework identifies and defines the various categories of unclaimed financial assets, provides for the manner of their reporting to UFAA and establishes an institutional framework for the administration of the UFA.

1.2 Policy Development Process

Kenya promulgated a new constitution in October, 2010 and with it came a new national governance system that would ensure, among other things, the guarantee of rights and economic development that is all inclusive.

The Constitution of Kenya is the foundation of all policies, laws and actions by state agencies in Kenya. It is obligatory that its relevant provisions be considered in the formulation of this policy. The provisions of the Constitution that underpin and inform this policy are:

- (a) the right to property whereby Parliament is prohibited from enacting law that permits

the state or any person to deprive a person of property of any description or of any interest in or right over, any property of any description;

(b) economic and social rights. These rights are deemed to have been promoted by the State when it facilitates the residents to exercise their economic and social affairs in a conducive and facilitative environment. A framework ensuring the safety custody and reunification of assets with the owners is an important State responsibility that is manifested in the unclaimed financial assets legal regime currently in place in the country;

(c) the protection of the economic interest of consumers.

The unclaimed financial assets legal framework has been in force for almost six years now. During that period a lot of valuable lessons have been learnt and gaps identified in the original idea reflected in the architecture of the Act. It is against this backdrop that the Government has adopted this enhanced Policy on unclaimed financial assets.

The process of developing this Policy involved the establishment of a multi-departmental steering committee by the PS, the National Treasury and chaired by the Director, Financial and Sectoral Affairs Department of the National Treasury and the engagement of a consultant to study and generate policy proposals for consideration of the steering committee. The process entailed rigorous and extensive interaction between the Authority, the steering committee and the consultant. The policy has benefited and has been informed by—

(a) consideration and factoring of provisions of the Constitution of Kenya, 2010, particularly on access to public services, protection of the right to property, on social and economic rights and the protection of consumers' economic interests;

(b) desk review and study of international best practices;

(c) lessons from the six years of the implementation of the Act;

(d) consultations with stakeholders.

1.3 Purpose and Scope of the Policy

The overall purpose of this policy is to guide the Government on the achievement of an improved and effective unclaimed financial assets governance framework through a strategic approach. It is expected that under such a framework there will be—

(a) effective handling and reporting requirements over unclaimed financial assets at holding institutions;

(b) effective regulatory framework for reunification of unclaimed financial assets with owners and beneficiaries under a regime of indefinite right of reunification;

- (c) a transparent and safe investment of unclaimed financial assets funds for the long-term economic development purposes;
- (d) a robust and facilitative legal framework to support the UFA regime in Kenya.

The scope of this policy extends to all unclaimed financial assets in Kenya held by institutions doing business or otherwise providing services that entail holding of financial assets owing and due to third parties (their clients/customers) as owners or legal beneficiaries.

1.4 Aims of the Policy

The specific aims of this policy are to:

- (a) strengthen the framework for governing, handling and managing unclaimed financial assets as an essential component of a safe and sound financial sector; a stable financial system with high levels of integrity and enhanced controls over financial assets held and managed by holding institutions; which also provides high levels of consumer protection to rightful owners and beneficiaries of financial assets;
- (b) create a strong framework for effective and efficient reunification of unclaimed financial assets with owners and beneficiaries under an indefinite right of reunification after remittance to the unclaimed financial assets trust fund;
- (c) establish a regime for transparency and prudence in the management of unclaimed financial assets held by the Unclaimed Financial Assets Authority and the effectiveness of the reunification of the assets with the rightful owners and, or beneficiaries;
- (d) establish a framework for alignment of the unclaimed financial assets governance to relevant national policy documents, the national vision for the financial services sector and to ensure compliance with Article 6(3) of the Constitution of Kenya, 2010 regarding access to public services;
- (e) provide for the ascertainment, and constant updating of data on the size, nature and extent of unclaimed financial assets in Kenya both by UFAA and holding institutions;
- (f) enhancing the regulatory framework for management of unclaimed financial assets to conform to the national policy and laws on unclaimed financial assets and is consistent with international best practice, through periodic reviews of existing legislation and regulations and the development of new legislation (if necessary) so as to enhance effective and transparent governance and administration of unclaimed financial assets in Kenya.
- (g) provide the basis of proposals for amendments to the Act and the UFAA Regulations, 2016 to address legal gaps and align the same with social applications and for long-term economic development.

1.5 Key Principles

The key principles that shall guide the management of unclaimed financial assets in Kenya are—

- (i) protection of the right to property and enhancement of consumer protection;
- (ii) adherence to, and alignment with the financial services sector core objectives of increasing access, improving efficiency and achieving stability and integrity of the financial services sector;
- (iii) enhancing *Know Your Customer* requirements on holding institutions which is critical to preventing assets from being separated from their owners in the first place;
- (iv) guaranteeing the safety of unclaimed financial assets held by the trust fund and their prudent investment to retain value and for economic development;
- (v) guaranteeing the indefinite right of re-unification to rightful asset owners or their beneficiaries;
- (vi) ensuring quick and efficient reunification of unclaimed financial assets with their rightful owners or beneficiaries;
- (viii) access of the services of the UFAA to the greatest extent possible pursuant to **Article 6(3)** of the Constitution.

