

THE ASSOCIATION OF KENYA INSURERS

AKI Centre, Mimosa Road, Muchai Drive, Off Ngong Road.

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11th January 2021

AKI CIRCULAR 06/LIC/01/2021

**CHIEF EXECUTIVES
ALL MEMBER COMPANIES
ASSOCIATION OF KENYA INSURERS**

Ladies & Gentlemen,

RE: UNCLAIMED FINANCIAL ASSETS – INDUSTRY CONCERNS

We are aware that some member companies have been audited by UFAA which has made various financial demands on some companies while for others the demands could be on the way. For the companies not yet audited the audit could be carried out soon.

We would like to bring to the attention of members that in 2019 the Secretariat organized several industry forums with UFAA where several industry concerns were raised. We wrote to UFAA raising the industry concerns as per the attached letter. We would like to share with you UFAA's response to our letter on the matters raised for your information.

The Secretariat has also been in discussion with IRA on these issues though a solution has not been forthcoming.

Yours sincerely,

A large, stylized handwritten signature in black ink, which appears to read 'T M GICHUHI', is written over the typed name and title. The signature is fluid and extends across the width of the text area.

**T M GICHUHI
EXECUTIVE DIRECTOR**

Encl.

UNCLAIMED FINANCIAL ASSETS AUTHORITY

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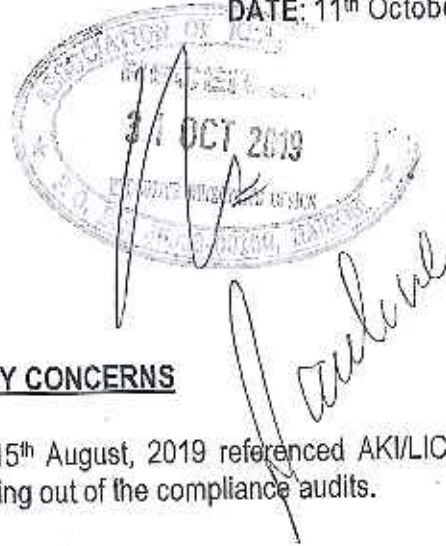


When Replying Please Quote

Our Ref. : UFAA/EO/2019/34

DATE: 11th October 2019

The Executive Director
The Association of Kenya Insurers
AKI Centre
Mimosa Road
Muchari Drive – Off Ngong Road
P. O. Box 45338 - 00100
NAIROBI



UNCLAIMED FINANCIAL ASSETS – INDUSTRY CONCERNS

We acknowledge receipt of your letter dated 15th August, 2019 referenced AKI/LIC/08/2019 communicating insurance industry concerns arising out of the compliance audits.

We wish to respond as follows: -

a) Definition of a claims

Unclaimed financial assets in the insurance industry are defined under section 7 of the UFAA Act which among other things provides that: -

- i. Funds held or owing under any life or endowment insurance policy or annuity contract that have matured or terminated are presumed abandoned if unclaimed for more than two years after the fund became due and payable as established from the records of the insurance company holding or owing the funds.
- ii. For purposes of the Unclaimed Financial Assets Act, a life or endowment Insurance policy or annuity contract not matured by actual proof of the death of the Insured or annuitant according to the records of the insurance company shall be deemed matured and the proceeds due and payable if one or more of the following requirements are met:

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

The Insurance industry claims therefore become unclaimed if not paid to the beneficiaries within 2 years of maturity regardless of whether relevant supporting documents have been provided or not.

The UFAA Act was enacted to address this very mischief where an insurance company indefinitely keeps the proceeds of the matured policies on basis that the beneficiaries have not come forward to provide supporting documents.

The Unclaimed Financial Assets Authority has a statutory duty under section 35 of the UFA Act to locate and notify the owners or beneficiaries of unclaimed assets of existence of such assets and ultimately reunite them with their assets.

Any contrary interpretation is against the provisions of the Unclaimed Financial Assets Act no.40 of 2011.

c) Period of keeping records

Section 34 of the UFA Act provides that: -

This Act shall, on coming into force, apply to all assets that would, but for the absence of this Act be deemed unclaimed assets under the provision of this Act as if this Act has been in force at that earlier date on which the assets would have become unclaimed assets under this Act. The Act is retrospective and requires that holders provide information from inception.

The Act was passed to give effect to article 40 of the Constitution 2010 on protection of private property; Under article 40 of the Constitution the right to private property is a basic human right that cannot be extinguished limited or restricted by any other Laws except by the Constitution itself. Therefore, the lapse of 7 years or any other time for that matter and the absence of records cannot be a reason to disenfranchise a beneficiary of a private asset.

d) Compliance in 2014

The first compliance period was 1st November, 2014. No penalties are charged for assets not reported and submitted before 1st November 2014. The UFAA Act no.40 of 2011 came into force with effect from 16th December 2011.

