

NORTHERN TERRITORY OF AUSTRALIA

COMPANIES (UNCLAIMED ASSETS AND MONEYS) ACT

As in force at 1 July 2010

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 July 2010. Any amendments that commence after that date are not included.

COMPANIES (UNCLAIMED ASSETS AND MONEYS) ACT

An Act relating to unclaimed assets in the hands of liquidators of companies and unclaimed moneys held by companies

Part I Preliminary

1 Short title

This Act may be cited as the *Companies (Unclaimed Assets and Moneys) Act*.

2 Commencement

This Act shall come into operation on the day on which the *Companies Ordinance 1963* comes into operation.

4 South Australian Act to cease to apply

The Unclaimed Moneys Act, 1891 of the State of South Australia shall cease to apply in the Territory as a law of the Territory.

5 Definitions

In this Act, unless the contrary intention appears:

Commissioner means the person holding or occupying the office of Commissioner of Consumer Affairs under the *Consumer Affairs and Fair Trading Act*.

company means:

- (a) a company incorporated or taken to be incorporated under the Corporations Act 2001; or
- (b) a co-operative registered under the *Co-operatives Act*.

Part II Unclaimed assets in hands of liquidators

6 Unclaimed assets in hands of liquidator

- (1) A liquidator of a company who has in his hands or under his control:
- (a) any amount being a dividend or moneys which have remained unclaimed for more than 6 months from the date when the dividend or moneys became payable; or
 - (b) after making a final distribution, any unclaimed or undistributed amount arising from the property of the company,
- shall forthwith pay that amount to the Treasurer, and furnish to the Treasurer full particulars of the amount.
- (2) A receipt given by an employee authorized by the Minister to give such receipts shall be an effectual discharge to the liquidator in respect of moneys so paid.
- (3) The Supreme Court may at any time on the application of the Commissioner order any liquidator to submit to it an account of any unclaimed or undistributed funds or dividends in his hands or under his control, verified by affidavit, and may direct and enforce an audit thereof and may direct him to pay them to the Treasurer.
- (4) The Treasurer shall pay all moneys paid to him in pursuance of this section into the Northern Territory Government Account.

7 Payments to persons entitled

- (1) A person claiming to be entitled to any money paid to the Treasurer under this Part may apply to the Supreme Court for an order for payment to him of any sum due to him, and the Court, if satisfied that the person claiming is so entitled, shall make an order for the payment accordingly.
- (2) Upon the making of an order under subsection (1) for payment of any money to a person, or where he is otherwise satisfied that a person is entitled to any money paid to the Treasurer under this Part, the Treasurer shall pay an amount equal to that money to that person.
- (3) The provisions of this section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

Part III Unclaimed moneys

8 Interpretation

- (1) In this Part:

unclaimed moneys, in relation to a company, means moneys in respect of deposits with, or securities of, the company, and dividends, bonuses, profits or other moneys payable to a member of the company as such, which have become legally payable by the company, whether before or after the date of commencement of this Act, but the recovery whereof becomes barred by operation of law after the date of commencement of this Act, or has become so barred on or after 1 January last preceding that date.

- (2) For the purposes of this Act, where any moneys are or were payable upon demand or upon notice, demand shall be deemed to have been made, or the requisite notice to have been given, at the earliest date upon which it could have been given, and the laws relating to limitation of actions shall be deemed to have applied accordingly.

9 Register of unclaimed moneys to be kept

- (1) Where, in the year which commenced on 1 January last preceding the date of commencement of this Act or in any subsequent year, any moneys payable by a company have become unclaimed moneys, the company shall, on or before 31 January next following the end of that year, enter, in an alphabetical register kept, in respect of that year, by the company at its head or principal office in the Territory, in the form set out in Schedule 1, particulars of those unclaimed moneys.
- (2) The company shall, on payment or tender of a fee of 20 cents permit any person to inspect, at that head or principal office during the hours within which the company transacts its ordinary business, all registers kept by the company under this section.
- (3) Where, at any time, a company pays any moneys entered in any such register to the person entitled thereto, the company may delete from the register the entry relating to those moneys.

10 Copy of register to be gazetted

A company which compiles a register in respect of a year in pursuance of section 9 shall, on or before the last day of February next following the end of that year, forward a copy of that register to the Treasurer for publication by him in the *Gazette*, and shall forward with the copy a statutory declaration, made by an officer of the company, in the form set out in Schedule 2.

11 Penalty

A company shall not fail to comply with any of the provisions of section 9 or 10.

Maximum penalty: \$4 for every day during which failure continues.

12 Unclaimed moneys to be paid to the Treasurer

- (1) All unclaimed moneys which have been entered in a register in pursuance of section 9 and which have not been paid by the company to the person entitled thereto within one year after the publication of a copy of the entry in the *Gazette* shall be paid by the company to the Treasurer within one month after the end of that year.
- (2) The company shall thereafter be relieved from all further liability in respect of the moneys so paid.
- (3) The Treasurer shall pay all moneys paid to him in pursuance of this section into the Northern Territory Government Account.

13 Penalty for neglect to pay unclaimed moneys

A company shall not fail to pay any moneys to the Treasurer as required by this Part.

Maximum penalty: \$4 for every day during which the failure continues.

14 Treasurer may examine accounts, &c.

- (1) The Treasurer may, at any time after receipt of a copy of a register in pursuance of section 10, examine any of the accounts relating to the unclaimed moneys referred to in that register, and may for that purpose require the production before him, or before such person as he appoints, of any book, voucher or document referring to those moneys, and if any error is found in the register or copy, he may direct the register or copy, or both of them, to be amended.
- (2) The Treasurer may cause to be examined the books and accounts of a company not furnishing a return of unclaimed moneys.
- (3) A person shall not refuse or fail to comply with a requirement made of him in or for the purpose of the exercise of the powers conferred by this section.

