



The Central Bank of The Bahamas

DORMANT ACCOUNTS

KEY POINTS ON THE DOMESTIC REGIME AND THE PROPOSED LEGISLATIVE AMENDMENTS

The Central Bank of The Bahamas (the Central Bank) is proposing to make changes to the dormant accounts law this year. To assist in clarifying the proposed amendments, the Central Bank has prepared, in the form of questions and answers, information on the existing regime and an explanation of key aspects of the legislative proposals. The legislative proposals have been issued for public consultation, until 12th Monday May, 2014, and may be found on the Central Bank's website at <http://www.centralbankbahamas.com/publications>. We invite the public to review the documents and submit any comments by this specified date.

The law that deals with dormant bank accounts was introduced in 1989, and may be found in what is now section 20 of the Banks and Trust Companies Regulation Act, 2000 (the BTCRA) and section 24 of the Central Bank of The Bahamas Act, 2000 (the CBBA).

Section 20 of the BTCRA requires banks that have dormant accounts to transfer the money in those accounts to the Central Bank and to keep all records relating to the dormant accounts. Section 24 of the CBBA allows the Central Bank to accept the money transferred by banks, in line with section 20 of the BTCRA, to pay interest on that money, and to pay that money (plus interest, if applicable) to any person who is entitled to claim it.

1. What is the purpose of the law that deals with dormant bank accounts?

Many people, for one reason or another, forget about or lose track of their deposit accounts held by banks. The dormant accounts law was enacted to protect these people from losing money that banks owe them, in connection with these forgotten accounts. The law provides for money held in dormant accounts to be transferred to the custody of the Central Bank for safe-keeping when there is no customer-initiated activity on the account for a period of seven (7) years. Currently, money transferred to the Central Bank can be claimed at any time by the account owner or other entitled person (for example, by the account owner's heirs or legal representatives).

2. What is a dormant account?

Currently, Section 20 of the BTCRA only applies to deposit accounts that contain money, gold bullion or silver bullion that are held at banks and on which the account owner has conducted no transaction for a period of seven (7) years. These accounts are referred to as dormant accounts.

3. How will changes in the law affect the definition of dormant accounts?

When the law is amended later this year, other types of facilities will also be covered by the dormant accounts law. These will include any account or arrangement that a person has with a

bank that can be used to conduct two (2) or more transactions, including instruments, such as bank drafts, manager's cheques, money orders, travellers cheques, credit card balances, etc. and in connection with which the person conducts no transaction for a period of seven (7) years. Therefore, for example, if a bank is holding a bank draft that has been uncollected, after seven (7) years it will be transferred to the Central Bank.

4. What is an inactive deposit account or facility?

Banks classify a deposit account or facility as inactive, if the account owner does not conduct any transaction on the account or facility for a period of at least one (1) year and up to almost seven (7) years.

5. What constitutes a transaction for the purposes of the dormant accounts law?

A transaction is performed when an account owner conducts some kind of business with a bank in connection with a deposit account or facility that he/she holds with the bank. A transaction includes –

- (a) the making of a deposit, withdrawal, exchange or transfer of money in any currency, whether in cash, by cheque, payment order, or other instrument on a deposit account or facility; or
- (b) any communication with, acknowledgement to, request of, or instruction to a bank by a person concerning his/her deposit account or facility held with that bank.

An account owner may conduct a transaction in person – for example, by walking into his/her bank and making a deposit to his/her account. An account owner may also conduct a transaction by electronic or other non-physical means – for example, by going online to check his/her account balance or by instructing his/her bank by telephone to perform a third party transfer from his/her account.

The account owner must be the one to initiate the transaction in order to prevent his/her account from becoming inactive. Therefore, the crediting of interest to an account or the debiting of a fee against an account will not constitute a transaction for the purposes of the dormant accounts law; because such activities are initiated by the bank and not the account owner.

6. Where the account owner has multiple accounts or facilities with the same bank, will a transaction have to be conducted on each account?

Currently, a transaction is required to be conducted on each account to prevent it from being classified as inactive/dormant. However, the amended law will enable banks to consider all contacts with a customer in deciding whether any one of the customer's accounts should be classified as inactive and, eventually, dormant. For example, a customer may have three (3) accounts with a bank – a savings account, a fixed deposit account and a mortgage account. The customer may initiate no activity on the account or no communication with the bank in connection with the savings account and fixed deposit account {for more than (7) years}. However, he/she may frequently contact the bank regarding the mortgage account. Because of its contact with the customer in connection with the mortgage account, the bank will be permitted to classify the savings account and fixed deposit account as active. This is because the bank is still in contact with the customer and should have no difficulty letting him/her know that action is required to prevent the other two (2) accounts becoming inactive/dormant.