1.6 Pillars of a robust unclaimed financial assets framework

The pillars of an efficient and effective unclaimed financial assets framework include the following-

- (a) *Safeguarding during temporary separation through strong controls and reporting requirements* over unclaimed financial assets held by holding institutions with regulations and guidelines on application of uniform accounting treatment and best practices in each sector; and obligations on holding institutions for identification, segregation, reporting and remitting of unclaimed financial assets. Properly thought out and clear regulations, policies, and procedures are essential to the proper management of unclaimed financial assets while they lie dormant *in situ* at holding institutions.
- (b) *Mandatory legal and regulatory framework* that creates a *regulatory institution (UFAA)* to receive, safeguard, reunify, regulate, supervise, and manage unclaimed financial assets at all stages of separation of assets. This is complemented by the *Unclaimed Financial Assets Trust Fund which serves as the safe repository of the funds handed over to UFAA by the holders.*

- (c) *Reunification of unclaimed financial assets with rightful owners and beneficiaries.* This pillar entails effective re-unification provisions and services that cover the periods of *temporary separation* and when unclaimed financial assets are transferred to the UFAA and deposited into the trust fund. Central to reunification is the indefinite right of claim by owners of unclaimed financial assets from the trust fund.

- (e) *Investment of unclaimed financial assets funds for the long-term economic development.* Management and investment of unclaimed financial assets remitted by holding institutions to UFAA for long-term economic development is an important aspect in the unclaimed financial assets framework.

CHAPTER TWO

2.0 SITUATION ANALYSIS

2.1 Overview of current legal, regulatory and institutional framework

At the time of the adoption of this policy, the framework for the administration of unclaimed financial assets was wholly domiciled in the Unclaimed Financial Assets Act, 2011.

The Act provides legal definition of unclaimed financial assets and tasks UFAA with the responsibility of receiving, managing, and re-uniting unclaimed financial assets with their rightful owners. It prescribes *periods of dormancy* beyond which unclaimed financial assets require to be *identified, segregated, reported and remitted* by holding institutions to UFAA.

The UFAA is also mandated to *license and regulate reunification agents* and other service providers as prescribed in the Act. Hence its mandate is essentially to protect consumers of financial services and to complement the mandate of regulators in the financial services sector and related sectors including telecoms.

In summary, the Act provides the legislative framework for dealing with unclaimed financial assets and makes provision with respect to the following matters—

- (i) general principles relating to unclaimed financial assets. The Act also identifies and sets out the respective types of assets which may be deemed as unclaimed and provides for the conditions under which they may be deemed unclaimed;¹
- (ii) the manner in which unclaimed financial assets are to be dealt with and the duties incumbent upon holders of unclaimed financial assets. The Act imposes duty on holders of assets to make reasonable effort to locate owners of these assets and notify such owner accordingly of the existence of the assets;²
- (iii) powers of the UFAA to require information from the holder of unclaimed financial assets which are deemed to have been abandoned;
- (iv) requirement on the holders to deliver unclaimed financial assets to the Authority which is then mandated to take custody of the unclaimed financial assets;
- (v) power of UFAA to sell, by public auction, unclaimed non-cash financial assets delivered to UFAA not later than three years from the time UFAA took custody of the assets;
- (vi) the manner of making claims for assets held by the UFAA. If a claim succeeds, the Authority is required to deliver the assets to the claimant;

¹ Unclaimed Financial Assets Act, 2011 Sec. 3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18

² Unclaimed Financial Assets Act, 2011 Sec. 19

3.UFA Act, 2011 sec 20

- (vii) the establishment, objects and functions of the Unclaimed Financial Assets Authority. The UFAA is established as a body corporate and its management is vested in a board;
- (viii) the establishment of the Unclaimed Financial Assets Trust Fund administered by the UFAA. Unclaimed financial assets which vests in the UFAA under the Act, and the moneys realized from the sale of such unclaimed financial assets by the UFAA are paid into the Fund. Claims for unclaimed financial assets approved by the UFAA are to be paid from the Fund, together with moneys to defray the costs of administration of the UFAA;
- (ix) powers of the CS to prescribe further categories of UFA and make Regulations necessary to carry out the provisions of the Act.

A mandatory legal and regulatory framework is the predominant international best practice for managing unclaimed financial assets. This framework, as distinct from voluntary or self-regulatory arrangements, usually require identification, segregation, periodic reporting, and remittance of unclaimed financial assets according to prescribed definitions and over prescribed dormancy periods.

