

# **NORTHERN TERRITORY OF AUSTRALIA**

## **COMPANIES (UNCLAIMED ASSETS AND MONEYS) ACT**

As in force at 1 July 2015

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 2015

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## 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 (National Uniform Legislation) Act*.

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## **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.

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## Schedule 1

section 9

### Company

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

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Name of Owner of Books	Total Amount due to Owner	Description of Unclaimed Moneys	Date of Last Claim
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## 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.

This declaration is true and I know it is an offence to make a declaration knowing it is false in a material particular.

Declared by

*[Signature of person making declaration]* \_\_\_\_\_

at *[place]* \_\_\_\_\_ on *[date]* \_\_\_\_\_

Witnessed by

*[Signature of witness]* \_\_\_\_\_

*[Name]* \_\_\_\_\_

*[Address or telephone number]* \_\_\_\_\_

NOTE: Making a declaration knowing it is false in a material particular is an offence for which you may be fined or imprisoned.



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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 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

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**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)

**Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)**

Assent date 18 November 2010  
Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and Gaz G7, 16 February 2011, p 4)

**Co-operatives (National Uniform Legislation) Act 2015 (Act No. 13, 2015)**

Assent date 22 May 2015  
Commenced 1 July 2015 (Gaz S62, 23 June 2015)

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**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; No. 13, 2015, s 26
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	amd No. 29, 1981, s 2
sch 2	amd No. 29, 1981, s 2; No. 40, 2010, s 14