Maximum penalty: 1.7 penalty units.

- (4) An offence of contravening or failing to comply with subsection (3) is a regulatory offence.

15 Treasurer to pay lawful claimant

Where the Treasurer is satisfied that a person is entitled to any moneys paid to the Treasurer in pursuance of section 12, he shall pay an amount equal to those moneys to that person.

16 Recovery of penalties

Offences against this Part shall be punishable upon being found guilty summarily.

17 Part not to apply to certain unclaimed moneys

This Part shall not apply to any unclaimed moneys which are required by any law of the Commonwealth or of the Territory to be dealt with in a manner other than that prescribed by this Act.

Schedule 1

section 9

Company

Register of unclaimed moneys which became statute-barred during the year 19 .

| Name of Owner of Books | Total Amount due to Owner | Description of Unclaimed Moneys | Date of Last Claim |
|---------------------------|------------------------------|---------------------------------------|-----------------------|
|---------------------------|------------------------------|---------------------------------------|-----------------------|

Schedule 2

section 10

NORTHERN TERRITORY OF AUSTRALIA

COMPANIES (UNCLAIMED ASSETS AND MONEYS) ACT

STATUTORY DECLARATION

I, *(insert name, address, and occupation)*, do solemnly and sincerely declare:

- (1) That I am an officer of *(insert name of company)*.
- (2) That, in accordance with the provisions of the Companies (Unclaimed Assets and Moneys) Act, the company has duly entered all moneys which became unclaimed moneys within the meaning of the Act during the year 19 in a register kept by the company at its head or principal office in the Northern Territory.
- (3) That the register correctly and completely sets forth the particulars of all such unclaimed moneys.
- (4) That the accompanying copy of the register is a true copy.

And I make this solemn declaration by virtue of the *Oaths Act* and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of person making the declaration)

Declared at the day of , 19 .

Before me:

(Signature of person before whom the declaration is made)

(Here insert title of person before whom the declaration is made)

ENDNOTES

1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2**LIST OF LEGISLATION*****Companies (Unclaimed Assets and Moneys) Ordinance 1963 (Act No. 52, 1963)***

| | |
|-------------|---|
| Assent date | 24 July 1963 |
| Commenced | 1 July 1963 (s 2, s 2 <i>Companies Ordinance 1963</i> (Act No. 43, 1963)) |

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)

| | |
|-------------|----------------------------|
| Assent date | 11 December 1973 |
| Commenced | 11 December 1973 (s 12(2)) |

Amending Legislation***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

| | |
|-------------|---------------------------|
| Assent date | 26 August 1974 |
| Commenced | 11 December 1973 (s 3(2)) |

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

| | |
|-------------|------------------------|
| Assent date | 24 October 1974 |
| Commenced | 11 December 1973 (s 3) |

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

| | |
|-------------|---|
| Assent date | 28 June 1976 |
| Commenced | ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974 |

Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)

| | |
|-------------|-------------------|
| Assent date | 1 July 1978 |
| Commenced | 1 July 1978 (s 8) |

Statute Law Revision Act (No. 3) 1979 (Act No. 37, 1980)

| | |
|-------------|---------------|
| Assent date | 24 April 1980 |
| Commenced | 24 April 1980 |

Statute Law Revision Act 1981 (Act No. 29, 1981)

Assent date 25 March 1981
Commenced 25 March 1981

Statute Law Revision Act (No. 3) 1981 (Act No. 91, 1981)

Assent date 21 September 1981
Commenced 21 September 1981

Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)

Assent date 28 November 1983
Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), Gaz G46, 18 November 1983, p 11 and Gaz G8, 26 February 1986, p 5)

Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)

Assent date 30 June 1986
Commenced 1 July 1986 (s 2)

Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)

Assent date 14 December 1990
Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and Gaz S76, 21 December 1990)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date 29 June 2001
Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)

Assent date 11 December 2001
Commenced 11 December 2001

Business Names Act 2007 (Act No. 1, 2007)

Assent date 8 March 2007
Commenced 22 August 2007 (Gaz G34, 22 August 2007, p 7)

Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)

Assent date 20 May 2010
Commenced 1 July 2010 (Gaz G24, 16 June 2010, p 2)

3 LIST OF AMENDMENTS

| | |
|-----------|--|
| lt | amd No. 29, 1981, s 2 |
| ss 1 – 2 | amd No. 29, 1981, s 2 |
| s 3 | rep No. 37, 1980, s 6 |
| s 5 | amd No. 29, 1981, s 2; No. 18, 1986, s 3; No. 59, 1990, s 4; No. 17, 2001, s 21; No. 62, 2001, s 15; No. 1, 2007, s 65 |
| s 6 | amd No. 54, 1978, s 4; No. 1, 2007, s 66 |
| ss 7 – 8 | amd No. 29, 1981, s 2 |
| ss 9 – 10 | amd No. 29, 1981, s 2; No. 91, 1981, s 2 |
| s 11 | amd No. 29, 1981, s 2; No. 12, 2010, s 3 |
| s 12 | amd No. 54, 1978, s 4 |
| s 13 | amd No. 29, 1981, s 2; No. 12, 2010, s 3 |
| s 14 | amd No. 29, 1981, s 2; No. 68, 1983, s 108; No. 12, 2010, s 3 |
| s 16 | amd No. 17, 1996, s 6 |
| s 17 | amd No. 29, 1981, s 2 |
| sch hdg | om No. 29, 1981, s 2 |
| sch 1 – 2 | amd No. 29, 1981, s 2 |