

# A FRAMEWORK FOR UNCLAIMED FINANCIAL ASSETS IN SOUTH AFRICA



## FSCA RESPONSE TO COMMENTS ON DISCUSSION PAPER

March 2024

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# PART 1: INTRODUCTION

## BACKGROUND

- 1.1 In 2022, the Financial Sector Conduct Authority (FSCA) published the *Discussion Paper on a Framework for Unclaimed Financial Assets in South Africa* (the Discussion Paper) and invited public comment on it. This response report summarises the comments received, sets out the FSCA's response to key themes and outlines the FSCA's next steps for advancing the recommendations outlined in the Discussion Paper.

Any reference to unclaimed assets in the Discussion Paper and in this response report refers specifically to unclaimed financial assets held by financial institutions.

## PURPOSE OF THE FSCA WORK ON REDUCING UNCLAIMED ASSETS

- 1.2 Unclaimed financial assets pose a challenge in South Africa and globally. While commendable progress has been achieved in the South African retirement fund sector to address the widespread issue, other industries have been slower to respond. The absence of a holistic and consistent approach to unclaimed financial assets motivated the FSCA to consider measures to address the challenges associated with unclaimed assets and to improve outcomes for customers, in alignment with the principles of treating customers fairly (TCF).
- 1.3 The purpose of the Discussion Paper was to seek stakeholders' views on the 13 recommendations proposed by the FSCA. The recommendations cover a wide range of aspects relating to unclaimed assets including, but not limited to, mitigating the accumulation of unclaimed assets, establishing a shared understanding of unclaimed assets, addressing the lack of awareness among beneficial owners and their beneficiaries regarding assets rightfully owed to them, rectifying the lack of reliable data concerning the number and value of unclaimed assets, and exploring avenues for the socially beneficial use of unclaimed assets.
- 1.4 The main aim of the work is to explore ways to reduce the amount of unclaimed assets. This involves confirming the responsibilities of financial institutions in reuniting customers with their assets, as well as establishing requirements for the proper handling and reporting of such assets.

# CONSULTATION PROCESS AND FEEDBACK

- 1.5 The Discussion Paper was published during September 2022. Stakeholders had until 30 November 2022 to submit comments to the FSCA. We received 36 responses from a wide range of stakeholders, including regulated financial institutions, industry associations, organised labour, civil society organisations and individuals. See Annexure A for the list of stakeholders that submitted comments.
- 1.6 Some respondents provided comprehensive comments covering all questions posed, others provided comments limited to specific questions, or gave feedback of a more general nature. We would like to thank all the respondents for their valuable input. Their responses have helped us to refine our future areas of focus and next steps.
- 1.7 In Part 2, we summarise the responses received. Thereafter, in Part 3, we outline the FSCA's next steps in progressing its work on reducing unclaimed financial assets.



# PART 2: SUMMARY OF COMMENTS

- 2 In this part, we summarise the feedback received from respondents regarding the 13 recommendations outlined in the Discussion Paper. These recommendations are grouped according to the following themes and are not discussed in a sequential order:
- The Central Unclaimed Assets Fund and matters relating thereto (**Central Unclaimed Assets Fund**) - Recommendations 3, 4, 5 and 11.
  - Identification, management, tracing and reporting of unclaimed assets (**Unclaimed Assets Framework**) - Recommendations 1, 2, 6, 7, 8, 9, 10, 12 and 13.

## CENTRAL UNCLAIMED ASSETS FUND

**Recommendation 3:** Establish a central unclaimed assets fund (Central Fund) to receive and manage unclaimed assets

- 2.1. In the Discussion Paper, we pointed out that there are at least R88,56 billion unclaimed assets in the financial sector. Given the lack of reliable data and the absence of a common understanding of what constitutes unclaimed assets, the total value of such assets may be much higher. We proposed that financial institutions be compelled to transfer unclaimed assets into a 'Central Fund'. A single fund is also likely to generate value and efficiency through operating synergies and economies of scale, as well as making it easier for customers to search for unclaimed assets through a single search facility.
- 2.2. As an alternative to the establishment of a central fund, we proposed that unclaimed assets be transferred to the National Revenue Fund (NRF), and we outlined the benefits of this approach.

### Summary of comments

- 2.3. Respondents voiced support for the design and implementation of a fair and efficient framework for unclaimed assets that systematically addresses unclaimed assets in a structured manner and that provides legal certainty for both consumers and financial institutions. The debate centres on the design and implementation factors. For example, the majority of financial institutions that hold unclaimed assets are against the establishment of a central fund, because of, amongst others, concerns relating to the governance of such a fund (fraud, corruption, mismanagement,) and the associated complexity and risks. These respondents argued that unclaimed funds should remain with financial institutions, and said they were in favour of a framework that regulates the management of unclaimed assets held by financial institutions.

