

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary
Gazette No. 71 dated 5 November, 2010.

**A BILL FOR A LAW TO AMEND THE DORMANT ACCOUNTS LAW,
2010; TO LIMIT THE SCOPE OF THE LAW; AND TO PROVIDE FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE DORMANT ACCOUNTS (AMENDMENT) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Dormant Accounts Law, 2010 in order to limit the scope of the Law.

Clause 1 provides the short title.

Clause 2 provides for the amendment of section 2 of the principal Law so that definitions for terms that are no longer required to be defined are deleted while those for terms that are required to be defined are inserted. The definitions deleted include “Financial Secretary” and “Constitution” and the definitions inserted include “account holder”, “account provider”, “bank”, “building society” “Class A insurer, “credit union”, “deposit for a fixed period” and “trust company”. The definition of “dormancy period” is deleted and substituted so that the period is seven years instead of six years.

Clause 3 amends the principal Law by repealing and substituting section 4 to limit the scope of the principal Law by limiting the transactions which affect the dormancy period. This is achieved by removing references to trusts and by restricting the definition of “monies held or owed by an account provider” to any sum payable with respect to any general deposit, demand deposit, savings deposit or deposit for a fixed period, made in the Islands with an account provider, together with any interest, but excluding any lawful charges thereon; any sum payable on cheques certified in the Islands by an account provider; the cash from, or proceeds of sale of precious metals and precious stones (excluding jewellery) from, safe deposit boxes upon which the lease or rental period has expired; monies claimable or payable to an insured or specified beneficiary in relation to long term business carried on by a class A insurer; and the proceeds of any assets held under a trust by a trust company specifically established for the purposes of maintaining monies settled from dormant accounts except for any trusts created pursuant to section 153 of the Companies Law (2010 Revision).

Clause 4 repeals and replaces section 5 of the principal Law to provide for the account provider to notify the dormant account holder that any right against the Government or claim arising will be dealt with in accordance with section 9 of the principal Law and Part VIII of the Public Management and Finance Law (2010 Revision), and to delete references to the Limitation Law (1996 Revision). Clause 4 also amends section 5 to provide for the notification to be sent either by registered mail, courier service or by any method of communication specified in the account mandate, to the last known address of the dormant account holder.

Clause 5 amends section 6 of the principal Law to provide for notice of dormant accounts to be by publication in the Gazette and, for dormant account holders resident in the Cayman Islands, in a daily newspaper circulating in the Islands, or, for dormant account holders not resident in the Cayman Islands, on the dormant account provider's website or in a register held at the principal office of the account provider in the Cayman Islands. Clause 5 also amends section 6 to provide for notice to be given to dormant account holders that any right against the Government or claim arising will be dealt with in accordance with section 9 of the principal Law and Part VIII of the Public Management and Finance Law (2010 Revision), and to delete references to the Limitation Law (1996 Revision).

Clause 6 repeals and replaces section 7 of the principal Law to make provision for monies held in the dormant accounts to be transferred to the Government and for such monies to be vested in the Government.

Clause 7 amends section 8 to specify that the details which would enable the account holder to be identified are to be entered on the dormant account register by the account provider.

Clause 8 amends section 9 of the principal Law to provide for the monies transferred from a dormant account to the Government to be dealt with as trust assets and for claims to be dealt with in accordance with that section and Part VIII of the Public Finance and Management Law (2010 Revision). References to the Limitation Law (1996 Revision) are deleted.

Clauses 9 amends section 10 of the principal Law to make specific consequential amendments which delete references to a financial institution and substitute references to an account provider.

Clause 10 amends section 11(3) of the principal Law to provide for the information or record to be produced to be relevant to the dormant account.

Clauses 11 and 12 respectively amend sections 13 and 15 of the principal Law to make specific consequential amendments which delete references to financial institutions and substitute references to account providers.

Clause 13 inserts a new section 17A into the principal Law which provides for the Governor in Cabinet to declare any type of financial institution to be an account provider where the Governor in Cabinet deems it to be in the national interest.