2.2 Gaps in the Situation of Unclaimed Financial Assets in Kenya

The current situation on unclaimed financial assets in Kenya can be summarized as follows—

2.2.1 Low levels of public awareness on UFAA mandate

The current trend of low levels of public awareness on the UFAA mandate means that there is low compliance rate among holding institutions and low claim rate from owners and beneficiaries of UFA. By June, 2018, the Authority had received only about 5,000 claims.

2.2.2 Lack of appropriate regulations to allow differentiated claim modes

Currently, there are no regulations that allow or require differentiated claims modes depending on the value of the claims. This has led to inefficiency and ineffectiveness in reunification of the different types of claims.

2.2.3 Lack of / or weak partnerships with relevant stakeholders

In exercising its mandate, the UFAA appears to have difficulties partnering with key and relevant stakeholders. This has led to low public awareness levels of the mandate of the UFAA and low levels of compliance by holding institutions.

2.2.4 Inadequate capacity of the UFAA

Human resource plays a vital role in ensuring implementation of the Act. The position currently is that the UFAA is experiencing inadequacy in the human resource department therefore ineffective delivery of the mandate of the UFAA.

2.2.5 Variation in recording and management of unclaimed financial assets

In the framework before the Act, there was wide variation in the recognition, treatment, accounting and reporting of unclaimed financial assets across different sectors. Many holding institutions operated, and unfortunately continue to operate, below the envisioned regulatory standards and best industry practices and policies on unclaimed financial assets. This justifies setting and enforcing uniform definitions, accounting and reporting requirements for unclaimed financial assets across all sectors envisaged under this policy.

2.3 Institutional interrelationship in management of unclaimed financial assets

The CS

The CS provides the overall policy direction for the governance of unclaimed financial assets regime. He or she is mandated with the promulgation of the policy on unclaimed financial assets on the advice of the Authority. He or she is empowered to prescribe further class of assets by order in the Gazette.

The Board of UFAA

The Board of UFAA advises the CS on the National Policy to be followed with regard unclaimed financial assets and implements all government policies on unclaimed financial assets.

The Board, as per tradition and practice, provides the general policy direction to the CEO and the secretariat generally on the management of the affairs of the Authority. The Board appoints the CEO and the other officers, servants and agents of the Authority.

The CEO

The CEO is responsible to the Board for the management of the day-to-day affairs of the Authority and is the managing trustee of the Unclaimed Financial Asset Trust Fund.

Holders

—
Holders of unclaimed financial assets constitute an important category of role players in the management of unclaimed financial assets. A holder is defined in the Act as any entity, who in respect to 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. —

Holders have a duty to locate and notify owners of assets as provided under section 19 of the Act and have a responsibility to submit reports concerning assets to the Authority.

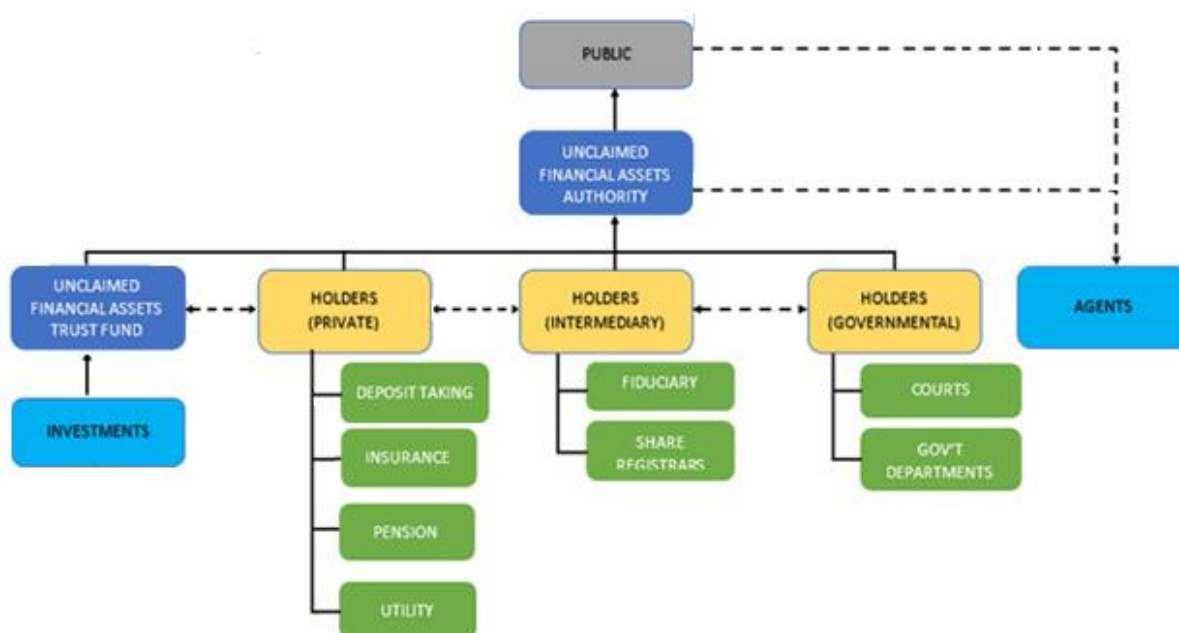
The UFA Trust Fund

The UFA Trust Fund vests in, and is managed by UFAA.

