

## UNCLAIMED MONEY ACT 2014

### No. 328

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#### Schedule

Register of unclaimed money held by [name of entity] on 1 June [year]

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An Act to provide protection for –

- (a) the owners of certain unclaimed money; and
- (b) the owners of money payable by entities that cease operating in Niue.

**The Assembly enacts as follows –**

**1 Title**

This Act is the Unclaimed Money Act 2014.

**2 Commencement**

This Act comes into force on the day after the date on which it becomes law in accordance with Article 34 of the Constitution.

*Preliminary provisions*

**3 Interpretation**

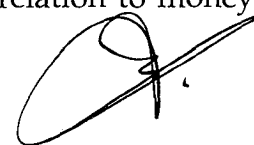
(1) In this Act, unless the context otherwise requires, –

**dividends and rebates** means –

- (a) money that is a dividend (other than a dividend payable by a mutual association in relation to money deposited with the association) payable by a company to any of its shareholders;
- (b) money that--
  - (i) is a rebate payable by a mutual association (other than an insurance office or a company) to any of its members in relation to the trading transactions of the member with the association; but
  - (ii) is not a rebate payable in relation to money deposited with the association;
- (c) money that is a benefit payable from a pension or superannuation fund

**entity--**

- (a) means a person or body that is--
  - (i) a body corporate incorporated in Niue; or
  - (ii) a body corporate incorporated outside Niue that carries on business in Niue; or
  - (iii) a society within the meaning of the Public Service Savings and Loan Society Act 1980; or
  - (iv) an insurance office or company; or
  - (v) a financial institution; and
- (b) includes –
  - (i) any person, firm, body, or institution carrying on the business of borrowing and lending money, in relation to any money borrowed by him, her, or it; and
  - (ii) an auctioneer, in relation to any balance of the proceeds of an auction sale; and
  - (iii) an accountant, lawyer, or sharebroker, in relation to money held on behalf of a client; and



- (iv) a motor vehicle trader (whether or not a body corporate), in relation to money held on behalf of a person for whom the trader has acted as an agent in the course of selling a motor vehicle; and
  - (v) a liquidator, receiver, or personal representative of an entity (within the meaning of any of paragraphs (a) and (b)(i) to (iv)); and
  - (vi) any person acting for or on behalf of an entity (within the meaning of any of paragraphs (a) and (b)(i) to (v)); but
- (c) does not include—
- (i) a designated bank or an approved agent (as those terms are defined in section 84A of the Niue Bank Act 1994), in relation to any thing done or permitted to be done by the bank or agent under Part 7A of that Act; or
  - (ii) a person to whom section 40A of the Niue Bank Act 1994 applies

**financial institution** means an institution that is a financial institution within the meaning of section 3 of the Financial Transactions Reporting Act 2006

**Financial Secretary** means the person charged with the administration of the Income Tax Act 1961 under section 3(1) of that Act

**mutual association** means a body or association of persons, whether incorporated or not, that enters into transactions of a mutual character with its members, whether or not it also enters into transactions with other persons

**New Zealand account** has the meaning given in section 84A of the Niue Bank Act 1994

**owner**, in relation to any money,—

- (a) means the person entitled to the money; and
- (b) includes any other person claiming under or on behalf of that person

**payable**, at any time, means payable—

- (a) at that time; or
- (b) at a future time that is certain; or
- (c) upon the happening of a future event, including a presentment or demand; or
- (d) at the discretion of the owner (whether at that time, at a future time that is certain, or upon the happening of a future event)

**register of unclaimed money**,—

- (a) in relation to a financial institution, means a register kept under section 6(1); and



(b) in relation to any other entity, means the register kept under section 6(2) by that entity

**tax officer** means any person employed in the Niue Tax Office

**unclaimed money** means money to which this Act applies by virtue of section 5.

- (2) For the purposes of this Act, person A is a **representative** of person B if person A--
- (a) is the liquidator, receiver, or personal representative of person B; or
  - (b) is acting for or on behalf of person B.
- (3) Nothing in paragraph (b) of the definition of **entity** in subsection (1) limits the generality of paragraph (a) of that definition.

#### 4 **Act binds the Government**

This Act binds the Government.