Clause 14 amends the principal Law to make general consequential amendments which delete references to "financial institution" and substitute references to

“account provider” and delete references to “general revenue of the Islands” and substitute references to “Government”, and remove the terms of imprisonment from the provisions which impose penalties for the criminal offences created under the principal Law.

THE DORMANT ACCOUNTS (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Dormant Accounts Law, 2010 - interpretation
3. Repeal and substitution of section 4 - dormant accounts
4. Repeal and substitution of section 5 - notification procedure
5. Amendment of section 6 - publication of notice
6. Repeal and substitution of section 7 - transfer and vesting of monies in dormant accounts
7. Amendment of section 8 - register of dormant accounts
8. Amendment of section 9 - claims
9. Amendment of section 10 - inspector
10. Amendment of section 11 - inspection
11. Amendment of section 13 - disclosure to the inspector
12. Amendment of section 15 - regulations for disclosure
13. Insertion of section 17A - declaration by Governor in Cabinet of account provider
14. Amendment of principal Law

CAYMAN ISLANDS

**A BILL FOR A LAW TO AMEND THE DORMANT ACCOUNTS LAW,
2010 TO LIMIT THE SCOPE OF THE LAW; AND TO PROVIDE FOR
INCIDENTAL AND CONNECTED PURPOSES**

Enacted by the Legislature of the Cayman Islands.

1. This Law may be cited as the Dormant Accounts (Amendment) Law, 2010. Short title

2. The Dormant Accounts Law, 2010, in this Law referred to as the “principal Law” is amended in section 2 as follows - Amendment of section 2
of the Dormant
Accounts Law, 2010 -
interpretation
 - (a) by inserting in the appropriate alphabetical sequence the following definitions -

“account holder” means a person having a legal or beneficial interest in, or right (including any encumbrance) over, monies held or owed by an account provider;

“account provider” means -
 - (a) a Class A insurer;
 - (b) a bank;
 - (c) a trust company;
 - (d) a credit union;
 - (e) a building society; or
 - (f) any other type of financial institution which is declared to be an account provider pursuant to section 17A;

“bank” means a person licensed to carry on banking business under the Banks and Trust Companies Law (2009 Revision);

“building society” has the same meaning as in the Cooperative Societies Law (2001 Revision);

“Class A insurer” means an insurer holding a valid Class ‘A’ Insurer’s Licence under the Insurance Law (2008 Revision);

“credit union” has the same meaning as in the Cooperative Societies Law (2001 Revision);

“deposit for a fixed period” means a deposit made with an account provider that, subject to any terms agreed between the account holder and the account provider in relation to continued reinvestment as a deposit, becomes due and payable after the expiry of a period of time agreed between the account holder and account provider;

“long term business” has the same meaning as in the Insurance Law (2008 Revision);

“monies held or owed by an account provider” means -

- (a) any sum payable with respect to any general deposit, demand deposit, savings deposit or deposit for a fixed period, made in the Islands with an account provider, together with any interest, but excluding any lawful charges thereon;
- (b) any sum payable on cheques certified in the Islands by an account provider;
- (c) the cash from, or proceeds of sale of precious metals and precious stones (excluding jewellery) from, safe deposit boxes upon which the lease or rental period has expired;
- (d) monies claimable or payable to an insured or specified beneficiary in relation to long term business carried on by a Class A insurer; and
- (e) the proceeds of any assets held under a trust by a trust company specifically established for the purposes of maintaining monies settled from dormant accounts except for any trusts created pursuant to section 153 of the Companies Law (2010 Revision); and

“trust company” means a company licensed to carry on trust business under the Banks and Trust Companies Law (2009 Revision);”;

- (b) by deleting the definitions of the words “Constitution” and “Financial Secretary”;
- (c) by deleting the definition of the words “dormant account holder” and substituting the following definition -

“ “dormant account holder” means a person having a legal or beneficial interest in, or right (including any encumbrance) over, monies deemed to be held in a dormant account pursuant to section 4(1);”;

- (d) by deleting the definition of dormancy period and substituting the following -

“ “dormancy period” means the period of seven years referred to in section 4(1);”.

