

CAYMAN ISLANDS



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THE DORMANT ACCOUNTS LAW, 2010

(LAW 28 OF 2010)

THE DORMANT ACCOUNTS LAW, 2010

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CAYMAN ISLANDS

Law 28 of 2010.

I Assent

Duncan Taylor

Governor.

14th July, 2010

**A LAW TO PROVIDE FOR THE MONIES IN DORMANT ACCOUNTS
TO BE TRANSFERRED TO THE GENERAL REVENUE OF THE
ISLANDS; 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 Law, 2010.

Short title

2. In this Law -

Interpretation

“claimant” means a person making a claim under section 9;

“computer” includes a personal organizer or any other electronic means of information storage and retrieval;

“Constitution” means the Constitution of the Cayman Islands set out in Schedule 2 to the Cayman Islands Constitution Order 2009;

S.I. 2009/1379

“dormant account” means a dormant account referred to in section 4(1);

“dormant account holder” means a person having a legal or beneficial interest in, or right over, monies deemed to be held in a dormant account;

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

	“financial institution” means a person carrying on financial services business;
S.I. 2009/1379	“Financial Secretary” means the Financial Secretary referred to in section 115 of the Constitution;
(2008 Revision)	“financial services business” means financial services business as defined in the Monetary Authority Law (2008 Revision);
	“inspector” means a person authorized as such by the Monetary Authority under section 10;
S.I. 2009/1379	“Minister” means the Minister charged with responsibility for finance under section 54 of the Constitution;
(2008 Revision)	“Monetary Authority” means the Cayman Islands Monetary Authority established under section 5 of the Monetary Authority Law (2008 Revision);
(2006 Revision)	“police officer” means a police officer as defined in section 2 of the Police Law (2006 Revision); and
	“record” means any book, document, or any other written or printed material in any form including - <ul style="list-style-type: none">(a) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form and that is capable of being reproduced in a legible form; and(b) all the electronic or other automatic means, if any, by which any such material or information is capable of being so reproduced and to which a financial institution, being inspected for the purposes of this Law, has access.
Application	3. This Law applies to a dormant account notwithstanding that the dormancy period commenced prior to the commencement of this Law.
Dormant accounts	4. (1) Subject to subsections (2), (3) and (4), monies held in a financial institution shall be deemed to be held in a dormant account if the dormant account holder has not, within the six years immediately preceding, effected any of the following transactions - <ul style="list-style-type: none">(a) subject to subsection (5), increased or decreased the amount held in the financial institution;(b) presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in subsection (6)(a) and (b);

- (c) corresponded in writing with the financial institution concerning the monies;
- (d) in the case of a trust, made a claim under the trust; or
- (e) otherwise indicated an interest in the monies as evidenced by a memorandum concerning the monies written by the financial institution.

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

(3) Where the monies held in a financial institution is a deposit for a fixed period in accordance with subsection (6)(a), the dormancy period shall not commence until the fixed period has expired.

(4) Where monies held in a financial institution are held on trust in accordance with subsection (6)(d) and there is a specified period within which -

- (a) a claim must be made under the trust; or
- (b) an extension of time may be applied for,

the dormancy period shall not commence until the specified period or the extension of time if granted, has expired.

(5) Interest paid by a financial institution on monies held in the financial institution shall not be regarded as a transaction which increases the amount held in the financial institution for the purposes of subsection (1)(a).

(6) In this section -

“monies held in a financial institution” includes -

- (a) any general deposit, demand deposit, savings deposit, deposit for a fixed period, made in the Islands with a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (b) any sum paid in the Islands toward the purchase of shares or other interests in a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (c) any sum payable on cheques certified in the Islands or on written instruments issued in the Islands on which a financial institution is directly liable;

- (d) intangible assets or movables and any income or increment thereon held in trust;
- (e) the cash from, or proceeds of sale of contents of, safe deposit boxes upon which the lease or rental period has expired; and
- (f) monies held or owing by insurance companies which have remained unclaimed for six years; and

“intangible assets” includes commercial papers.