Agents and Service Providers

UFAA appoints or licenses agents and service providers as it may deem necessary to assist in effective and efficient implementation of UFAA’s mandate of receiving, safeguarding and re-uniting unclaimed financial assets with rightful owners.

The following table illustrates the current institutional arrangement in the administration of unclaimed financial assets in the country.



2.4 Challenges and shortcomings in the current unclaimed financial assets governance framework

The legal and regulatory framework currently in place suffers certain challenges, critical shortcomings and significant gaps. These gaps include:

- (a) The most significant function of UFAA has not registered much success with a reunification level remaining at very low levels. Some of the reasons for this is very low awareness levels among the claimants, hence need to intensify public campaigns on UFAA’s mandate and review of UFAA Regulations, 2016 to allow differentiated modes of settling different claims values, use of different re-unification channels to reach a wide scope of claimants in various parts of the country, establish various partnerships with various stakeholders to deepen re-unification and capacitate holders of UFA so as to file complete and accurate returns on UFA for ease of re-unification.

- (b) Article 6(3) of the Constitution of Kenya, 2010 requires every national State organ ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service. Currently, the UFAA's only office is in Nairobi with no outposts or agents elsewhere in the Republic hence making its services inaccessible within the tenor of Article 6 (3) of the Constitution in so far as its services are not accessible at the grass-root level especially with regard to compliance and reunification outreach.

- (c) The legal framework addresses only the most common types of unclaimed financial assets. This leaves out, and does not extend to all financial asset classes and new financial instruments including balances in mobile money and banking innovations where Kenya is a world leader as well as in the emerging area of crypto-currencies. Other holders so far not included are lawyers (in respect of unclaimed balances in *client accounts held by law firms*) and trust accounts.

- (d) The current unclaimed financial assets framework is unclear about compliance by, institutions and entities in the public sector that hold significant financial assets. These include the Public Trustee, Kenya Deposit Insurance Corporation and other government departments. The regime does not explicitly differentiate public and private institutions as holders of different categories of UFA.

- (e) The law, as currently designed, envisages penalties and fines for non-compliance against all holding institution be they private or public. The penalty system, as it applies to public entities is impractical.

CHAPTER THREE

3.0 POLICY OBJECTIVES

3.1 Introduction

The following specific policy objectives and statements shall bind and guide the governance of unclaimed financial assets in Kenya:

UNDER THE RECEIVE PILLAR

Objective 1: Regularly review the definition and identification of unclaimed financial assets

The legal framework shall be reviewed from time to time to include other categories of holding institutions and clearer, and more precise, definitions to extend the applicability of the Act to newly identified and emerging holding institutions to all financial asset classes and new financial instruments.

Objective 2: Include audit of UFA in IFRS and other accounting and audit policies and standards to enhance compliance by holders.

The UFAA shall engage relevant accounting bodies, notably ICPAK, to include audit of UFAA as part of statutory/compulsory audit of holding institutions, both public and private. This will facilitate greater compliance by holders.

UNDER THE SAFEGUARD PILLAR

Objective 3: The objectives, governance and management of unclaimed financial assets funds

The objectives, the governance, and management structures and principles of the unclaimed financial assets Trust Fund shall—

- (a) include transparency, accountability and prudence and eliminate all possible areas of conflict of interest thereto;
- (b) ensure that all the board members of UFAA qualify under a fit and proper assessment;
- (c) require the fiduciary duty in the management of the UFA by the Board;
- (d) enable investment of unclaimed balances for social and economic development while at the same time safeguarding the right to perpetual reunification and the guaranteed repayment of the original principal sum owing to rightful beneficiary(s).

Objective 4: Treatment of non-cash unclaimed financial assets

Non-cash assets which include shares, safe depository box, jewelry and foreign currencies shall be converted into cash and be treated as part of the Fund. The Authority shall devise mechanisms for conversion of these non-cash assets into cash/local currency equivalent.

UNDER THE REUNITE PILLAR

Objective 5: Re-unification of rightful owners with their unclaimed financial assets is a critical and key pillar of the unclaimed financial assets in Kenya

There shall be re-unification of owners, encompassing reunification of unclaimed financial assets with owners, dependents and beneficiaries of asset owners is in tandem with Article 40 of the Constitution on the right to property and thus no person may be deprived of their property due to lack of a legal framework by the State facilitating reunification of the owners with their property.