7. What types of accounts and facilities will the amended law cover?

The amended law will clearly identify the types of deposit accounts and facilities that it covers. These include–

- cash deposit accounts
- chequing accounts
- bank drafts
- cashier and certified cheques;
- traveller's cheques
- automatically renewable fixed term deposit accounts
- money orders
- credit card balances
- deposit receipts
- credit balances on loans and collateral held
- security deposits
- any other deposit account or facility that the Governor of the Central Bank decides should be covered
- custody accounts or safety deposit boxes
- funds paid for shares or other interest in a licensee
- deposit accounts of gold and silver bullion
- non-cash collateral
- share accounts
- savings bonds
- undelivered stock certificates
- matured bonds
- unredeemed bond coupons

8. Will the money/assets in all dormant accounts be transferred to the Central Bank?

No. Although the below-listed types of accounts and facilities will be subject to the dormant accounts law, the balances/assets held in these dormant accounts will not be required to be transferred to the Central Bank. These facilities will be classified as exempted dormant accounts –

- automatically renewable fixed term deposit accounts
- deposit accounts of gold and silver bullion
- non-cash collateral
- custody accounts or safety deposit boxes
- any other deposit account or facility that the Governor of the Central Bank decides should be exempted from the transfer requirement
- share accounts
- savings bonds
- undelivered stock certificates;
- matured bonds
- unredeemed bond coupons; and

9. What will happen to dormant accounts that will not be transferred to the Central Bank?

The amended law will require banks to –

- maintain exempted dormant accounts, and subject them to heightened monitoring to ensure their preservation and continued administration in the best interest of the account owner, and in accordance with the bank's contract with the account owner;
- keep comprehensive records relating to the exempted dormant accounts; and
- report on exempted dormant accounts to the Central Bank every three (3) years.

10. What happens to money that is currently transferred to the Central Bank?

Currently, the Central Bank maintains custody of and invests all dormant account balances that it receives until they are claimed. Very few claims are made annually and, to date, dormant account balances held by the Central Bank are substantial.

11. What will happen to the money that will be transferred to the Central Bank when the law changes?

The Central Bank will be required to transfer all dormant account balances of less than five hundred dollars (\$500) to the Treasurer of the Commonwealth of The Bahamas (the Treasurer), within two (2) months of its receipt of those balances.

The Central Bank will hold and invest all dormant account balances of five hundred dollars (\$500) or more for a period of twenty-five (25) years, before it will be required to transfer those balances (plus any interest gained on them) which remain unclaimed to the Treasurer.

12. What will happen to the money once it is transferred to the Treasurer?

The dormant account balances transferred to the Treasurer will form part of the Consolidated Fund, vested in the Treasurer for the benefit of The Bahamas, and will be disposed of by the resolution of both Houses of Parliament. It is proposed that the Government uses the money to fund projects for the general good of the Bahamian society; such as, youth programmes, sporting clubs and/or community centres, or to fund and support charitable organisations. These proposals are in line with how dormant account balances are utilised by the Governments in a number of other countries.

13. Can money that has been transferred to the Central Bank be reclaimed?

Yes. Currently, an account owner (or if the account owner is deceased, his/her heirs or legal representatives) may claim dormant account balances (plus accrued interest, where applicable) at any time after the funds have been transferred to the Central Bank.

However, under the amended law, the right to claim dormant account balances transferred to the Central Bank will be extinguished or come to an end, twenty-five (25) years from the date of the Central Bank's receipt of such funds. This means that dormant account owners, their heirs and legal representatives will only be able to claim dormant account balances (plus accrued interest, where applicable), at any time, prior to the expiry of 25 years after receipt of such balances by the Central Bank.

For the purposes of calculating the 25-year period, the clock starts to run upon the transfer of dormant account balances to the Central Bank; and, in the case of balances of \$500 or less, continues to run after the funds have been transferred to the Treasurer, but not beyond the 25 years. Dormant account balances of more than \$500 can only be claimed before they are transferred to the Treasurer, which takes place on the expiry of the 25-year period.

14. What about dormant accounts denominated in a foreign currency – are these balances transferred to the Central Bank?

Yes, the dormant accounts law applies to both Bahamian currency and foreign currency accounts. Banks are required to transfer balances held on foreign currency dormant accounts to the Central Bank. Persons entitled to such balances, upon making a successful claim, are paid in the foreign currency in which the account was denominated – e.g., US dollars, Canadian dollars, Euro, etc.

15. How would an account owner know when his/her dormant account was transferred to the Central Bank?

Banks are required to monitor all deposit accounts and facilities that they classify as inactive and should seek to contact the account owners of inactive accounts and facilities to let them know that their account or facility will become dormant if the account owner does not reactivate the account or collect funds owed with respect to the facility. At a minimum, the bank should seek to contact the owners of inactive accounts and facilities –

- after the account or facility has remained inactive for one (1) year;
- after the account or facility has remained inactive for three (3) years; and
- after the account or facility has remained inactive for almost 7 years (or just before the account or facility is classified as dormant and the balances transferred to the Central Bank).

Because of this, the bank at which a deposit account or facility is/was held should be able to advise an account owner (or his/her heirs or legal representatives) whether the account or facility is dormant and when the balances were transferred to the Central Bank.