3. The principal Law is amended by repealing section 4 and substituting the following section -

Repeal and substitution of section 4 - dormant accounts

“Dormant accounts

4. (1) Subject to subsections (2) and (3), monies held or owed by an account provider shall be deemed to be held in a dormant account if the monies are due to be claimed but have not been claimed and the dormant account holder has not, within the seven years immediately preceding, effected any of the following transactions -

- (a) subject to subsection (4), increased or decreased the amount held or owed by the account provider;
- (b) presented the passbook or other record for the crediting of interest or dividends in respect of -
 - (i) any sum payable with respect to any general deposit, demand deposit, savings deposit or deposit for a fixed period, made in the Islands with the account provider; or
 - (ii) any sum payable on cheques certified in the Islands by the account provider;
- (c) corresponded in writing with the account provider concerning the monies; or
- (d) otherwise indicated an interest in the monies

as evidenced in writing by the account provider.

(2) Where monies are held or owed by an account provider for an account holder in more than one account, the monies shall not be deemed to be held in a dormant account if the account holder has, within the seven years immediately preceding, effected any of the transactions specified in subsection (1) through, or in relation to, any of the accounts.

(3) Where the monies held or owed by an account provider is a deposit for a fixed period, the dormancy period shall not commence until the fixed period has expired.

(4) Interest paid, or account fees applied, by an account provider on monies held or owed by the account provider shall not be regarded as a transaction which increases or decreases the amount held in the dormant account for the purposes of subsection (1)(a).

(5) For the avoidance of doubt, where any transaction referred to in subsection (1) is effected prior to monies held or owed by an account provider being deemed to be held in a dormant account under that subsection, the dormancy period shall not commence until immediately after that transaction is effected.”.

Repeal and substitution of section 5 - notification procedure

4. The principal Law is amended by repealing section 5 and substituting the following section -

Notification Procedure

5. (1) Subject to section 6, except where a dormant account holder has been previously notified under this section in respect of the dormant account, an account provider, shall, on or before 31st July in each year, notify the dormant account holder, in writing, of the following -

- (a) the name and current address of the account provider and information regarding a change of name, if any, of the account provider since the opening of the dormant account;
- (b) that the dormant account to which the dormant account holder appears to be entitled is held by the account provider;
- (c) that if a transaction referred to in section

- 4(1) is not effected on the dormant account on or before 31st December next following, the monies held in the dormant account will be transferred to the Government without further notice to the dormant account holder;
- (d) that on the transfer of the monies held in the dormant account to the Government, and subject to this Law, the dormant account holder will no longer have any right against the account provider to repayment of the monies transferred, but that the dormant account holder will have, against the Government, such right to repayment of the monies transferred that the dormant account holder would have had against the account provider except that any right against the Government or claim arising under this Law shall be dealt with in accordance with section 9 of this Law and Part VIII of the Public Management and Finance Law (2010 Revision); and
 - (e) any other matters that may be prescribed.

(2) The notification referred to in subsection (1) shall be sent either by registered mail, courier service or by any method of communication specified in the account mandate, to the last known address of the dormant account holder.

(3) An account provider that fails to notify a dormant account holder under this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

(4) Nothing in this section shall prevent an account provider from re-activating an account (so that the monies held or owed in that account are no longer deemed to be held in a dormant account) where a person complies with a notification given under this section after the date specified in subsection (1)(c), but prior to the transfer referred to in section 7(1).

(5) For the avoidance of doubt, notification to a dormant account holder under this section shall be given -

- (a) to the person who is the dormant account holder having the legal interest in the monies held or owed by the account provider; and
- (b) to the extent that the account provider is aware, and has contact details, of a person who has a beneficial interest or right (including any encumbrance) over the monies held or owed by the account provider, to the person who has that beneficial interest or right.”.