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, a financial institution, 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 financial institution and any information regarding a change of name since the opening of the dormant account;
- (b) that the dormant account to which the dormant account holder appears to be entitled is held at the financial institution;
- (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 in the dormant account will be transferred to the general revenue of the Islands without further notice to the dormant account holder;
- (d) that on the transfer of the monies in the dormant account to the general revenue of the Islands and subject to this Law, the dormant account holder will no longer have any right against the financial institution to repayment of the monies transferred, but that the dormant account holder will, subject to the Limitation Law (1996 Revision), have against the Government such right to repayment of the monies transferred that the dormant account holder would have had against the financial institution; and
- (e) any other matters that may be prescribed.

(2) The notification referred to in subsection (1) shall be sent by ordinary post to the last known address of the dormant account holder.

(3) A financial institution 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 or to imprisonment for a term of two years, or to both.

(4) Nothing in this section shall prevent a financial institution from re-activating an account (so that the monies held 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).

6. (1) Where monies held in a financial institution are deemed to be held in a dormant account under section 4(1) and -

Publication of notice

- (a) the financial institution has been instructed by the dormant account holder not to correspond with or contact the dormant account holder; or
- (b) the financial institution 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,

section 5 does not apply and, subject to subsections (2), (3) and (4), the financial institution shall publish a notice in the Gazette and in one or more daily newspapers circulating in the Islands, and may publish the notice in any other media as the financial institution deems necessary.

(2) A notice under subsection (1) shall be in the prescribed form and shall contain the following information -

- (a) the name and current address of the financial institution and information regarding a change of name, if any, of the financial institution;
- (b) that the financial institution holds dormant accounts and the nature and type of such dormant accounts;
- (c) that if a transaction referred to in section 4(1) is not effected on a dormant account on or before 31 December next following, the monies in the dormant account will be transferred to the general revenue of the Islands without further notice;
- (d) that any interested person should contact the financial institution to establish if that person is a dormant account holder;
- (e) that on the transfer of the monies in the dormant account to the general revenue of the Islands and subject to this Law, the dormant account holder will no longer have any right against the financial institution to repayment of the monies transferred, but that the dormant account holder will, subject to the Limitation Law (1996 Revision), have against the Government such right to repayment of the monies transferred that the dormant account holder would have had against the financial institution; and
- (f) any additional information that may be prescribed.

(3) A notice under subsection (1) shall be published on or before 31st July in each year.

- (4) Copies of a notice published under subsection (1) may be -
- (a) displayed in a prominent position at each premises in which the financial institution carries on business that is open to the public; and
 - (b) published in a prominent position -
 - (i) in all brochures and publicity material, in relation to dormant accounts, issued by the financial institution; and
 - (ii) in any relevant code of conduct of the financial institution.

(5) A financial institution that publishes a notice under subsection (1) shall, on request, make available free of charge -

- (a) details of the current address of the financial institution and any information regarding a change of name; and
- (b) subject to subsection (6), any other relevant information specified in the request.

(6) Where the information referred to in subsection (5)(b) is otherwise made available to persons subject to a lawful charge, that information may be made available under this subsection subject to that charge.

(7) Nothing in this section shall prevent a financial institution from reactivating an account (so that the monies held 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 (2)(c) but before the date of the transfer referred to in section 7(1).

Transfer and vesting of monies in dormant accounts

7. (1) Subject to subsections (3) and (4) and section 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 financial institution at which the dormant account is held shall, not later than 31st March next following, transfer to the general revenue of the Islands the monies in the dormant account.

(2) The monies transferred to the general revenue of the Islands by a financial institution under subsection (1) shall vest in the Government.

(3) A financial institution that transfers monies to the general revenue of the Islands 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) 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 general revenue of the Islands under this section shall be the ledger balance on the date of transfer.