There shall be indefinite right of re-unification for rightful owners. The ultimate objective is to return unclaimed financial assets to rightful owners hence the continuous re-unification requirement and obligation on all duty holders. This also implies application of cost-efficient means of reunification that will enable small/insignificant amounts to be available for re-uniting with their rightful owners

The governance framework primarily shall focus on reunification and in this regard, shall, where necessary—

- (i) provide for the appointment and regulation of reunification agents;
- (ii) reunification of unclaimed financial assets shall be done through measures that minimize costs of the service;
- (iii) review UFAA regulations, to allow differentiated claim modes to enhance efficiency and effectiveness in reunification of different types of claims;
- (iv) facilitate and increase processing of unclaimed financial assets using the most cost effective means available and to review this from time to time to ensure modernization that considers applicable technological advances such as mobile money.

ON THE CROSSCUTTING MATTERS

Objective 6: The Pillars of the unclaimed financial assets regime are re-affirmed

Pillars of a robust unclaimed financial assets framework that shall guide the policy and development of the unclaimed financial assets framework and established in a mandatory legal and regulatory Framework with a regulatory institution (UFAA) are—

- (a) receiving unclaimed financial assets from holders;
- (b) safeguarding these assets in an unclaimed financial assets trust fund; and
- (c) re-uniting these assets with their owners.

Objective 7: Key principles of the current unclaimed financial assets regime are re-affirmed

The key principles that shall guide the policy on development of the legal, regulatory and institutional framework on Unclaimed Financial Assets are:

- (a) alignment with financial services sector objectives of increasing access, improving efficiency and achieving stability and integrity;
- (b) enhancing *Know Your Customer* requirements;
- (c) ensuring compliance by holders of the provisions of the Act;
- (d) safety of unclaimed financial assets trust funds and investments;
- (e) indefinite right of re-unification of assets with their rightful owners;
- (f) investment of unclaimed financial assets by the Trust Funds in government securities;
- (g) the management of, and custody of the Unclaimed Financial Assets Fund, by the Authority;
- (h) investment of unclaimed financial assets funds for the long-term economic development. The protection of consumer assets at holding institutions and management and investment of unclaimed financial assets separated from owners for long-term economic development is an important aspect in the unclaimed financial assets framework.

Objective 8: Enhance transparency and robust risk management in the governance and management of unclaimed financial assets regime at all stages in the life cycle of these assets

The legal framework shall make provision for transparency and accountability in the management of financial assets in order to minimize fraud by employees, curb corporate malpractices; promote re-unification; and raise standards of corporate governance and social responsibility.

Specifically, regulatory requirements shall cover and ensure transparent and effective management of unclaimed financial assets at all stages in the cycle of these assets, that is, identification, segregation, reporting, remittance, reunification and investment. These requirements shall include:

- (a) regulations on internal controls, accounting, reporting and disclosure of unclaimed financial assets especially while in the phase when they are held *in situ* at holding institutions;

- (b) mandating and empowering the UFAA and primary regulators to enforce compliance by holders;
- (c) sensitizing the general public on the need to have strong control mechanism in identification and surrender of unclaimed financial Assets by the holders in line with Act;
- (d) strong accounting, controls and reporting obligations on holding institutions to identify, segregate, report and remit unclaimed financial assets;
- (e) establish partnerships with relevant stakeholders to deepen compliance with UFA Act, 2011 among the holders;
- (a) empower the CS in respect of administering penalties including options for waivers or amnesties where necessary so as to encourage voluntary compliance among holders and deepen UFAA mandate;
- (b) establish and maintain a robust risk control mechanism and strong internal controls and will, to this end, leverage more on the use of ICT in its operations.

Objective 9: There shall be regular and continuous review of legislation on unclaimed financial assets legal and regulatory regime and of other relevant sectoral regulatory bodies

There shall be established, and maintained, responsive unclaimed financial assets regulatory framework that considers ICT advances and other financial management changes. The Government shall aim at greater financial transparency in the management of unclaimed financial assets and the obligation on the part of unclaimed financial asset holding institutions to adopt good governance practices in the management of the unclaimed financial assets.

Further, the government shall develop and continuously revise the legal and regulatory framework on unclaimed financial assets to ensure among other things:

- (a) effective collaboration between all relevant entities *to ensure service delivery at grass-root level*;
- (b) alignment of the various relevant sector legislations to deepen and make effective the governance of unclaimed financial assets in the country;
- (c) entrenchment of core regulatory elements of unclaimed financial assets administration, including in legislation governing holders in non-financial sectors, to ensure effective enforcement of reunification and reporting by all entities holding unclaimed financial assets;
- (d) continuous efforts to identify and address the underlying reasons why financial assets become or remain unclaimed in Kenya.