- 2.4. Other stakeholders were generally in favour of a well-governed central fund.
- 2.5. Some respondents argued that customers should have a choice in deciding where their unclaimed assets should be held. They suggested allowing customers to opt to keep their unclaimed assets with the relevant institution instead of transferring them to a central fund.
- 2.6. Most respondents said that, if they had to choose between the two options (Central Fund or NRF), they would prefer to transfer unclaimed assets to the Central Fund. They believe that the proposed Central Fund would offer better transparency, record-keeping capabilities, governance, and accountability than the NRF. A respondent noted that organised labour is not represented at the NRF, which means that workers (that contribute to the pool of unclaimed assets) are not represented at the NRF.
- 2.7. Respondents also suggested alternatives to the Central Fund and NRF approaches. Such alternatives included the redistribution of unclaimed funds as profit-share allocations to members where the structure of the financial institution allows for it; the establishment of an investor compensation fund similar to the one in Cyprus; and the transferring of unclaimed deposits to the Deposit Insurance Fund.
- 2.8. Respondents raised various concerns regarding the proposal to transfer unclaimed assets to a central fund (including the NRF). Some of the concerns are highlighted below:
  - a. *Corruption and a loss of trust in financial institutions* - They emphasised that the responsible management of customers' funds by a central fund would be crucial to maintaining trust in the financial services sector. They expressed reservations about relying on a single institution to manage funds across different sectors as such an institution may not have the necessary expertise and infrastructure.
  - b. *Potential breach of treating clients fairly principles* - Such breach could happen when transferring assets that legally belong to clients without considering their ownership rights and the impact that the transfer may have on, amongst others, their investment values. (See also comments under the recommendation relating to restitution.)
  - c. *Disconnect between the central fund and the source of funds* - They argued that transferring unclaimed assets could result in loss of accountability, reduced efforts to locate owners, increased costs (for administering and verifying assets), and reputational risks. It could also create a break in primary relationships between claimants and the original financial institutions.
  - d. *Risk of losing important information (e.g., previously taxed amounts) during the transfer process, potentially compromising data integrity* - This could impact the ability to claim (validate claimants) unclaimed assets, especially if managed by a central fund.
  - e. *Smaller administrators may lose business, potentially leading to closures and job losses* - Putting an end to private unclaimed benefit funds would directly affect service providers, including administrators, asset managers, trustees, auditors, and tracing agents, impacting their income and potentially resulting in job losses.
  - f. *Increased costs and reduced investment return for members of funds.*

- g. *The transfer of assets would impact the capital of prudentially regulated entities, such as banks, and negatively affect their profitability* - Banks would lose the margin they make on funds in dormant accounts, and their prudential liquidity requirements would be adversely affected.
  - h. *Increase in operational costs for financial institutions, such as building and maintaining new systems and processes* - Respondents highlighted the complexity of reconciling unclaimed dividends, the need for system development, and the recovery of administration costs.
  - i. *Costs associated with setting up and running a central fund* - Considerable funding will be required to set up the processes and systems required to validate claims (especially given the volumes) across all types of financial assets.
  - j. *Liquidity issues associated with a mass transfer of cash, particularly for historic unclaimed amounts* - The extent of the impact on liquidity needs further investigation.
  - k. *Potential conflicts of interest and grey areas between the regulator and the regulated if the FSCA were both a player and referee in the process* - Respondents suggested that the FSCA's role should be carefully considered and possibly limited to an advisory board position.
- 2.9. Respondents emphasised the importance of good governance (e.g., an independent board, due diligence and adequate controls), transparency and accountability (appropriate investment criteria, proper reporting), ability to trace and reunify the funds with rightful beneficiaries, and to ring-fence funds efficiently and effectively.
- 2.10. Some respondents expressed concern about the way 'new' unclaimed assets were dealt with in the Discussion Paper. According to them, the accumulation of such assets has decreased significantly because fund administrators have implemented stricter data requirements. It thus follows that the primary unclaimed asset challenge primarily exists within certain occupational funds, rather than specialised unclaimed funds.

## **Recommendation 11: Use of a portion of unclaimed assets for projects with social, environmental and developmental benefits**

- 2.11. In the Discussion Paper, we proposed that unclaimed assets should – where it is not possible to reunite those assets with their rightful owners – be used for positive impact initiatives such as social, environmental and developmental projects. This seen from a public-interest perspective and subject to the creation of a sustainable unclaimed assets pool to cover expected claims.

### **Summary of comments**

- 2.12. There is a range of opinions regarding the proposed redistribution of unclaimed funds. Some respondents expressed support for using the funds for positive impact investing and social upliftment, while others expressed opposition to it or proposed alternative approaches. A respondent suggested

the establishment of a South African Financial Sector Compensation Scheme specifically targeting unpaid contributions in the retirement funds space and another suggested the establishment of a listed public benefit organisation in which funds can be consolidated into a transparent public wealth fund that invests in assets that could lead to growth in the economy and job creation.

- 2.13. Many respondents emphasised the importance of rigorous corporate governance frameworks and processes to prevent corruption and misallocation of funds. They recommended transparent and effective management of investments through regulated asset managers. They highlighted the need for clear investment objectives, continuous review of return and risk objectives, and the establishment of a governing board to balance reserving for future claims and making distributions for good causes. They also advocated for a conservative approach to allocating funds for social, environmental, and developmental benefits. Furthermore, they suggested that the percentage allocation should be initially low and gradually increased as the Central Fund gains a better understanding of the success rate and cost of tracing unclaimed beneficiaries, and they called for the setting of clear guidelines and criteria for the redistribution of unclaimed funds.
- 2.14. Several respondents argued for funds and assets to be held by financial institutions until they are rightfully reunited with their owners. They contended that the legal right and ownership belong solely to the beneficial owner, and the funds should not be utilised for any purpose until claimed. They further stressed the importance of prioritising restitution in perpetuity and argued that sufficient reserves should be maintained to ensure ongoing support for claims. Some were also of the view that unclaimed benefits released from retirement funds should be used solely for the benefit of the retirement fund and its members, and that beneficiary accounts must be retained indefinitely, and assets be invested in a way that generates value for the beneficiaries.
- 2.15. Respondents further stressed the importance of prioritising restitution in perpetuity. They reiterated that sufficient reserves should be maintained to ensure ongoing support for claims. There is also support for the idea that assets linked to specific regions and communities can be invested through social impact funds to support infrastructure development and benefit poverty-stricken areas.

#### **Recommendation 4: Provide for restitution in perpetuity**

- 2.16. In terms of Recommendation 1, we proposed, amongst others, that non-liquid assets should be liquidated before transferring them to the proposed Central Fund. This recommendation primarily stemmed from our decision not to propose full restitution due to the intricate nature of executing it through the Central Fund or NRF. Enabling full restitution would entail restoring beneficial owners to the financial position in which they would have been had the transfer to the Central Fund never occurred. This, in turn, would necessitate the management of each beneficial owner's assets in accordance with their original agreements with the financial institution, presenting a multitude of challenges.
- 2.17. Our proposal entailed that claimants should be able to claim, in perpetuity, the value of the assets at the point of transfer into the Central Fund (or other fund as may be determined), as well as any accrued interest between the date of transfer and the date of claim.