Further the entire industry was accordingly advised on how to comply with the UFA Act 2011. It is therefore not true that the Authority did not have the requisite structure and contacts to facilitate compliance as per your letter.

e) Audit Costs

The Authority has powers under section 49 to appoint or license such agents as it may deem necessary for the carrying out of the objects of the Act. The issue of whether to utilize agents or to conduct audit using internal capacity is at the discretion of the Authority.

f) Notice period for Audits

Whereas the International Audit Standards do not prescribe a notice period for external audits, the Notice period by the Authority will be reasonable and adequate for preparation by the auditee. Compliance audits for unclaimed assets relate to records already submitted to the Authority and are historical by nature being audited and closed records in respect of past years. Requesting for a longer notice is not justifiable unless the auditees have the intention of interfering with audited and closed records. However, the authority may reconsider the notice to issue on need basis.

g) Submission period for unit linked policies which are purely savings policies.

Section 7 of the UFAA Act provides for determination of unclaimed assets with insurance industry giving 2 years' abandonment period. The Act under section 6 separately provides for unclaimed assets in the banking sector to include demand, savings and matured time deposits whose abandonment period is 5 years.

The two classes of assets are separate and distinct and are under different financial sector regulators. While the insurance industry is regulated by the Insurance Regulatory Authority the banking industry is regulated by the Central Bank of Kenya.

The Authority would however appreciate your clarification on how these two balances are separated from the insurance records so as to account for Insurance savings separately from the insurance policies for our understanding and consideration.

h) Industry representation on the UFAA Board

The composition of the Board is a creation of the statute and not at the discretion of the Authority. The composition of the UFAA Board under section 40 of the UFAA Act provides for appointments which are a prerogative of the Cabinet Secretary (The National Treasury) and not the UFAA.

We hope that this response adequately addresses your Industry Concerns and that you will advise the industry accordingly.

Yours Sincerely,



JOHN MWANGI

CHIEF EXECUTIVE OFFICE AND MANAGING TRUSTEE

Copy to: **Mr. Godfrey Kiptum, MBS**
Commissioner of Insurance & CEO
Insurance Regulatory Authority
Zep Re Place, Longonot Road, Upper Hill
P.O. Box 43505- 00100
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OUR REF: AKI/LIC/08/2019

15th August 2019

Mr. John K. Mwangi
Chief Executive Officer & Managing Trustee
Unclaimed Financial Assets Authority
Pacis Centre, Westlands
NAIROBI

Dear Sir,

RE: UNCLAIMED FINANCIAL ASSETS – INDUSTRY CONCERNS

We would like to thank you for your valuable support in sending your team to engage with our members during the industry forum on 22nd July 2019.

We would like to bring to your attention several industry concerns that were raised by our members during the forum.

The issues are:-

a) Definition of a Claim

As per the insurance Act section 203 a report only becomes a claim once the claimant has submitted all the relevant documents. However UFAA auditors are treating this differently by treating all reported cases as claims even where relevant supporting documents have not been submitted.

b) Period for keeping documents

Legally a company is required to keep documents for a period of seven years. However, UFAA auditors are requesting for documents dating back to inception of the insurance companies. Companies are not able to provide this because documents could have been destroyed after the seven year period. Such cases are then treated by the auditors as lack of co-operation with the auditors.

c) Compliance in 2014

In 2014 the Unclaimed Financial Assets Authority did not have an office and the organization structure/ contacts were not in place. Companies that attempted to file returns in 2014 did not succeed in tracing the office. Companies should therefore not be penalized for not complying in 2014 due to these challenges.

d) Audit cost

The audit cost is borne by the insurance company being audited. UFAA should build internal audit capacity and only use external auditors in cases which warrant further investigations.

e) Notice period given by UFAA auditors notifying member companies about the audit exercise is one week. This is too short and we request for a one month notice period to enable companies prepare adequately.

f) Submission period for unit linked policies which are purely savings policies

Some Unit linked policies are purely savings products. Under the Unclaimed Financial Act the submission period for these products is two years. However the submission period for similar banking savings products is five years. The submission period for these savings products should be harmonized with the submission period for banking savings products which is five years.

g) Industry Representation on the UFAA Board

The industry is a major player in the Unclaimed Financial Assets field and should be represented in the UFAA board.

We would like to request that you kindly look into the issues and keep us updated on the outcome.

Yours sincerely,



T.M. GICHUHI
EXECUTIVE DIRECTOR