Objective 10: Information communication technology shall be adopted in the management of unclaimed financial assets

This will include the use of information communication technology in risk management, detection and prevention of fraud within the holders, by claimants, at UFAA and from any other quarter.

The use of ICT shall—

- (a) ensure accurate and efficient identification, segregation, reporting and remittance of unclaimed assets from holding institutions in accordance with international best practice;
- (b) ensure the safe receipt, safeguarding and most importantly the efficient reunification of unclaimed assets with owners and beneficiaries;
- (c) enable reunification of insignificant amounts with owners at minimal cost.

The percentage of assets with low values has posed a challenge to the UFAA due to the high cost of administering these assets *vis-a-vis* their value.

UFAA shall, from time to time, determine the manner *of dealing* with assets of insignificant value and shall, in that regard, among other things, make use of appropriate ICT to enable the reunification of these assets with the owners at the most cost-effective way possible.

Objective 11: The income of the Fund and penalties imposed by law for non-compliance shall form part of the Unclaimed Financial Assets Fund

Income accruing from investment of the Fund and penalties imposed by law for non-compliance by relevant duty holders shall be paid into the Unclaimed Financial Assets Fund held and managed by UFAA. UFAA shall seek approval of the CS on any application of the income accruing from the investment of these Funds.

Objective 12: There shall be established linkages between UFAA and all government agencies relevant to the management of unclaimed financial assets.

The legal framework and operational arrangements shall ensure that there is collaboration between these agencies which include all the relevant regulatory authorities and other relevant stakeholders responsible for management of UFA in terms of receive, safeguard and re-unite.

The unclaimed financial assets regulatory framework shall provide for compliance by public sector institutions and entities that hold financial assets.

CHAPTER FOUR

4.0 INSTITUTIONAL FRAMEWORK FOR THE ADMINISTRATION AND MANAGEMENT UNCLAIMED FINANCIAL ASSETS IN KENYA

4.1 Introduction

Institutional framework for unclaimed financial assets administration and management aims to operationalize and effectively enable the three pillars of *Receive. Safeguard and Reunite*.

The Rationale and Operational Principles for the Institutional Framework for Unclaimed Financial Assets Administration and Management

The proposed new institutional arrangements are based on the acknowledged policy factors that require an appropriate institutional arrangement for implementation.

In order to effectively realize the implementation of the policy objectives under chapter 4, the following Institutional Framework shall be implemented.

4.2 Government/Cabinet Secretary

On behalf of the Government the cabinet secretary will provide the policy direction, support and monitor implementation of the National Policy framework. Policy implementation will include the facilitation of a conducive business environment for unclaimed assets regime.

Cabinet Secretary to prescribe further classes of assets

4.3 The Unclaimed Financial Assets Authority

There shall be an authority to be known as the Unclaimed Financial Assets Authority which shall be a body corporate. It shall comprise the Board and the Secretariat headed by the Chief Executive Officer for purposes of implementing the policy directives of the Board.

4.4 The Board of the Authority

The Board of the Authority shall comprise persons not being public officers appointed by the Cabinet Secretary of who shall have banking and investment; insurance; accounting and auditing, law, corporate or business management and unclaimed assets management.

The Board of the Authority shall—

- enforce, and administer, the provisions of the law;
- act as the Trustee to the Fund;
- receive all payments required by law to be made to the Fund;

- make payments out of the Fund to the rightful owners;
- manage and invest the funds of the Authority;
- advise the Cabinet Secretary on the national policy on unclaimed assets and to implement all government policies relating to it;
- perform such other functions as are conferred on it by law.

Before appointment, the proposed members of the Board shall undergo a fit and proper test to determine suitability to superintend the Fund.

4.5 Chief Executive Officer and Secretariat of the Authority

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

The Board shall, through a competitive process, recommend a chief executive officer who shall be appointed by the CS. The recruitment process shall entail a fit and proper test to determine suitability to superintend the Fund.

The CEO shall be the managing trustee of the Fund.

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.

4.6 The Trust Fund

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

There shall be paid into the Fund, all moneys that become or are deemed to be unclaimed assets and other payments required by the law to be paid into the Fund; out of the Fund shall be made payments due and payable to owners out of the Fund and amounts to defray costs associated with the administration of the Authority and performance of its functions.

The Trust Fund shall—

- (a) ensure transparency, accountability and prudence and eliminate all possible areas of conflict of interest thereto;
- (b) ensure that all the board members of UFAA qualify under a fit and proper assessment;
- (c) require and ensure the fiduciary duty in the management of the UFA by the Board;

- (d) enable investment of unclaimed balances for social and economic development while at the same time safeguarding the right to perpetual reunification and the guaranteed repayment of the original principal sum owing to rightful beneficiary(s)

4.7 Regulatory Authorities

All relevant regulatory authorities specifically those responsible for the supervision of a holder shall assist the Authority in the enforcement of the provisions of the law and generally ensure that the objectives of the unclaimed financial assets regime are achieved.