## Summary of comments

- 2.18. Several respondents acknowledged the challenges and complexities involved in achieving full restitution. Although they had some objections and concerns, the majority said that full restitution is crucial to ensure fair outcomes for customers. To uphold TCF principles, unclaimed assets should, therefore, remain with financial institutions rather than being transferred to a central fund.
- 2.19. Respondents argued that relying solely on accrued interest (as proposed) may not adequately compensate for the effects of inflation and may, over time, lead to a loss of value for customers. In their opinion, the reclaim value must consider inflation and aim to align with the intended growth of the original assets.
- 2.20. Respondents highlighted the following concerns with regards to converting non-liquid assets to cash:
- a. *Converting non-cash assets to cash may raise legal concerns, as financial institutions are bound by contracts and mandates with clients* - Clients may argue that institutions have no right to convert assets, leading to potential claims for damages. Some respondents further argued that unilaterally amending the return and limiting the restitution value may not be fair to beneficiaries. They emphasised the importance of honouring contracts and providing full restitution to customers in line with their expectations. Respondents further highlighted the need for explicit legislative protection to ensure that liability for transferred balances of assets rests with the Central Fund and not with financial institutions. They want to ensure that financial institutions are not liable for claims once the balances have been transferred.
  - b. *Converting non-cash unclaimed assets to cash may result in losses for beneficiaries* - It is recommended that a reasonable period be allocated for liquidation; this to avoid threatening the value of the assets through fire-sale processes.
  - c. *Liquidating certain non-cash assets, such as delisted shares or longer-term assets, may pose practical challenges* - The market movement and timing of liquidation could affect the value of assets and potentially lock in losses.
  - d. *Converting assets to cash may trigger capital gains tax events* - There may be tax implications for withdrawing from tax-free products.
  - e. *There are operational complexities, and thus questions arise about who bears the administration costs of converting non-cash assets to cash, before transfer* - Financial institutions may need to open and maintain separate accounts for the conversion process, and fee implications should be clarified.
  - f. *Converting securities to cash may present practical challenges* - These include share price fluctuations and the inability for shareholders to receive future dividends or corporate action entitlements. Reconciliation processes may be complex, and the legal rights of shareholders need to be considered.

- g. *Some respondents highlighted the differences in treatment between cash and securities when it comes to restitution* - They argued that unclaimed securities pose additional complexities and challenges, and their restitution should be approached differently to cash. The impact of market risk and movements on the conversion process needs further consideration.
- h. *Respondents had different views about the interest rate benchmark that should be used when calculating a claimant's restitution value as per Recommendation 4.* Some suggested an interest rate of 10% or a minimum of CPI<sup>1</sup> +3% whilst others suggested that the interest rate should reflect the actual returns of the investment vehicle used to host the unclaimed assets (e.g., a respondent said that unclaimed assets should be invested in the market to generate returns higher than interest rates and inflation – this approach would, potentially, maintain the value of assets and fulfil customer expectations). Other suggestions included using the Treasury Bill Interest rate, SteFi return rate<sup>2</sup>, Government Bond Rate and Repo rate<sup>3</sup> as benchmarks.
- i. *Some respondents proposed the establishment of a reasonable and justifiable 'cut-off' period instead of perpetual restitution.* They argued that consideration should be given to the Prescription Act, which states that the prescription period begins when a claimant becomes aware of their claim.

## **Recommendation 5: Tax neutrality**

2.21. Considering the tax treatments applicable to different financial products, we proposed that assets be taxed at the time of reclaim and that beneficial owners be treated in a tax-neutral manner. In other words, the beneficial owner must be put in a tax position as though the transfer to the Central Fund had not occurred.

### **Summary of comments**

2.22. Respondents supported the principle of tax neutrality. They, however, highlighted the need to identify and address the differing tax treatments applicable to different types of unclaimed assets and how tax neutrality will be achieved in respect of each type of asset. In this regard, reference was made to the importance of clear policy guidance from the National Treasury on how tax neutrality can be achieved.

2.23. Respondents also raised concerns regarding the application of this principle to tax-free savings accounts especially about the tracking of contributions and penalties.

2.24. Most respondents proposed that unclaimed assets remain with financial institutions as they are best positioned to achieve tax neutrality and can remain responsible for any tax liabilities related to the assets until claimed.

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<sup>1</sup> Consumer Price Index

<sup>2</sup> Short-term Fixed-Interest Index

<sup>3</sup> Repurchase Rate

# UNCLAIMED ASSETS FRAMEWORK

**Recommendation 2:** Aligned approach to the treatment of unclaimed assets across all industry segments and adoption of a common escalation system for the identification of unclaimed assets

- 2.25. We proposed to develop a standard approach to the identification (including a common understanding of what is an unclaimed asset), monitoring and responding to cases of possible unclaimed assets, by financial institutions. The approach could include a flagging system to escalate cases where the account holder cannot be located. This would help to standardise practices and ensure that customers are always treated fairly.
- 2.26. We made proposals regarding the charging of fees for the custody, administration and/or management of unclaimed assets. We believe fees should be prohibited. This is intended to encourage active tracing of beneficial owners or their beneficiaries and to shift the behaviour of financial institutions by providing an incentive to maintain contact with their customers.

## Summary of comments

### Aligned definitions

- 2.27. Different institutions and sectors have different policies and timeframes for defining and managing dormancy and unclaimed assets. Some institutions refer to industry guidelines (e.g., the ASISA Standard on Unclaimed Assets<sup>4</sup>), legislation (Pensions Funds Act<sup>5</sup>) or industry practice to define dormancy and unclaimed assets whilst others have their own definitions based on, amongst other, their operating model, product and sub-product category rules, size of book, value of book, and number of customers. Some banks define dormancy at customer level and not product (account) level, which means that an account is regarded as inactive if there is no customer-initiated transaction. Customers become dormant after 12 months of customer inactivity on all accounts.
- 2.28. Overall, respondents emphasised the need to consider the specific characteristics of each financial product class and sub-class and customer behaviour when defining dormancy or inactivity.
- 2.29. There is general agreement amongst most respondents for the need to treat fixed-term and open-ended products differently; however, there are various views on specific time periods and trigger events in defining what constitutes an unclaimed asset.

