UMACA

Unclaimed Moneys Act Compliance & Administration

The Law and Practice of Unclaimed Moneys in Malaysia

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Chapter Six

Claiming your Unclaimed Moneys

The practice of making a claim will be reviewed in this chapter. Firstly, the opportunity to discover one's missing money will be examined, including the right of inspection at the Trust & Securities Department of the Accountant-General's Office.

Following this, the actual practice of making a claim will be examined, including the major role the entity plays in the claims process, as well as the Registrar's many requirements for making a claim.

Do you know what you're missing?

Moneys usually get lost and remain unclaimed because owners are not aware of the loss. In Malaysia, the opportunities you have to discover unclaimed moneys is to

1. make an enquiry with the Registrar;
2. read the Unclaimed Moneys Gazette diligently;
3. do a thorough audit of your finances.

Any of these might not yield any results, in any case. This is because there is no full proof method of determining what exactly belongs to you, or if anyone gave you a gift.

This book will only deal with the first two points.

Enquiries with the Registrar

As discussed briefly in Chapter 1 "History of Unclaimed Moneys", the UMA, in its pre-2002 form, allowed public inspection of the Register of Unclaimed Moneys at the Registrar's office. Any person could, on the payment of three ringgit, inspect the copies of the entries lodged with the Registrar at such place and time prescribed by the Registrar.[1]

Several years ago, being aware of this provision, the authors had sought to make a public inspection. However, we were informed over the counter at the Registrar's office that we could not make such an inspection, as there were no rules or procedure for this. This was notwithstanding the statutory right afforded by the Act.[2]

After the 2002 amendments, the corresponding provision[3] states that any person may make any enquiry as to the existence of unclaimed moneys *belonging to him* with the Registrar on payment of a prescribed fee.

As such, the right of the public to inspect the register generally was removed and only owners of the unclaimed moneys only are now allowed to make an enquiry. This, as discussed, assumes that owners know what they had lost in the first place. And, although this provision appears simple, the reality of making this enquiry is very

different.

As with the earlier experiment, the authors once again sought to make an enquiry, as provided for by s. 10B of the Act, over the counter at the Registrar's office in Menara Maybank. This time, the authors sent their agent, with two savings pass books from the 1980s, the sums in which would by now be with the Registrar of Unclaimed Moneys. The purpose of the experiment was to ascertain if:

1. there was procedure to make an enquiry since the amendments came into being; and
2. the Registrar would recognize the agent's authority to make such an enquiry.

Unfortunately, the result of this experiment was no more encouraging than that of the previous experiment. The authors' agent was informed that in order to determine if there were any unclaimed moneys to be claimed, we had to ask the entity in question for confirmation, notwithstanding the evidence of the savings pass books. It appears that no procedure exists for such an enquiry and that no fee has been prescribed.

As such, it appears there is no workable way for the public to find out from the Registrar if any of their moneys has been deposited with him. This, in essence, would appear to defeat the entire purpose of the Act, considering that the office of the Registrar was established to be the custodian of unclaimed moneys.[4]

The Unclaimed Moneys Gazette

As discussed in Chapter Four "Reporting and Submission of Unclaimed Moneys",[5] the concept of publishing official notices in a Government Gazette is taken as valid notice to the public of the matters contained therein. W We also discussed in Chapter Four how simply publishing notices in the Gazette was generally unsuccessful in terms of giving effective notice to the public. The general populace do not generally subscribe or read the Gazette.

Furthermore, if one does not know *when* exactly or *what* exactly one has lost, browsing the thousands of Gazette volumes annually needs to be a habit, so as to determine if one has unclaimed moneys.

To compound the difficulty, the date on which a sum of unclaimed moneys went to the Registrar would be determined by whether the money became unclaimed, in the legal sense under the Act, before or after 2002.