(5) A financial institution 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), a financial institution 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 financial institution 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 a financial institution that holds dormant accounts to which subsection (1) applies, the transfer of monies from such dormant accounts to the general revenue of the Islands under that section and the submission of a report to the Minister and the Monetary Authority under subsection (3);
- (c) in the case of a financial institution which 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) A financial institution that -

- (a) fails to transfer monies in dormant accounts to the general revenue of the Islands 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 or to imprisonment for a term of two years, or to both.

(9) Monies which a financial institution fails to transfer to the general revenue of the Islands under this section, together with any accrued interest thereon, shall be a debt due and owing by the financial institution to the Government and may be recovered in any court from the financial institution.

(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 or dividends payable and charges in excess of those made in respect of comparable active accounts shall not be made by a financial institution during the period of inactivity of a dormant account or at the time payment or transfer of the monies in the dormant account is required.

(11) In this section -

“authorized officer” means a person authorized in writing by the financial institution; and

“ledger balance” means the monies in the dormant account on the date of transfer of those monies to the general revenue of the Islands under this section together with any accrued interest thereon but excluding any charges that may lawfully be withheld by the financial institution.

Register of dormant
accounts

8. (1) Subject to subsections (2) and (3), a financial institution shall keep and maintain a register of dormant accounts.

(2) A financial institution shall enter in the register kept under subsection (1), the following particulars in respect of dormant accounts from which, within the past six years, monies have been transferred to the general revenue of the Islands under section 7 -

- (a) 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;
- (b) the dormant account number, if any;
- (c) if a notification was sent to the dormant account holder under section 5, the date on which and, if different from the address referred to in paragraph (a), the address to which, the notification was sent;
- (d) if a notice was published under section 6, the date on which the notice was published;
- (e) the date on which the monies were deemed to be held in a dormant account;
- (f) the date of the transfer of the monies to the general revenue of the Islands and the amount transferred; and

(g) any other matters that may be prescribed.

(3) The register under subsection (1) may be kept in any form capable of being converted into a legible form and being used to make a legible copy or reproduction of any entry in the register.

(4) Subject to subsection (5), the register kept under subsection (1) shall not be open to public inspection.

(5) Nothing in subsection (4) shall be construed as restricting the right of a person, who proves to the satisfaction of a financial institution that he is, or may be, a dormant account holder, to inspect the register kept under subsection (1) with regard to the dormant account concerned.

(6) A financial institution that fails to keep and maintain a register in accordance with this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

9. (1) Where a financial institution has transferred monies from a dormant account to the general revenue of the Islands under section 7 - Claims

- (a) the dormant account holder no longer has any right against the financial institution to repayment of the monies transferred; and
- (b) the dormant account holder has, against the Government, subject to the Limitation Law (1996 Revision) such right to repayment of the monies transferred as the dormant account holder would have had against the financial institution.

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

(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 general revenue of the Islands under section 7, the claimant shall be provided with a statement of account and shall within twenty-eight days be paid out of the general revenue of the Islands, subject to the deduction of any charges that may lawfully be withheld, the total amount of the monies transferred to the general revenue of the Islands under section 7.

(4) The Government or a financial institution shall not be liable for any interest on monies transferred to it by the financial institution under section 7.

(5) A person aggrieved by a decision of the Minister under this section has a right of appeal against that decision to the Grand Court.

(6) A person who fraudulently makes a claim for repayment under subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

Inspector

10. (1) The Monetary Authority may authorize a person to be an inspector for the purposes of -

- (a) ensuring compliance by financial institutions with this Law;
- (b) ascertaining whether financial institutions have established systems, procedures and practices that are adequate to secure an effective check on the identification, notification, transfer, recording and repayment of monies in dormant accounts; and
- (c) determining whether the systems, procedures and practices referred to in paragraph (b) have been employed and applied in an adequate manner in relation to monies in dormant accounts by financial institutions.