### Tracing

- 2.30. Institutions use various tracing techniques and methods to trace beneficiaries. Some institutions conduct tracing in-house using their own resources such as specialised staff, internal databases,

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<sup>4</sup> <https://www.asisa.org.za/media/jp3baqq4/asisa-standard-on-unclaimed-assets-approved-23-october-2018-1.pdf>

<sup>5</sup> Pension Funds Act, No. 24 of 1956.

media platforms, next-of-kin contact information, desktop resources, advertising, campaigns, outreach programmes and so on, whilst others outsource it to tracing agents or conduct both in-house and external tracing. Some institutions apply a tiered approach to tracing, they start, for example, with electronic tracing and progress to more resource-intensive physical tracing methods if necessary.

- 2.31. Some respondents stated that the success of tracing efforts largely depends on how long an asset has been unclaimed for and whether a customer has a digital footprint or not. Some respondents indicated that third-party tracing agents deliver the most success.
- 2.32. Several institutions emphasised the need for collaboration and access to information from entities like SARS, the Department of Home Affairs, as well as the Department of Labour to facilitate the tracing and verification process. Access to secure links and authorised queries could streamline the process of obtaining key information.
- 2.33. Compliance with data protection laws pose challenges to the use of group-wide customer contact details for tracing purposes. Some respondents explained that they use group-wide customer databases in their reunification efforts because they address the constraints imposed by the POPI Act<sup>6</sup>. They, for example, ensure that there are data sharing agreements in place between the financial institutions in the group and they obtain consent from customers to share data within a group under certain circumstances (or by relying on section 11(d) of the POPI Act<sup>7</sup> that allows data to be shared if it is in the legitimate interest of the customer).
- 2.34. The average cost per tracing effort seems to vary widely, depending on the type of claim and the level of tracing required. The costs reported by respondents ranged from R25 (internal tracing) to R7 500 for successful traces. Some institutions also mentioned a 'no-trace, no-fee' basis for third-party tracing. The average costs for investigative tracing ranged from R1 500 to R3 000.
- 2.35. Some institutions recover tracing costs from dormant accounts whilst others bear the costs. In certain instances, only external tracing costs are recovered from the dormant account. Some respondents follow the ASISA Standard<sup>8</sup> which dictates that unless it is on record that a customer has specifically agreed to it, no tracing cost may be claimed from policies or other assets. A customer contract must show that the product provider has permission to deduct tracing cost from the value of the customer's asset.
- 2.36. In response to the question about the financial impact on institutions should they be prohibited from charging tracing fees, most respondents indicated that it would most likely result in increased costs. Financial institutions would probably recover such costs from customers via increased administration fees and premiums. Some respondents in the retirement fund industry also indicated that prohibiting tracing fees would result in active members subsidising the costs associated with unclaimed assets or tracing efforts.
- 2.37. Respondents pointed out that, should they be unable to charge fees, their tracing efforts might be limited. This could lead to fewer successful traces and to beneficiaries not being found or paid.

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<sup>6</sup> Protection of Personal Information Act, No. 4 of 2013.

<sup>7</sup> Protection of Personal Information Act, No. 4 of 2013.

<sup>8</sup> ASISA Standard on Unclaimed Assets:

<https://www.asisa.org.za/media/jp3baqq4/asisa-standard-on-unclaimed-assets-approved-23-october-2018-1.pdf>

## **Fees**

- 2.38. There is general support amongst respondents for prohibiting fees on dormant accounts with zero or negative balances. Some, however, argued that if there is a zero or negative balance, there is no unclaimed asset.
- 2.39. Holders of unclaimed financial assets were generally against the proposal to prohibit institutions from charging fees on lost accounts/assets (step 3). They argued that:
- a. Charging zero fees would not be financial sustainable for the institutions;
  - b. It may lead to cross subsidisation as institutions will have to factor these costs into existing products through increased fees for all clients, even those not directly impacted, which may result in unfair outcomes for active customers;
  - c. It may disincentivise investment managers from managing assets and this may result in those assets remaining on 'autopilot', which would not be in the best interests of the members and beneficiaries; and
  - d. Institutions have contractual obligations to provide certain services and customers have the obligation and have agreed to pay certain fees.
- 2.40. Some respondents proposed putting an end to the practice of financial services providers charging commission on an ongoing basis. Unclaimed assets and dormant accounts clearly indicate that a financial services provider is not in contact with its client and is no longer providing the services that warrant commission fees. It was also argued that fees should be considered in the context of returns being generated for customers. Where the fee is linked to the return, it can never erode the investment balance to nil in the way a fixed monthly rand fee on an inactive bank account can. In the context of possibly transferring assets to a central fund, there should not be "*sensitivities for services providers at the expense of rightful beneficiaries.*"

## **Accounting of unclaimed assets**

- 2.41. Institutions employ different accounting treatments for unclaimed financial assets. For instance, unclaimed retirement fund benefits are typically recognised as a liability in the financial statements of retirement funds. In contrast, certain institutions in other sectors do not separate unclaimed assets from active client accounts and account for them in a similar manner. Some banks transfer unclaimed assets to their income statement after a specified period, while certain issuers may classify them as accruals or liabilities. Institutions adhering to the ASISA Standard<sup>9</sup> do not treat unclaimed assets as income to shareholders.