Amendment of section 6
- publication of notice

5. The principal Law is amended in section 6 as follows -

- (a) by repealing subsection (1) and substituting the following subsection -

“ (1) Where monies held or owed by an account provider are deemed to be held in a dormant account under section 4(1) and -

- (a) the account provider has been instructed by the dormant account holder not to correspond with or contact the dormant account holder; or
- (b) the account provider has taken all reasonable steps to notify the dormant account holder in writing in relation to the dormant account and has failed to make contact or receive a response from the dormant account holder,

section 5 does not apply and, subject to subsections (2) and (3), the account provider shall publish a notice in the Gazette and, for dormant account holders resident in the Cayman Islands, in a daily newspaper circulating in the Islands, or, for dormant account holders not resident in the Cayman Islands, on the account provider's website or in a register held at the principal office of the account provider in the Cayman Islands.”;

- (b) in subsection (2) -
 - (i) by repealing paragraph (a) and substituting the following paragraph -
 - “ (a) the name and current address of the account provider and information regarding a change of name, if any, of the account provider since the opening of the dormant account;”;
 - (ii) by repealing paragraph (e) and substituting the following paragraph -

“ (e) that on the transfer of the monies held in the dormant account to the Government and subject to this Law, the dormant account holder will no longer have any right against the account provider to repayment of the monies transferred, but that the dormant account holder will have, against the Government, such right to repayment of the monies transferred that the dormant account holder would have had against the account provider, except that any right against the Government or claim arising under this Law shall be dealt with in accordance with section 9 of this Law and Part VIII of the Public Management and Finance Law (2010 Revision);”;

- (c) by repealing subsection (4); and
- (d) in subsection (7), by inserting after the words “so that the monies held” the words “or owed”.

6. The principal Law is amended by repealing section 7 and substituting the following section -

Repeal and substitution of section 7 - transfer and vesting of monies in dormant accounts

“Transfer and vesting of monies in dormant accounts

7. (1) Subject to subsections (3) and (4) and sections 5(4), 6(7) and 15, if a transaction referred to in section 4(1) is not effected on a dormant account on or before the date specified in section 5(1)(c) or 6(2)(c), as the case may be, the account provider shall, not later than 31st March next following, transfer to the Government the monies held in the dormant account.

(2) The monies, and any related rights and obligations, transferred to the Government from a dormant account by an account provider under subsection (1), shall, subject to section 9, vest in the Government.

(3) An account provider that transfers monies from a dormant account to the Government under this section shall, at the time of the transfer, submit to the Minister and to the Monetary Authority, a report, in the prescribed form, specifying -

- (a) the total amount of monies transferred;
- (b) the total number of the dormant accounts;
- (c) the amount of each dormant account transferred;

- (d) (where known) the name, date of birth and last known address of each dormant account holder; and
- (e) any other details that would enable the dormant account holder to be identified.

(4) The monies transferred from a dormant account to the Government under this section shall be the ledger balance on the date of transfer.

(5) An account provider that does not hold any dormant accounts to which subsection (1) applies shall submit a report to that effect to the Minister and to the Monetary Authority, in writing, not later than 31st March in each year.

(6) Subject to subsection (7), an account provider shall submit a certificate of compliance in the prescribed form to the Minister and to the Monetary Authority, not later than 31st March in each year, stating, if this is the case, that the account provider has complied with this Law in respect of the following -

- (a) the notification procedure under section 5 or the publication of a notice under section 6;
- (b) in the case of an account provider that holds dormant accounts to which subsection (1) applies, the transfer of monies from such dormant accounts to the Government under that subsection and the submission of a report to the Minister and the Monetary Authority under subsection (3);
- (c) in the case of an account provider that does not hold any dormant accounts to which subsection (1) applies, the submission of a report to that effect to the Minister and the Monetary Authority under subsection (5); and
- (d) the keeping and maintaining of a register in accordance with section 8.

(7) A certificate of compliance under subsection (6) shall be signed by an authorized officer and shall include any qualifications, amplifications or explanations that the

authorized officer considers appropriate.