(2) An authorization under subsection (1) shall be in writing and shall be subject to any terms and conditions, including terms and conditions relating to remuneration, fees and allowances for expenses, that may be determined by the Monetary Authority, and that are specified in the authorization.

(3) The authorization of an inspector under this section ceases when the Monetary Authority revokes the authorization in writing or where the authorization expires.

(4) Subject to section 13, the Monetary Authority may give directions in relation to the form, manner and content of the report to be prepared by an inspector under section 12(1).

Inspection

11. (1) Subject to subsection (4), an inspector may, for the purposes specified in section 10 and on production of the authorization issued under section 10, at all reasonable times and on reasonable notice enter and search any premises of a financial institution and may -

- (a) inspect and take copies of or extracts from, and make any enquiries that the inspector considers necessary in relation to, the following records kept by a financial institution -
 - (i) accounts held by the financial institution;
 - (ii) records of the transfer of monies to the general revenue of the Islands under section 7;
 - (iii) the register kept under section 8(1);

- (iv) any other records relating to the matters specified in subparagraphs (i) to (iv); and
 - (v) any other records relating to dormant accounts;
 - (b) where records are -
 - (i) stored in electronic form, require the financial institution or a person employed by the financial institution to produce written copy of those records; or
 - (ii) not in the English language, require the financial institution or a person employed by the financial institution to produce a copy of those records in the English language;
 - (c) require a person by whom or on whose behalf a computer is or has been used to produce or store records or any person having charge of, or otherwise concerned with the operation of, the computer to afford the inspector all reasonable assistance in relation to the computer; and
 - (d) remove and retain the records referred to in this subsection for such period as may be reasonable for further inspection or until the conclusion of any legal proceedings, subject to a warrant being issued for that purpose by a magistrate under subsection (6).
- (2) A person who has in his power or possession any records referred to in subsection (1) shall -
- (a) produce them at the request of the inspector and permit the inspector to inspect and take copies of or extracts from them;
 - (b) at the request of the inspector, give the inspector any information that the inspector may reasonably require in relation to any entries in those records and provide an explanation of any apparent omissions from them or any omission of a record required to be produced; and
 - (c) give any other assistance and other information to the inspector that is reasonable in the circumstances.
- (3) The duty to produce or provide any record or information extends to an examiner, administrator, liquidator, receiver, official assignee or any person who is or has been an officer or employee or agent of a financial institution or who appears to the inspector to have the information or record in his possession or under his control.
- (4) For the purposes specified in section 10, an inspector shall not, except with the consent of the occupier, enter -
- (a) a dwelling; or
 - (b) premises other than that of a financial institution,

unless the inspector has obtained a warrant issued by a magistrate under subsection (6) authorizing the entry.

(5) Where an inspector considers it necessary, the inspector may be accompanied by a police officer when performing any powers conferred on the inspector under this section.

(6) If a magistrate is satisfied, on the sworn information of an inspector, that there are reasonable grounds for suspecting that there is information required by an inspector under this section held on any premises or any part of any premises, the magistrate may issue a warrant authorizing the inspector, accompanied by a police officer, at any time within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter the premises, and exercise all or any of the powers conferred on an inspector under this section or section 10.

(7) For the purposes of carrying out inspections under this section, the inspector shall have access to -

- (a) all records kept by the Minister and the Monetary Authority in relation to the transfer of monies to the general revenue of the Islands; and
- (b) the certificates of compliance furnished to the Minister and the Monetary Authority under section 7.

(8) A person who -

- (a) obstructs an inspector in the exercise of a power under this section;
- (b) gives to an inspector information that the person knows is false or misleading; or
- (c) without reasonable excuse, fails to comply with a request or requirement made by an inspector under this section,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

Report to Monetary
Authority

12. (1) Where, following an inspection under section 11, the inspector is of the opinion that -

- (a) there is reason to believe that a financial institution is in breach of any provision of this Law; or
- (b) there is a material defect in the systems, procedures and practices referred to in section 10(1)(b),

the inspector shall prepare a report, in writing, and submit a copy of the report to the Monetary Authority.