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<sup>9</sup> ASISA Standard on Unclaimed Assets:  
<https://www.asisa.org.za/media/jp3baqq4/asisa-standard-on-unclaimed-assets-approved-23-october-2018-1.pdf>

## **Recommendation 1: Assets to be included within the scope**

- 2.42. As per Recommendation 2, we recommend a holistic and consistent approach to the treatment of unclaimed financial assets. The emphasis should be on identifying, reporting, managing, and reuniting these assets with their rightful owners. To accomplish this, it is necessary to include all financial products in the proposed framework. We proposed that the following financial products and financial instruments be incorporated into the suggested Unclaimed Assets Framework:
- Retirement fund benefits
  - Bank deposits, irrespective the term and including foreign currency deposits
  - Participatory interests in CIS
  - Life and Non-Life Insurance policies
  - Securities
  - Any investment, return, income, dividend or other proceeds in respect of or derived from the financial products listed above that are payable or due to customers or their beneficiaries by financial institutions, including assets held by central securities depository participants (CSDPs).
- 2.43. It is important to note that at the time of publication of the Discussion Paper, crypto assets were not classified as financial products. Consequently, they were not included in the proposed framework's scope. However, since then, crypto assets have been designated as financial products. We therefore propose that consideration be given for crypto assets to be included in the framework's scope so as to align with the stated objective. We will engage with stakeholders in this regard.

### **Summary of comments**

- 2.44. While the Discussion Paper pointed out that not all potential pools of unclaimed assets are included in its scope (e.g., unclaimed assets held by the Government Employees Pension Fund, Guardians Fund and Transnet), some respondents nonetheless advocated for their inclusion.
- 2.45. There were also proposals to include unclaimed assets within stokvels, medical schemes and trusts with no identifiable beneficiaries. Some respondents also recommended including the following additional asset types: crypto assets, fixed assets such as property and unclaimed land.
- 2.46. Most respondents were of the view that non-South African domiciled assets of customers should be excluded. A respondent was of the view that assets invested offshore via a SA domiciled financial institution should, however, be included whilst another supported the inclusion of assets only if:
- a. They are denominated in local currency, but invested in overseas assets and paid out in rand into a South African account;
  - b. They are denominated in overseas currency and paid out in rand into a South African account;

- c. They are offshore endowment policies;
  - d. They are held by customers who are South African residents subject to South African tax laws and who have signed contracts with South African regulated entities.
- 2.47. There are opposing views on the inclusion of securities, with various arguments for and against. A respondent proposed that only assets where the value is a determinable rand value at a particular point in time by operation of a contractual, legal or regulatory event (for example, it reaches its contractual end-date, or the owner has died) should be included. It seems that the main reason for opposing the inclusion of securities stems from the fact that these assets will have to be liquidated into cash when transferred to the Central Fund. If assets are to remain with financial institutions, the inclusion of those assets does not seem to be of a concern (except for one or two respondents).
- 2.48. Some respondents are of the view that assets such as pension funds, insurance and investments should be excluded as those assets are governed under their own legislative and industry frameworks. It was argued that unclaimed benefit preservation funds should be excluded from the proposed framework as provision for treatment of these assets has already been made through the establishment of these funds.
- 2.49. There are also differing opinions on whether non-life insurance should be included as an unclaimed asset, with arguments for exclusion due to its nature and arguments for potential inclusion based on certain scenarios where unclaimed benefits could arise (e.g., customer credit and personal accident policies, medical gap policies, refunds and loyalty rewards).
- 2.50. A respondent advocated for the exclusion of bank deposits that do not have a bank charge/fee attached to same. Another respondent argued for the exclusion of retirement benefits of 'paid-up' members and 'deferred retirees'. The only time paid-up members or deferred retirees may be considered 'unclaimed' is when members elect to receive their benefit and thereafter the benefit is not paid within 24 months – this as per the definition of 'unclaimed' in section 1 of the Pension Funds Act.
- 2.51. In response to the question whether there is good cause to exclude certain types of customers from the framework's scope, several respondents said that they supported the inclusion of all customers, both retail and non-retail. A few respondents, however, argued that institutional clients, should not be included.
- 2.52. Respondents emphasised the importance of aligning definitions and product inclusion with existing legislation to ensure consistency and to enable clear understanding of responsibilities. They further emphasised the need for a tailor-made framework to accommodate the unique characteristics and challenges associated with different asset types. They recommended extensive engagement with all stakeholders and further consideration, investigation, and research to address practical issues, understand potential challenges, and assess the impact of the proposed recommendations.

## **Recommendation 6: Reporting by financial institutions should be standardised in terms of regularity and form**

- 2.53. As highlighted throughout the Discussion Paper, there's a need for reliable data on unclaimed financial assets. To address this need, we proposed that all financial institutions maintain records of dormant accounts and unclaimed assets. Additionally, financial institutions should document their efforts in tracing and verifying beneficial owners, along with the effectiveness of these efforts. These records should be routinely submitted to the FSCA in a prescribed format for monitoring purposes.
- 2.54. Additionally, it was proposed that financial institutions be required to retain records of the unclaimed assets transferred to the Central Fund and that they be responsible for validating claims.

### **Summary of comments**

- 2.55. The FSCA asked financial services providers whether it would assist them if the information that they must report on is included in the conduct of business returns (CBRs). There were differing opinions among institutions. Some respondents expressed support for inclusion in the CBR as it would avoid duplication and the need for additional reporting, while others suggested separate reporting.
- 2.56. Some respondents raised concerns about the frequency of reporting. While the CBR is proposed to be facilitated quarterly, institutions suggested that reporting on unclaimed assets might require less frequency, possibly annual reporting.
- 2.57. Most respondents said that should unclaimed assets be transferred to the Central Fund; the latter should be responsible for validating claims. Financial institutions cannot be expected to remain responsible for records, claims validation and costs associated with the aforementioned once the institution has no remaining interest.
- 2.58. The estimated costs to validate a claim can vary significantly depending on the nature of the claim, complexity of the case, and specific requirements. Some respondents mentioned that costs can total less than R10 and escalate to an undetermined value; indicating a wide range of potential expenses. Another respondent estimated that the cost ranges between R350 to R5 000 per claim.
- 2.59. The average costs of retaining records of unclaimed assets are not consistently quantified across financial institutions and depend on the size of the data and method employed for data retention. Estimates range from R5 to R20 per customer per month, with additional costs for active communication and administration, tracing and record updates amounting to around R1 000 per annum.

