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FINANCE ACT 2020: WHAT YOU NEED TO KNOW ABOUT THE UNCLAIMED FUNDS TRUST FUND

Introduction

President Muhammad Buhari signed the Finance Act 2020 (“the Act”) into law on 31st December 2020. The Act introduced several far-reaching changes to the Nigerian fiscal landscape, to facilitate reforms and improve the Nigerian business environment.

One of the significant changes introduced by the Act is the establishment of the Unclaimed Funds Trust Fund (“the Trust Fund”).¹ From 1st January 2021, any unclaimed dividend of a public limited liability company quoted on the Nigerian Stock Exchange (“NSE”) and any unutilised amount in a dormant bank account (which has remained unclaimed or unutilised for a period of not less than six years from the date of declaring the dividends or domiciling the funds in a bank account) shall be transferred immediately to the Trust Fund.

According to the Minister of Finance, Budget and National Planning, Zainab Ahmed, the Federal Government could access as much as ₦850 billion to be realised from payments into the Trust Fund.² However, some critics opposed to the establishment of the Trust Fund insist that dividends and dormant accounts are private wealth of investors (whether individuals or corporate entities) and the idea of converting such private wealth to a source of revenue for Federal Government negates the provisions of the 1999 Constitution (as amended) which guarantee the right to own property and assets.³

A Summary of the Provisions

¹ Section 77(1) Finance Act 2020.

² <https://www.thecable.ng/zainab-ahmed-fg-may-access-up-to-n850bn-through-special-trust-fund-of-unclaimed-dividends>, accessed on 12th February 2021.

³ <https://thenationonlineng.net/shareholders-kick-against-unclaimed-dividend-trust-fund/> accessed on 12th February.

1. **Establishment:** The Trust Fund is established by way of a trust, as a sub-fund of the Crisis Intervention Fund under section 77(1) of the Act.
2. **Source of funding:** The Trust Fund shall be maintained by revenue from unclaimed dividends from publicly quoted companies and dormant bank accounts, which have respectively remained unclaimed or unattended for up to six years (and above).
3. **Exemption:** The Act expressly provides that official bank accounts owned or belonging to the Federal Government, State Governments or Local Governments, or any of the Ministries, Departments or Agencies shall not be affected or paid into the Trust Fund. Also, from the clear wording of the Act, unclaimed dividends of private companies shall not be applicable as only that of companies listed on the Stock Exchange is applicable.
4. **Repayment of debt:** Such unclaimed dividends and unutilised amounts in a dormant bank account transferred to the Trust Fund shall be a special debt owed by the Federal Government to the affected shareholders and dormant account holders respectively and shall be available for claim, together with the yield by the shareholder or dormant account holder at any time. The repayment can be made to the shareholder, depositor (or their legal beneficiaries), as the case may be.
5. **Responsibility of quoted companies and banks:** The Act stipulates that unclaimed dividends and unutilised monies in dormant bank accounts shall be transferred by the public limited company, its Registrar or deposit money bank respectively, to the Trust Fund.
6. **Penalty for non-compliance:** Failure by any company or deposit money bank to transfer the unclaimed dividends or unutilised amounts in dormant bank accounts to the Trust Fund constitutes an offence and the company or deposit money bank is liable upon conviction to a fine of not less than five times the value of the unclaimed dividends and unutilised funds in a dormant bank account plus accumulated interest at the Central Bank of Nigeria Monetary Policy Rate.
7. **Supervision and management of the Trust Fund:** The Act mandates the Debt Management Office (DMO) to supervise the operation of the Trust Fund as well as serve as the secretariat of the Trust Fund. To enhance transparency and accountability over the Trust Fund, the Act established a Governing Council to be chaired by the Minister of Finance and a Co-Chairperson from the private sector, to be appointed by the President on the recommendation of the Minister of Finance subject to confirmation by the Senate. Other members of the Council include:

- a. The Governor of the Central bank;
 - b. The Director General of the Securities and Exchange Commission;
 - c. The Managing Director of the National Deposit Insurance Corporation;
 - d. A representative of the Registrar General of the Corporate Affairs Commission;
 - e. Two representatives of the shareholder's association;
 - f. A representative of the Bankers Committee; and
 - g. The Director General of the DMO, as secretary of the Trust Fund.
8. **Custody of the Fund:** To enhance transparency in the management of the Trust Fund, the Act requires the DMO to operate the Trust Fund in conjunction with the Central Bank of Nigeria and the Securities and Exchange Commission.
9. **Annual returns & audit:** Under the Act, all public limited liability companies quoted on the NSE and deposit money banks are required to render annual returns of unclaimed dividends and unutilized amounts in a dormant account in a format prescribed by the DMO. Further, the DMO is required to prepare and submit the financial statement of the unclaimed dividends and unutilised amounts in a dormant bank account to the Office of the Auditor-General for the Federation for audit.
10. **Database:** The DMO is mandated to maintain a database of all unclaimed dividends and dormant bank balances constituting the debt owed by the Trust Fund, which shall be verified and reconciled with the Central Bank of Nigeria and the Securities and Exchange Commission on a bi-annual basis.

Comment

The establishment of the Trust Fund will no doubt increase the Federal Government's access to more funds to be used for infrastructure development in light of dwindling resources available to government due to the low price of crude oil in the international market.

Understandably, fears have been expressed that government will hijack unclaimed dividends and cash in dormant bank accounts (which are private property owned by Nigerians) through the Trust Fund. However, the Act provides a safeguard to ensure that owners of the unclaimed dividends and cash in dormant bank accounts are protected. The sums paid into the Trust Fund shall be treated as a special debt owed by the Federal Government to the shareholders and owners of the dormant bank accounts respectively and shall be available for claim, together with the yield thereon at any time.

Nevertheless, government must allay the fears of stakeholders by ensuring that the Trust Fund is professionally managed and utilised in a credible and transparent manner. Also, measures must be put in place to prevent bureaucratic bottlenecks when such shareholders and accounts holders seek to claim such dividends and cash amounts.

To check whether you have any unclaimed dividends, go to the website of the Securities and Exchange Commission by following this [link](#).

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