(2) Subject to subsection (3), a dormant account holder shall not be referred to in a report under subsection (1), otherwise than for the purposes of subsection (3), by name or in any manner by which the dormant account holder could be identified as a dormant account holder.

(3) An inspector who, in the course of an inspection, obtains *prima facie* evidence of -

- (a) a possible underpayment or non-transfer of monies from a dormant account to the general revenue of the Islands under section 7; or
- (b) a fraudulent claim for repayment under section 9,

shall submit to the Monetary Authority particulars of the evidence and of the dormant account and dormant account holder concerned.

(4) An inspector shall provide to the Monetary Authority any information and assistance that may reasonably be required by the Monetary Authority in respect of any matters relating to an inspection carried out under section 11 or for the purpose of clarifying any matter in the report under subsection (1).

13. (1) Subject to section 12(2), any prohibition or restriction imposed by law, including any contract, in relation to the disclosure of information does not apply in relation to -

Disclosure to the
inspector

- (a) the disclosure of information in good faith to, or access to information by, an inspector for the purposes of his functions under this Law; or
- (b) any information that is contained in a report under section 12(1) and is information that in the inspector's opinion ought, in the public interest, to be so contained,

and no liability shall attach to the person or financial institution making the disclosure.

(2) Nothing in this section or in section 12 compels the disclosure by any person of any information that the person would, in the opinion of any court, be entitled to refuse to produce on the grounds of legal professional privilege or authorizes the taking possession of any document containing such information that is in the person's possession.

Directions for compliance

14. (1) Without prejudice to any prosecution that might be brought under this Law, where a report under section 12(1) discloses particulars of -

- (a) non-compliance by a financial institution with any provision of this Law; or
- (b) a material defect referred to in section 12(1)(b),

the Monetary Authority may, as soon as practicable after receiving the report, give, by notice in writing, directions to the financial institution aimed at ensuring compliance or rectification of the material defect, as the case may be, subject to any terms and conditions that the Monetary Authority may specify in the directions.

(2) A financial institution that fails to comply with a direction given under subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(3) It is a defence to a prosecution under subsection (2) for the financial institution to prove that a direction given under subsection (1) was unreasonable having regard to -

- (a) the scope and terms of the provision of this Law that, in the opinion of the inspector, the financial institution has breached; or
- (b) the nature and consequences of the alleged material defect.

Regulations for disclosure

15. (1) The Governor in Cabinet, in the interests of consumer protection and the proper and orderly regulation of financial institutions, may, for statistical purposes only, make regulations providing for the disclosure of the information specified in subsection (2) -

- (a) to the persons and subject to the conditions, including the payment of charges by the person seeking the information, that the Minister may determine; and
- (b) in a form that the information cannot be directly or indirectly related to an identifiable person.

(2) The information referred to in subsection (1) is -

- (a) prescribed information from the register kept under section 8;
- (b) details of the classes of dormant accounts; and
- (c) the number of dormant accounts in each class.

Immunity

16. (1) The Monetary Authority, a director, an inspector or an employee of the Authority shall not be liable in damages for anything done or omitted in the

discharge or purported discharge of their respective duties or functions under this Law unless it is shown that the act or omission was in bad faith.

(2) A financial institution, a director, an officer or an employee of a financial institution shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective duties or functions under this Law unless it is shown that the act or omission was in bad faith.

17. (1) Where a body corporate commits an offence under this Law, every director or other officer concerned in the management of the body corporate commits that offence unless the director, officer or employee proves that the offence was committed without his consent or connivance or that he exercised reasonable diligence to prevent the commission of the offence.

Liability of directors etc.
where an offence is
committed by a body
corporate

(2) In subsection (1), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

18. The Governor in Cabinet may make regulations prescribing all matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law.

Regulations

Passed by the Legislative Assembly the 12th day of July, 2010.

Mary J. Lawrence, JP

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.