4.7 Agents/service providers

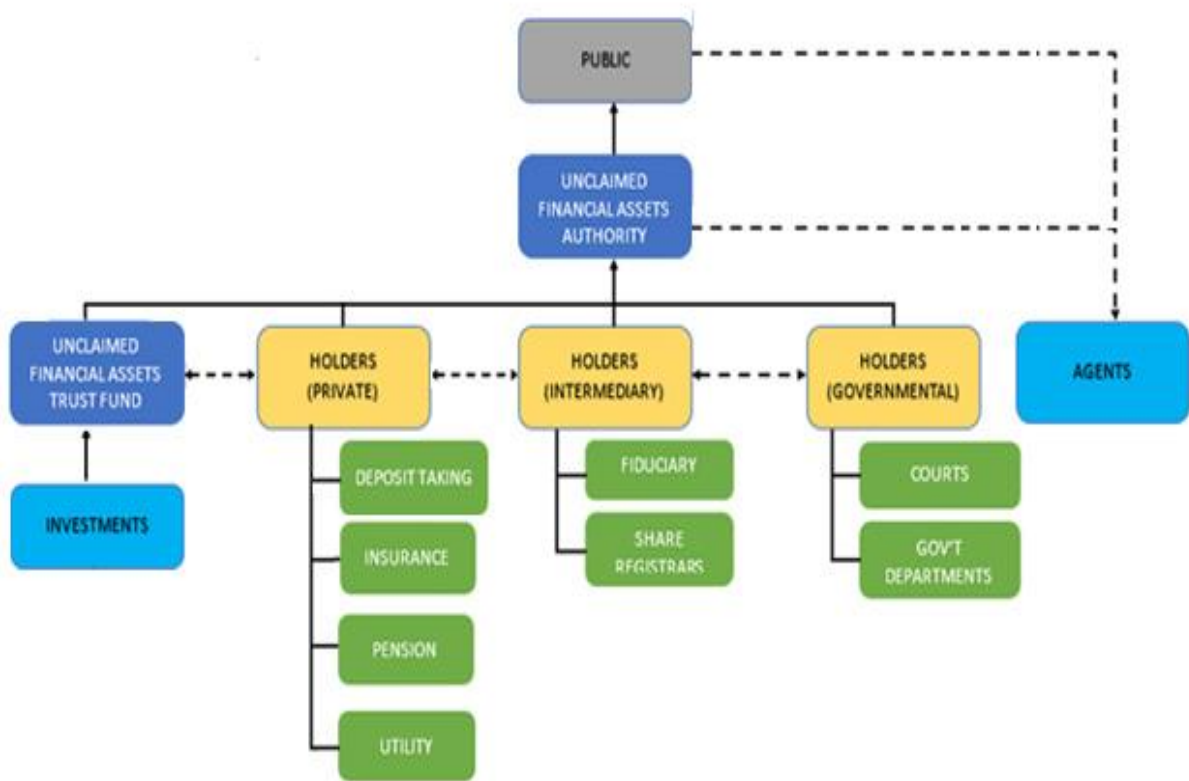
The law shall empower and require the Authority to appoint or license agents and service providers as it may deem necessary for the carrying out functions of the Authority. These may include custodians, fund managers and reunification agents to assisting the reunification of the assets with the owners.

Holders

Holders of unclaimed financial assets are those entities who hold assets on behalf of an owner, are in possession of assets belonging to another, are indebted to another on an obligation or are a trustee.

Holders shall have duty to locate and notify owners of assets and to report of presumed abandoned assets, and shall where they hold assets presumed abandoned, make a report concerning the assets to the Authority.

*Draft Unclaimed Financial Assets Policy
(Draft for Public Exposure)
25th March, 2019*



The Figure below provides the institutional framework for the administration and management of unclaimed financial assets