## **Recommendation 7:** Establish a centralised database to assist in the tracing of persons in respect of all industry segments across the financial sector

2.60. We proposed that financial institutions populate a central database with information as prescribed by the FSCA and that this database informs the FSCA's unclaimed retirement benefit search engine. It was further proposed that it be expanded to include all unclaimed assets. The purpose of such a database is to assist with the tracing of owners of unclaimed assets.

### **Summary of comments**

2.61. Overall, respondents support extending the central database to cover all financial products within the scope of the Discussion Paper.

2.62. However, respondents emphasised the need for improving the user experience of the search engine, making it mobile-friendly and easy to find on the FSCA website. It should allow multiple searches and accommodate variations in data entry points to improve the search results. They further pointed out challenges relating to poor compliance with quarterly data uploads by financial institutions and lack of penalties for non-compliance at a trustee level.

2.63. Many respondents highlighted the importance of compliance with the POPI Act<sup>10</sup>, obtaining customer consent, and ensuring the privacy and security of the data.

2.64. Respondents also proposed enriching the central database by sourcing data from other entities such as SARS<sup>11</sup>, the Department of Home Affairs and credit bureaus. Collaboration between financial institutions, regulators, and other stakeholders is seen as essential to enhance data accuracy and interoperability.

## **Recommendation 8:** Identify a minimum threshold for unclaimed assets below which a financial customer will not be actively traced

2.65. In terms of this recommendation, we proposed that when a financial institution confirms an asset as unclaimed and the value falls below a specified threshold (initially proposed at R1 000 for retirement funds older than 20 years and R100 for other assets), it should be immediately categorised as 'untraceable' and transferred into the Central Fund. Though active tracing will not be undertaken for these assets, they must remain in the database, allowing owners or beneficiaries to claim them indefinitely.

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<sup>10</sup> Protection of Personal Information Act, No. 4 of 2013.

<sup>11</sup> South African Revenue Service.

## Summary of comments

- 2.66. Respondents supported the concept of a *de minimis* value, where assets below a certain value-threshold would not require extensive tracing. It seems that they consider the cost of tracing versus the value of the asset when determining whether to actively trace beneficial owners. The rationale is that tracing costs should not exceed the benefit remaining after tracing, as it would be financially impractical.
- 2.67. Overall, respondents expressed the need for a nuanced approach that considers the complexity, cost, and specific characteristics of different financial products and sub-categories when determining tracing thresholds. Some respondents argued that the proposed thresholds are too low and that the cost of tracing would exceed the minimum threshold amounts. They recommended that higher thresholds should be considered, otherwise the purpose of setting a threshold would be defeated.
- 2.68. There were also suggestions for different thresholds to be applied to different types of financial products and sub-categories; to introduce prescribed time-thresholds, such as not allowing unclaimed benefits older than 10 years; and tracing fees should not exceed the value of the asset. Another proposal was that financial institutions must verify that all unclaimed asset records per beneficial owner are merged or linked to determine the total aggregated unclaimed asset.
- 2.69. Respondents currently apply thresholds below which they do not actively trace beneficial owners. The thresholds are based on the cost of tracing, the value of the asset, and considerations of cost-effectiveness. The specific thresholds vary among institutions and depend on the type of product or claim being processed.

## **Recommendation 9 & 10:** Prioritise the tracing of members of high impact retirement fund and product providers

- 2.70. We recommended that the tracing of beneficiaries by retirement funds with a high concentration of unclaimed benefits be more closely monitored. In the first phase, it was proposed that funds with more than R500 million total unclaimed assets, or funds with average unclaimed assets per beneficiary exceeding R45 000, be prioritised.
- 2.71. If such concentrations are found in other sectors, we will consider similar prioritisation strategies based on the experiences with retirement funds.

## Summary of comments

- 2.72. Respondents expressed support for the proposed approach of prioritising high-impact funds in addressing unclaimed benefits. However, there were different opinions on setting thresholds for high-impact funds. Some suggested using a percentage of the total assets or considering the number of unclaimed benefits above a certain threshold instead of the proposed thresholds (R500 000 per fund or R45 000 per beneficiary). A respondent voiced concern with the proposed average amount of R45 000 being too low and the potential perception of favouring the rich over the poor.

- 2.73. Respondents further suggested that factors like the age and complexity of unclaimed assets in older funds should be considered. They proposed an age analysis of the assets. Attention should also be given to newer funds, particularly those where unclaimed assets are starting to accumulate.
- 2.74. It was emphasised that finding the right balance for the thresholds is crucial to prevent classifying funds with only a few unclaimed benefits as high impact.
- 2.75. Respondents also noted that other than the retirement fund sector that has the highest level of unclaimed assets, specific financial product categories (including credit life policies, retirement annuities, preservation funds, retail transactional banking, unclaimed dividends, and underwritten life policies) may also have high numbers of unclaimed assets. However, due to the lack of a clear definition of unclaimed assets and the absence of reporting on or tracking of this information, respondents were unable to provide detailed insights into these categories.

## **Recommendation 12: Coordinated consumer awareness campaigns**

- 2.76. We suggested shared responsibility between financial customers and institutions to maintain updated contact information and proposed an ongoing awareness campaign, in collaboration with financial institutions and employers, to emphasise the importance of keeping personal information current and the consequences of failing to do so.
- 2.77. Additionally, we proposed legislative obligations for financial institutions to disclose the effects and implications of unclaimed assets and dormant financial products to customers, both at the point of sale and regularly thereafter.