#### *Money to which this Act applies*

#### 5 **Money to which this Act applies**

- (1) Except where expressly provided otherwise in this Act or any other enactment, this Act applies to money (other than dividends and rebates) of any of the following descriptions that is held by an entity in Niue:
- (a) money that--
    - (i) came into the entity's possession as money deposited so as to bear interest for a fixed term only; and
    - (ii) has been held by the entity for at least 6 years after the expiry of the term:
  - (b) money that is held in an account at the entity that the depositor has not operated for at least 25 years (whether by deposit, withdrawal, or instruction in writing) and that came into the entity's possession as money deposited with the entity--
    - (i) to earn interest without limitation of time; or
    - (ii) to earn interest for a fixed term on whose expiry it was to be treated as reinvested if it were not withdrawn by the depositor:
  - (c) money that--
    - (i) is held in an account at the entity that the depositor has not operated for at least 6 years (whether by deposit, withdrawal, or instruction in writing); and
    - (ii) came into the entity's possession as money deposited with the entity and not earning interest:
  - (d) money that--



- (i) is payable or distributable on or in consequence of the maturity of a policy of life assurance otherwise than by death; and
  - (ii) has been in the possession of the entity for at least 6 years after the policy matured:
- (e) money that--
  - (i) is or may be payable or distributable on or in consequence of the maturity of a policy of life assurance by death; and
  - (ii) has been in the possession of the entity for at least 6 years after the entity first had reason to suppose that the policy had matured by death:
- (f) money of any other kind that--
  - (i) is owed by the entity; and
  - (ii) has been owed for at least 6 years from the date on which the money become payable by the entity.
- (2) Subsection (1)(d) and (e) apply even if the terms of the policy concerned provide that the money concerned is not payable or distributable except on proof of death or on proof of age or any other collateral matter.
- (3) Subsection (1)(e)(ii) applies whether or not the death concerned has been legally proved.

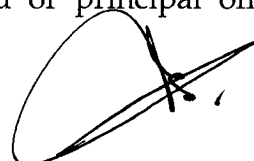
*Registers of unclaimed money*

**6 Financial institutions and other entities to establish registers of unclaimed money**

- (1) As soon as practicable after the commencement of this Act, every financial institution must establish a register for the purposes of section 7.
- (2) On 1 June in each year (or if not a working day, the first working day after 1 June), every other entity must establish a register for the purposes of section 7 if--
  - (a) it does not already maintain a register of unclaimed money; and
  - (b) at the close of that day, it held money that became unclaimed money during the preceding 12-month period.
- (3) A register of unclaimed money must be established (and maintained) in hard copy, in the form set out in the Schedule.

**7 Registers of unclaimed money to be maintained and available for inspection**

- (1) An entity that has a register of unclaimed money must ensure that the register is--
  - (a) maintained securely at the entity's head or principal office in Niue; and



- (b) open to inspection at that office by all people (during the hours during which the entity's ordinary business is transacted).
- (2) The entity may refuse to allow any person to inspect the register unless the person pays a fee, not exceeding \$5, fixed by the entity.

**8 Entries in register of unclaimed money**

- (1) On 1 June in each year (or if not a working day, the first working day after 1 June), an entity must enter in its register of unclaimed money information about money it held at the close of the previous day that became unclaimed money during the preceding 12-month period ending on that previous day.
- (2) The information must be as much of the information required by the form set out in the Schedule that is known to the entity.

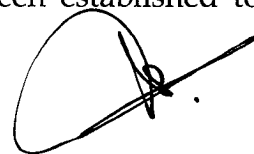
**9 Entities to notify owners and Financial Secretary of entries in register**

- (1) Every entity required by section 8(1) to enter in its register of unclaimed money on 1 June in any year information about any money--
  - (a) must, not later than 30 June in that year, by letter addressed to the last known business or residential address of its owner, mail to the owner a notice stating the amount of the money and the fact that it is entered in the register as unclaimed money; and
  - (b) must then enter in the register the date on which the notice was posted.
- (2) On 1 October in that year (or if not a working day, the first working day after 1 October), each entity must give the Financial Secretary--
  - (a) a copy of every entry made in its register on 1 June of that year; and
  - (b) written notice stating which, if any, of the amounts of unclaimed money entered in the register on that date have been paid to the owners concerned.