ANNEX

POLICY OBJECTIVES IMPLEMENTATION STRATEGIES

POLICY OBJECTIVES	IMPLEMENTATION STRATEGIES	TIMELINES/ SEQUENCING	RESPONSIBILITY / BY WHO
UNDER THE RECEIVE PILLAR			
Objective 1: Regularly review the definition and identification of unclaimed financial assets	<ul style="list-style-type: none"> • Draft necessary amendments to the Act • Prescription of further asset classes by the CS • Continuous consultations 	Continuous	<ul style="list-style-type: none"> • UFAA • National Treasury • Attorney General • Parliament
Objective 2: Include audit of UFA in IFRS and other accounting and audit policies and standards to enhance compliance by holders	<ul style="list-style-type: none"> • Engage relevant accounting bodies 	Immediate	<ul style="list-style-type: none"> • UFAA • Relevant accounting bodies • National Treasury
UNDER THE SAFEGUARD PILLAR			
Objective 3: The objectives, governance and management of unclaimed financial assets funds	<ul style="list-style-type: none"> • Continue consultations • Elimination of conflict of interest, • Requirement for fit & proper test, • Impose fiduciary duties/responsibility 	Continuous	<ul style="list-style-type: none"> • National Treasury • UFAA
Objective 4: Treatment of non-cash unclaimed financial assets	<ul style="list-style-type: none"> • Put in place mechanisms for conversion of non-cash assets to cash without losing their value 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • National Treasury • Various Stakeholders
UNDER THE REUNITE PILLAR			
Objective 5: Re-unification of rightful owners with their assets is a critical pillar of the unclaimed financial assets framework in	<ul style="list-style-type: none"> • Tighter compliance audits by the UFAA to enforce against on institutions with large amounts of data and significant reconciliation backlogs evidenced by suspense accounts • The UFAA to require greater 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • Holders • Sector Regulators • Various UFAA's stakeholders • Agents of the UFAA • GOK

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POLICY OBJECTIVES	IMPLEMENTATION STRATEGIES	TIMELINES/ SEQUENCING	RESPONSIBILITY / BY WHO
Kenya	<p>public disclosure by holders of the steps taken to contact individual clients before transferring assets to the UFAA</p> <ul style="list-style-type: none"> • The UFAA to undertake more outreach and capacity building and application of penalties and fines under the Act to encourage compliance with the law. • Encourage holding institutions to embed data mining and analysis of an organizations data to accurately determine unclaimed financial assets. • UFAA to ensure its compliance with the Constitutional and legal provisions applicable and exercise of its powers including powers to appoint reunification agents and • ensure access to its services to the grassroots • Undertake financial literacy and public awareness campaigns on unclaimed financial assets • Make use of social media in publishing or tracing of customers/owners of assets. 		
ON THE CROSSCUTTING MATTERS			
Objective 6: Pillars of Unclaimed Financial Assets regime are affirmed	<ul style="list-style-type: none"> • Provisions requiring and supporting the implementation of pillars to be reflected in the Act and regulations • Regular review and revisions, if necessary, to ensure efficacy, of the 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • Regulators • Holders • GOK • Various UFAA's Stakeholders • Agents of UFAA

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POLICY OBJECTIVES	IMPLEMENTATION STRATEGIES	TIMELINES/ SEQUENCING	RESPONSIBILITY / BY WHO
	<p>legal provisions applicable;</p> <ul style="list-style-type: none"> • Performance indicators by UFAA maintained and regular assessment of implantation of pillars 		
Objective 7: Key principles of the current unclaimed financial assets regime are affirmed	<ul style="list-style-type: none"> • Implementation of the Act and UFAA Regulations with the current principles maintained 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • Sector Regulators • Various UFAA's stakeholders • Holders • GOK
Objective 8: Enhance transparency and robust risk management in the governance and management of unclaimed financial assets regime at all stages in the life cycle of these assets	<ul style="list-style-type: none"> • The UFAA should require greater disclosure to the Authority by holders of the steps taken to contact individual clients before transferring assets to the UFAA • Transparency/accountability on utilization of assets by the UFAA by public disclosure of the UFAA and Unclaimed Trust Fund annual accounts and quarterly updates on investments of the Trust Funds 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • Holders

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POLICY OBJECTIVES	IMPLEMENTATION STRATEGIES	TIMELINES/ SEQUENCING	RESPONSIBILITY / BY WHO
Objective 9: There shall be regular and continuous review of legislation on unclaimed financial assets legal and regulatory regime and of other relevant sectoral regulatory bodies	<ul style="list-style-type: none"> • Continuous review of legal provisions to ensure their efficacy • Conduct regular review of sectoral laws and KYC requirements to ensure availability of necessary contact details of third parties and ensure institutions apply the principles of good faith, due diligence and care to the management of financial assets 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • GOK • Various UFA stakeholders
Objective 10: Information communication technology shall be adopted in the management of unclaimed financial assets	<ul style="list-style-type: none"> • Follow the guidelines as set out in the ICT Government Policy 	Immediate and continuous	<ul style="list-style-type: none"> • UFAA • ICT Authority
Objective 11: The income of the Fund and penalties imposed by law for non-compliance shall form part of the Unclaimed Financial Assets Fund	<ul style="list-style-type: none"> • Pay into the Fund 	At intervals as these funds are realized	<ul style="list-style-type: none"> • UFAA • Holders
Objective 12: There shall be established linkages between the financial sector and other government agencies responsible for the management of unclaimed non-financial assets.	<ul style="list-style-type: none"> • Various Government agencies including MDAs 	Immediate	<ul style="list-style-type: none"> • UFAA • Relevant government agencies