### **Summary of comments**

- 2.78. Respondents agreed that it is of critical importance to create awareness and educate the public about unclaimed assets.
- 2.79. The following are some of the suggestions on how best to create public awareness:
- a. *A central database of unclaimed assets that is easily accessible to the public.* This would allow individuals to search for their unclaimed assets and contact the relevant institution to initiate the claim process.
  - b. *Mainstream and social media platforms can be used to reach a wide range of customers.* Radio stations, billboards, consumer magazines, online articles, social media campaigns, and television are all potential channels for raising awareness. A wide range of languages should be used to reach customers effectively and the messaging should be clear and easy to understand.
  - c. *Awareness messages should be integrated into various communication channels, such as brochures, marketing materials, application forms, sales scripts (point-of-sale), bi-annual reminders, ad-hoc training materials, and minimum standards for member communication.* This would help to ensure that people are exposed to awareness messages on a regular basis.

Information about the unclaimed benefits process and reminders to update contact details should be incorporated in annual client communications.

- d. *Financial product education should be included in school curriculums, particularly in life orientation subjects.* This would help to enhance financial understanding and awareness from an early age.
- e. *Collaboration with industry bodies and supervisory authorities:* The regulator can collaborate with industry bodies and supervisory authorities to create dedicated sections on their websites for raising awareness about unclaimed assets. This would help to raise awareness and provide a central resource for information.
- f. *Coordinated awareness strategies and campaigns between industry and government to improve consumer understanding and awareness of unclaimed assets.*

2.80. Respondents emphasised the need for customers to know and understand what unclaimed financial assets are and how they happen. Customers should also be made aware of the process for claiming unclaimed assets and the potential consequences of not claiming them.

## **Recommendation 13: Regulation of tracing agents**

2.81. In the Discussion Paper, we recommended that steps be taken to regulate the activities of tracing agents seeing that concerns have arisen due to certain practices. Furthermore, it is anticipated that the role of tracing agents may expand to encompass other products once the proposed Unclaimed Financial Assets Framework starts applying to those products. Tracing agents are currently not regulated, which may potentially pose risks for consumers.

### **Summary of comments**

2.82. Most respondents were in favour of regulating tracing agents, but raised concerns about the potential increase in compliance costs that may result from such regulation. Some of the tracing practices that can hinder fair customer outcomes include excessive fees; upfront fees not reliant on successful traces; misuse of personal information; poor communication skills; lack of training; potential misconduct and fraud; and “fly-by-night” tracers that use sources for traces that the customer could use themselves.

2.83. Most respondents were of the view that the FSCA should be responsible for regulating tracing agents. A respondent suggested that the provisions relating to ‘supervised entities’ may apply to tracing agents as their activities could be regarded as outsourced arrangements and, therefore, standards could be imposed on them. It was further suggested that the following be addressed through regulation:

- a. Licensing/registration (including ‘representatives’ of relevant tracing agents).
- b. Requirements that financial institutions may only make use of licensed/registered relevant tracing agents.

- c. Fit-and-proper requirements and other qualifying criteria (e.g. typical procurement credentials, the ability to communicate in multiple languages).
- d. Tracing methods.
- e. Reporting and monitoring.
- f. Conduct and practices, including prohibited practices.
- g. Fraud prevention.

2.84. Respondents had divergent views on the regulation of tracing fees with some promoting regulation – including providing for maximum caps – and others arguing against it.





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# PART 3: PROPOSED APPROACH & NEXT STEPS

3. The FSCA's proposed approach and immediate next steps for progressing the work on unclaimed financial assets, are set out below.

## PROPOSED APPROACH

### Establishment of a central unclaimed assets fund

- 3.1. The transfer of unclaimed assets to a central fund and/or the NRF presents various complexities, especially with regard to the liquidation of non-cash assets, customers' legal and contractual rights, limited restitution and tax neutrality. The FSCA recognises that these complexities require further consideration before advancing the recommendation to establish a central unclaimed assets fund. The implementation of such a fund warrants close care and attention. As the authority to establish a central unclaimed assets fund and transfer unclaimed assets into such a fund lies with the National Treasury, the FSCA will continue to support the National Treasury in its decision-making process, by investigating and assessing solutions.
- 3.2. As identification and monitoring of unclaimed benefits is materially more advanced in the retirement funds industry than in the rest of the financial sector, the establishment of a central fund for retirement fund benefits (as proposed by the National Treasury) can progress. Simultaneously, a reporting framework for the remaining pool of unclaimed financial assets can be developed.
- 3.3. The general lack of reliable data regarding the value of unclaimed assets and the number of affected beneficial owners, as well as the absence of age analyses of unclaimed assets, creates system design and implementation challenges. This means that an enhanced reporting framework may function as a crucial stepping stone to generate relevant and reliable data to inform future decisions on the suitability and design of a central fund. (The retirement fund sector is an exception where data is concerned.)
- 3.4. As there is no common definition for unclaimed assets, we propose that taxonomy development be prioritised as part of the reporting framework. This will enable us to assess the status quo of unclaimed assets in the financial sector and may enhance transparency and accountability. It is also expected to assist with the collection of specific and comparable data points that will support the monitoring of trends and identification of areas of concern.<sup>12</sup> See paragraph 3.9 below for more detail in this regard.

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<sup>12</sup> The development and testing of appropriate definitions as to what constitutes unclaimed assets will be a critical success factor in the effective and efficient operation of a central fund. We should aim to minimise changes to the taxonomy once it is developed and implemented in order to limit the impact on the central fund and industry.

- 3.5. The collected data will address the concerns raised by respondents about the high-level approach of the Discussion Paper, the absence of detailed technical and operational documentation, and the lack of an industry impact assessment and business case analysis. The potential unintended consequences and the need to consider legal, regulatory, tax, cost, liability, infrastructure, and operational requirements were also highlighted by respondents.

## Alternative proposals

- 3.6. Respondents proposed various alternatives to creating a central fund, including the following: establishing an investor compensation fund; transferring unclaimed deposits to the Deposit Insurance Fund; that industry continues to administer unclaimed assets, but with a central investment solution; and retaining current status quo with a more robust framework to regulate the management of unclaimed assets within financial institutions.
- 3.7. Deferring a final decision on the establishment of a central fund will enable further consideration and assessment of the feasibility of the alternatives proposed by respondents.