16. How do banks satisfy the Central Bank that they have made sufficient efforts to contact dormant account owners?

The Central Bank's *Guidelines for the Administration and Ultimate Disposition of Dormant Bank Accounts* set out the minimum requirements that banks are expected to comply with, to identify, investigate and administer inactive deposit accounts. The Guidelines also require banks to go one step further, by developing their own documented internal policies and procedures for dealing with these accounts. When Central Bank examiners conduct onsite examinations of banks, they check to see whether banks are following the Guidelines and their internal policies and procedures to ensure, among other things, that adequate efforts are made to contact owners of inactive/dormant accounts and to safeguard funds held on these accounts.

17. What is the process for reclaiming money transferred to the Central Bank?

The below process is offered as general guidance. Your bank will be able to provide you with detailed guidance on their particular procedures and requirements.

- a. If your bank notifies you that you have a dormant account, or if you have reason to believe that you have a dormant account in a bank, you should go to the bank at which the deposit account or facility was held and complete the Dormant Account Claim Form. Your bank will ask you for identification and other documentation to make sure that you are the account owner/joint owner or are otherwise entitled to make a claim (for example, where the claimant is an heir or legal representative of a deceased account owner).
- b. The bank will thoroughly investigate the claim and, once satisfied that the dormant account was transferred to the Central Bank and that the claimant is entitled to make the claim, the bank will forward the completed Dormant Account Claim Form to the Central Bank for processing.
- c. On receipt of a completed Dormant Account Claim Form, the Central Bank will verify that the balances were transferred and calculate the amount of interest accrued on the funds (if applicable). Once the verification process is completed, and if the funds are still in the Central Bank's possession, the Central Bank will pay the funds (plus interest, if applicable) to the facilitating bank for payment to the claimant.
- d. If the claimed amount is less than \$500 and has already been transferred to the Treasurer, the Central Bank will make application to the Minister of Finance, on behalf of the claimant, for repayment of the funds by the Treasurer. On receipt of the funds from the Treasurer, the Central Bank will pay the funds to the facilitating bank for payment to the claimant. **Dormant account balances of less than \$500 dollars do not accrue interest.**

18. When is interest paid on dormant account balances transferred to the Central Bank?

The Central Bank will pay interest on dormant account balances that it receives, only if the balances were earning interest prior to being transferred to the Central Bank. One exception to this general rule is that no interest will be paid on dormant account balances of less than \$500. This is because –

- the Central Bank will be required to transfer these balances to the Treasurer within two (2) months of the Bank's receipt of them; and
- interest will not accrue on dormant account balances when they are transferred to the Treasurer.

19. Can fees be charged against inactive or dormant accounts?

Yes, fees may be charged at various stages of the process.

A bank may charge a fee against an account or facility that it has classified as inactive, but only if the contract that it has with the account owner expressly and specifically provides for such a fee to be charged.

Currently, the Central Bank does not charge a fee for administering dormant account balances, although it does incur associated costs, including salaries of personnel necessary for the maintenance of records, processing of claims, and investing of funds. However, the amended law will enable the Central Bank to charge a fee, which will be deducted from the Fund of dormant account balances, and will be limited to necessary and reasonable expenses incurred by the Central Bank in connection with its administration of the Fund.

20. What should you do if you think you have a dormant account?

Banks are currently required to maintain all records relating to dormant accounts transferred to the Central Bank and, under the amended law, will also be required to maintain a detailed register of all such accounts. Because of this, the bank at which you think or know you own a dormant account should be able to verify this to be or not be the case.

When you contact your bank, you should be prepared to provide supporting documents to show the existence of the account and to prove your entitlement to the account as its owner/joint owner or as the result of some legal relationship with the owner(s) (for example, as the account owner's heir or legal representative). Your bank will let you know what documents you need, given your particular situation.

If the bank at which the dormant account was held no longer exists, you should contact the Central Bank for further guidance.

21. What should you do if you are the heir or legal representative of a deceased person who you think owned/owns a dormant account?

Banks in The Bahamas are generally prohibited from disclosing to third parties any information about the identity, assets, liabilities, transactions or accounts of account owners. Therefore, banks will only provide information about a dormant account to a person who can prove their entitlement to obtain such information. "Fishing expeditions" to find dormant accounts are never entertained.

If you are an heir or legal representative of a deceased or incapacitated person who you think owned a dormant account, the bank at which you think the dormant account was held will let you know what documentation you must provide in order to satisfy it that you are entitled to obtain information about the account. If you do not know the name of the bank(s), it may be necessary to engage legal counsel to assist you with finding any dormant account that may exist. Again, you will be required to prove your entitlement to receive information about the dormant account.

22. Is it a criminal offence to make a false claim for dormant account funds?

It is an offence under the Penal Code to make a false claim for dormant account funds. However, while the BTCRA does not currently contain a provision that criminalises the making of a false/fraudulent claim, this gap will be addressed in the amended. The penalty, on summary conviction, will be a fine of five thousand dollars (\$5,000) or imprisonment for a term not exceeding one (1) year or both such fine and imprisonment.