*Dealings with unclaimed money*

**10 Unclaimed money to be paid to Financial Secretary**

- (1) An entity that holds any unclaimed money must pay it to the Financial Secretary on 1 November in any year (or if not a working day, the first working day after 1 June) (the **payment date**) if--
  - (a) the money became unclaimed money (after the commencement of this Act) in the period of 12 months ending with 31 May of that year; and
  - (b) the money has not been paid by the entity to its owner or a representative or a valid claim has not been established to the money before the payment date.



- (2) The Financial Secretary may, on behalf of the Government of Niue, recover any money payable to him or her under subsection (1)—
  - (a) as a debt due to the Government; and
  - (b) by action, in his or her official name, against the entity concerned in any court of competent jurisdiction.
- (3) All unclaimed money received by the Financial Secretary under this or any other Act must be paid into the Niue Government Account.

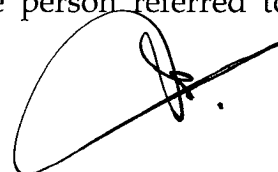
## **11 Special arrangements may be made by Financial Secretary**

- (1) The Financial Secretary may, by written agreement with any entity or entities, exempt the entity or entities from compliance with all or any of the provisions of sections 6 to 9--
  - (a) absolutely or conditionally; and
  - (b) in respect of unclaimed money of all kinds or in respect of unclaimed money of stated kinds only.
- (2) The Financial Secretary may, —
  - (a) by written agreement with the entity or entities, amend the exemption; or
  - (b) by written notice to the entity or entities, cancel the exemption.
- (3) Subsections (1) and (2)--
  - (a) override other provisions of this Act to the contrary; but
  - (b) do not affect an entity's liability to pay unclaimed money to the Financial Secretary.

### *Money that may be treated as unclaimed money*

## **12 Money may be treated as unclaimed money if entity ceases business**

- (1) This section applies to money--
  - (a) that is held by or owed by or payable to—
    - (i) an entity that has ceased to carry on business in Niue; or
    - (ii) a representative of an entity that has ceased to carry on business in Niue; and
  - (b) that some other person is entitled to claim by virtue of an agreement, or transaction or other dealing (however described), with the entity that relates to the entity's carrying on of business in Niue; and
  - (c) that has not been claimed by or on behalf of the other person; and
  - (d) that--
    - (i) would become unclaimed money by operation of section 5(1) if the money were, or continued to be, held in Niue by the entity and were not claimed by the person referred to in paragraph (c); or



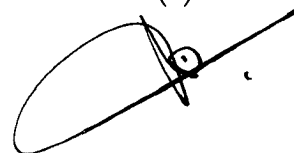
- (ii) is dividends and rebates that would by operation of section 5(1) be unclaimed money if it were money to which that section applied and if it were held, or continued to be held, in Niue by the entity and were not claimed by the person referred to in paragraph (c).
- (2) An entity or representative that holds, owes, or has payable to it, money to which subsection (1) applies may pay the money to the Financial Secretary and give the Financial Secretary information about the payment and the person who is entitled to claim it, and, in that case,--
  - (a) the money must be treated as unclaimed money; and
  - (b) this Act, with any necessary modifications, applies as if the entity had always held the money in Niue and the entity had not ceased to carry on business in Niue.
- (3) In this section, **entity** does not include an entity that is an individual.

*No further liability for unclaimed money paid to Financial Secretary*

- 13 No further liability for unclaimed money paid to Financial Secretary**
- (1) The holder of unclaimed money is relieved of all further liability to any claimant in respect of the money as soon as the money is paid to the Financial Secretary under this Act.
  - (2) In this section, **holder** means--
    - (a) an entity to which section 10(1) applies; and
    - (b) an entity to which section 12(2) applies.

*Other matters*

- 14 Examination of accounts**
- (1) At any time, the Financial Secretary may--
    - (a) examine any register of unclaimed money and any accounts of the entity concerned relating to money that is or may be unclaimed money; and
    - (b) for that purpose, require the production of any book, voucher, or document relating to money that is or may be unclaimed money.
  - (2) If any error is found in the register, or in any notice sent to the owner of any unclaimed money, the Financial Secretary or any tax officer may (as the case requires) direct the entity to--
    - (a) correct the register; or
    - (b) send an amended notice to the owner.
  - (3) The entity must comply with a direction under subsection (2).