## Transfer of central unclaimed retirement benefit fund from the Pension Funds Act to the Financial Sector Regulation Act

- 3.8. The FSCA intends to proceed with the recommendation to transfer the establishment of the central unclaimed retirement benefit fund from the Pension Funds Act<sup>13</sup> to the Financial Sector Regulation Act. Additionally, it is proposed that the legislative provisions be made flexible enough to expand the scope of the central unclaimed retirement benefit fund to accommodate the inclusion of other assets.

## Developing an unclaimed assets identification, management and reporting framework

- 3.9. It is proposed that the immediate focus should be on developing a framework for the identification, monitoring, tracing (including creating consumer awareness) and reporting (to the FSCA) of all unclaimed assets. This process must include the development of common definitions specific to different asset classes. Monitoring the use of the definitions in practice will provide valuable insights into their effectiveness and appropriateness. There seems to be general support for such a framework.

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<sup>13</sup>Pension Funds Act, No. 24 of 1956

- 3.10. In addition to the reasons already mentioned, creating a standardised framework for unclaimed assets is important as it will assist all stakeholders to have a clear understanding of what constitutes an unclaimed asset across various product categories. It will prevent ambiguity and ensure consistent practices in identifying and managing unclaimed assets. It will further recognise the importance of consumer awareness by providing for requirements to educate consumers about the existence of unclaimed assets and how to find and claim them.
  - 3.11. The framework is expected to enhance the overall transparency and accountability of financial institutions in handling unclaimed assets. It will facilitate the reporting of such assets to the FSCA, enabling better oversight and regulatory compliance. The data collected through this reporting will help us gain a better view of the scale and nature of unclaimed assets within the financial sector, which, in turn, will inform future developments.
  - 3.12. We also intend for the framework to address conflicts of interest. We noted from the comments received, that some respondents were concerned that transferring unclaimed retirement fund benefit assets to the Central Fund may directly affect service providers (including administrators, asset managers, trustees, auditors, and tracing agents), impact their income, the capital of prudentially regulated entities and potentially resulting in job losses. This raises questions about the way financial institutions currently manage conflicts of interest.
  - 3.13. While institutions have a responsibility to reunite unclaimed assets with their beneficial owners, the more successful they are in doing so, the greater the negative impact on their profitability (through the loss of fees, interest, etc.). As a result, there may exist a significant business incentive to refrain from tracing beneficial owners. This can be resolved by adjusting the way in which financial institutions are remunerated for services rendered in respect of unclaimed assets. However, it is important to consider the consequential impact it may have on the active customers of the institution as it may result in increased costs or fees for such customers.
  - 3.14. Another approach is to impose tracing requirements and to penalise institutions who do not comply with those requirements (including naming and shaming). This may make it more costly for institutions to not trace beneficial owners.
  - 3.15. It is therefore important to prioritise the management of conflict of interest within the unclaimed assets framework. Monitoring conflicts should also be given high priority, particularly for institutions most affected by such conflicts. To ensure transparency, reporting on unclaimed assets should include the percentage of fees or income earned from unclaimed assets in relation to total fees or income. This will allow for better monitoring of how institutions exercise their duties whilst managing potential conflicts of interest.
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## NEXT STEPS

- 3.16. Our immediate next step will be to develop a framework that outlines the requirements relating to the identification, monitoring, management, tracing and reporting of unclaimed assets. The framework is an important component of our objective to enhance transparency, accountability and effectiveness of managing unclaimed assets, and reflects our commitment to address unclaimed assets in a systematic and well-structured manner.
- 3.17. To ensure the success of this work, we will continue to actively engage all relevant stakeholders to obtain their insights, expertise and perspectives. We intend to approach industry representative bodies for assistance in developing an unclaimed assets taxonomy. We further aim to solicit input and feedback from the broader public and relevant stakeholders on the proposed framework for unclaimed financial assets in South Africa before the end of 2024. A collaborative approach is vital in ensuring that the framework is practical, recognises the unique characteristics of the various types of assets and achieves its intended purpose.
- 3.18. In parallel with the above, we will continue to support the National Treasury in its efforts to establish a central unclaimed retirement benefit fund.

## ANNEXURE A: LIST OF RESPONDENTS

1	GIG Co Operative Financial Institution
2	TDF Fund Administrators (Pty) Ltd
3	Guardrisk Life, Guardrisk Insurance and Guardrisk Microinsurance
4	JSE - Market Regulation
5	Fedgroup
6	Engineering Industries Pension Fund (EIPF)/ Metal Industries Provident Fund (MIPF)
7	OUTsurance Insurance Company Limited; OUTsurance Life Insurance Company; and OUTvest (Pty) Ltd
8	Acrainvest (Pty) Ltd
9	Naxex Invest Ltd
10	Free Market Foundation
11	Fairheads Benefit Services (Pty) Ltd
12	Jeremy Andrew
13	Institute of Retirement Funds Africa NPC
14	Centriq Life Insurance Company
15	Actuarial Society South Africa
16	Carol Lenzi (Independent Consultant)
17	Professional Provident Society
18	Banking Association South Africa
19	Computershare Investor Services (Pty) Ltd and Computershare (Pty) Ltd
20	Office of the Pension Funds Adjudicator
21	Government Employees Pension Fund
22	Batseta Council of Retirement Funds for South Africa
23	Hollard Insurance
24	The Financial Planning Institute of Southern Africa
25	JSE Investor Services Proprietary Limited
26	Old Mutual
27	Liberty Holdings Limited
28	Old Mutual SuperFund Pension and Provident Funds, the Protektor Preservation Pension and Provident Funds, and the Old Mutual SuperFund Unclaimed Benefits Preservation Pension and Provident Funds
29	The Association for Savings and Investments South Africa
30	KwaZulu-Natal Joint Municipal Pension and Provider Funds
31	The South African Institute of Stockbrokers
32	Evo Brokers CC
33	HCJ (Monus) Flemming
34	Henk Kruger (Nyala Capital)
35	Business Unity South Africa
36	Labour Federations



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