- (8) An account provider that -
 - (a) fails to transfer monies from a dormant account to the Government under this section;
 - (b) fails to submit a report to the Monetary Authority or to the Minister under subsection (3) or (5); or
 - (c) fails to submit a certificate of compliance under subsection (6),

commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

(9) Monies which an account provider fails to transfer from a dormant account to the Government under this section, together with any accrued interest thereon, shall be a debt due and owing by the account provider to the Government and may be recovered from the account provider in any court.

(10) Except with the approval of the Monetary Authority, on such terms and conditions as the Monetary Authority may determine, a reduction in the amount of interest payable and charges in excess of those made in respect of comparable active accounts shall not be made by an account provider during the period of inactivity of a dormant account or at the time payment or transfer of the monies held in the dormant account is required.

(11) In this section -

"authorized officer" means a person authorized in writing by the account provider; and

"ledger balance" means the monies in the dormant account on the date of transfer of those monies to the Government under this section together with any accrued interest thereon but excluding any charges that may lawfully be withheld by the account provider."

Amendment of section 8
- register of dormant
accounts

7. The principal Law is amended in section 8(1) by deleting paragraph (a) and substituting the following paragraph -

“ (a) (where known) the name, date of birth and last known address of the dormant account holder and any other details which would enable the dormant account holder to be identified;”.

Amendment of section 9
- claims

8. The principal Law is amended in section 9 by repealing subsections (1), (2), (3) and (4) and substituting the following subsections -

“ (1) Where an account provider has transferred monies (and any related rights and obligations) from a dormant account to the Government under section 7, the monies vested in the Government shall be held as trust assets within the meaning of Part VIII of the Public Management and Finance Law (2010 Revision) and -

(a) the dormant account holder no longer has any right against the account provider to repayment of the monies transferred and any other related rights and related obligations of the account provider are extinguished; and

(b) the dormant account holder has, against the Government such right to repayment of the monies transferred and any other related rights and obligations as the dormant account holder would have had against the account provider, except that any right against the Government or claim arising under this section shall be dealt with in accordance with this section and Part VIII of the Public Management and Finance Law (2010 Revision).

(2) A claim under subsection (1) shall be submitted to the Minister in writing signed by the claimant and shall be accompanied by the prescribed documents and information.

(3) Where a claimant proves to the satisfaction of the Minister that he is the dormant account holder and the monies in the dormant account have been transferred to the Government under section 7, the claimant shall be provided with a statement of account and shall within twenty-eight days be paid by the Government, subject to the deduction of any charges that may lawfully be withheld, the total amount of the monies transferred to the Government under section 7.

(4) The Government or an account provider shall not be liable for any interest on monies transferred to the Government by account provider under section 7.”.

9. The principal Law is amended in section 10(1) as follows -
- (a) by deleting the words “financial institutions” wherever they appear and substituting the words “an account provider”;
 - (b) in paragraph (b) by deleting the word “have” and substituting the word “has”.
10. The principal Law is amended in section 11(3) by inserting after the word “control” the words “in relation to the dormant account”.
11. The principal Law is amended in section 13(1) by deleting the words “financial institution” and substituting the words “account provider”.
12. The principal Law is amended in section 15(1) by deleting the words “financial institutions” and substituting the words “account providers”.
13. The principal Law is amended by inserting after section 17 the following section -
- “Declaration by
Governor in
Cabinet of
account provider
- 17A. The Governor in Cabinet may by Order published in the Gazette declare any type of financial institution to be an account provider where the Governor in Cabinet deems it to be in the national interest.”.
14. The principal Law is amended as follows -
- (a) by deleting the words “the financial institution” wherever they appear and substituting the words “the account provider”;
 - (b) by deleting the words “A financial institution” wherever they appear and substituting the words “An account provider”;
 - (c) by deleting the words “a financial institution” wherever they appear and substituting the words “an account provider”;
 - (d) by deleting the words “general revenue of the Islands” wherever they appear and substituting the word “Government”;
 - (e) by deleting the words “or to imprisonment for a term of one year, or to both” wherever they appear; and
 - (f) by deleting the words “or to imprisonment for a term of two years, or to both” wherever they appear.

Passed by the Legislative Assembly the day of , 2010.

Speaker.

Clerk of the Legislative Assembly.