**15 Financial Secretary must pay claimant if satisfied of certain matters**

- (1) The Financial Secretary must pay the amount of any money paid to him or her under this Act as unclaimed money to any claimant to the money if--
- (a) the claimant demands it from the Financial Secretary; and
  - (b) the Financial Secretary is satisfied that the claimant is the person who would have been the entitled to claim that money from an entity, as the owner of the money, before the entity's liability was extinguished under section 13.
- (2) All money paid by the Financial Secretary under subsection (1) must be paid out of the Niue Government Account without further appropriation than this Act.
- (3) If any money paid to a claimant under subsection (1) is later demanded from the Financial Secretary by another claimant,--
- (a) the Financial Secretary is not responsible for its payment; but
  - (b) the other claimant may have recourse against the claimant to whom the money was paid.

**16 Interest**

No person is entitled to interest on any money --

- (a) paid to the Financial Secretary under this Act; or
- (b) paid to a person under section 15.

**17 Secrecy**

(1) The Financial Secretary and every tax officer--

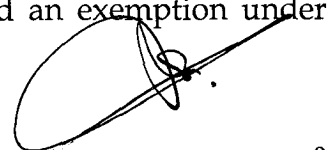
- (a) must maintain and help to maintain the secrecy of all information that comes to his or her knowledge in the course of his or her duties under this Act; and
- (b) must not communicate any of the information to any person, except for the purpose of carrying this Act into effect or complying with an obligation to disclose the information under any other enactment.

(2) Subsection (1) does not prevent the Financial Secretary from making available for publication the names of owners of unclaimed money paid to the Financial Secretary under this Act and the amounts received belonging to those owners.

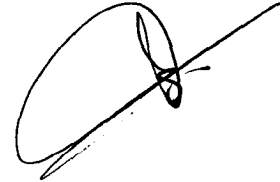
**18 Offences**

(1) Every person commits an offence, and is liable on conviction to a fine not exceeding 5 penalty units, who,--

- (a) being a financial institution, or other entity holding unclaimed money, wilfully or negligently fails or refuses to comply with any provision of any of sections 6 to 9, or with any condition on which the Financial Secretary has granted an exemption under section 11; or



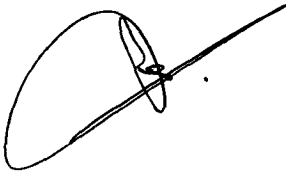
- (b) being a director, manager, secretary, or other officer of the entity, authorises or permits the entity to fail or refuse to comply with the provision or condition.
- (2) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units, who wilfully contravenes section 17.

A handwritten signature or scribble consisting of a large, loopy oval shape with a diagonal line crossing through it from the bottom left to the top right.

**Schedule**  
**Register of unclaimed money held by [name of entity] on 1 June [year]**

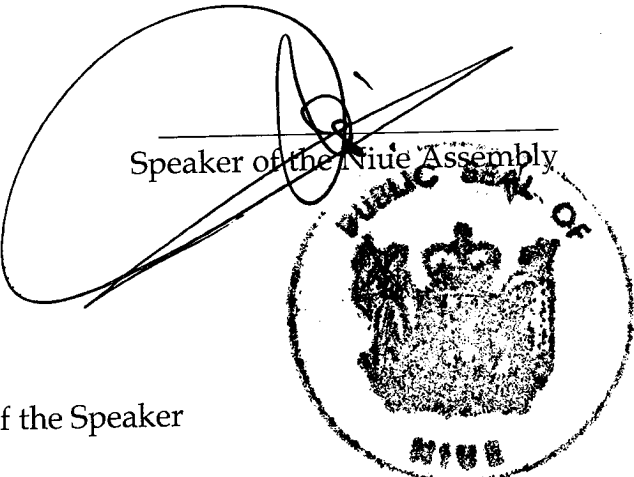
Name, occupation, and last known address of owner	Total amount due to owner	Descriptio n of unclaimed money	Date of posting notice to owner	Unclaimed money paid to owner	
				Date	Amount

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I, AHOHIVA LEVI, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

SIGNED AND SEALED at the Assembly Chambers this 2nd day of March 2014.



COUNTERSIGNED in the presence of the Speaker

  
Clerk of the Niue Assembly

\_\_\_\_\_  
This Act is administered by the Niue Tax Office.  
This Act was passed by the Niue Assembly on the 26<sup>th</sup> day of February 2014.  
\_\_\_\_\_