For example, if you are trying to reclaim moneys from a savings account you just remembered you had, but have no proof of ownership (like a savings pass book), you would need to know:

1. when the last time you operated the account; and
2. add to this seven years; and
3. add to this two years for the reporting and submission process if the amount became unclaimed before 2002; *or*
4. add to this one year for the reporting and submission process if the amount became unclaimed after 2002.

Once you determine this, you would know when the amount went to the Registrar. But you will still need to trawl through four or five thousand pages of printed Unclaimed Moneys Gazette, in fine print, to look for your entry.[6]

The practicality of the above exercise need not be discussed, considering how unlikely it would be for someone who has unclaimed moneys to be able to fix clearly in his head the date on which he last he operated his bank account. It is likely that these moneys will remain forever unclaimed, to the detriment of the owner or his kin.

Possible Solutions

As suggested in Chapter Four "Reporting and Submission of Unclaimed Moneys", there seems good reason for the Gazette to be made available online in this digital age. In 2007 the government launched its new Financial and Management Accounting System, through which the Registrar of Unclaimed Moneys disburses payments.[7] Perhaps some re-engineering of this database is in order to provide a more transparent system for holders of unclaimed moneys.[8]

In other countries, the relevant Registrars are happy to publish government Gazettes on the Internet. Principle examples can be found in the USA and Australia, where the authorities work very hard to publicise lists of unclaimed moneys. Making the Malaysian information available through digital technology would surely be to the advantage of the public when it comes to determining whether or not they have unclaimed moneys waiting for them.

Making A Claim

Under s. 10(6) of the UMA:

> *Where the unclaimed moneys have been lodged with the Registrar, the owner of the unclaimed moneys may recover the moneys from the Registrar in accordance with the provisions of this Part.*

Also, s. 13 of the UMA states:

> *Registrar to pay lawful claimant*
>
> *13. (1) If any claimant makes any demand against the Registrar for any unclaimed moneys credited to the Consolidated Trust Account, the Registrar upon being satisfied that the claimant is the owner of the money shall authorize payment thereof to be made to him out of the Consolidated Trust Account or, if the money had been transferred to the Consolidated Revenue Account, the Minister shall direct payment of a like amount to be made to him; and such amount shall be charged upon the Consolidated Fund and be payable out of the Consolidated Revenue Account.*
>
> *(2) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person that other person shall not be entitled to the payment thereof, but such person may have recourse against the claimant to whom the unclaimed money has been paid.*

The statutory provisions above are the few that remain unchanged after the 2002 amendments. However, what the 2002 Act has caused is the abolition of the subsidiary legislation dealing with claims, namely the Unclaimed Moneys Regulations 1976.[9]

The Registrar has his own rules and guidelines to make a claim. These are set out in the Guidelines and also in notices in the Registrar's office. However, it is interesting to note the powers to make regulations lie with the Finance Minister, and with not the Registrar. Consequently, it is hard to see how these procedures and processes have any legal force at all.[10]

Although the pre-2002 Act had simple provision dealing with the claims process, namely that the claims "shall be in Form UMA 7",[11] at least this was legal standing. The UMA 7 now has no legal force, but the practice of using the UMA 7 form has continued after 2002.

This form, together with an array of other forms[12] prescribed by the Registrar, is now required for the processing of a claim of reimbursement of unclaimed moneys.

Documentation Required for a Claim

We have, above, raised the question of whether the Registrar's procedural rules and guidelines have any force in law. In practice, however, unless the Registrar "satisfied" with a claim, he will not issue any refund payment. So in practical terms, therefore, if a claimant wants to recover his money, he needs to know what the Registrar expects.

According to point 9.1 of the UMA Guidelines,

> *To allow for the refund of unclaimed moneys, the claimant must satisfy the Registrar that he is the rightful owner or has a legal right over the unclaimed moneys.*

This corresponds with s. 13(1) of the UMA, in that the Registrar needs to be satisfied that the claimant is the owner of the money.

The UMA Guidelines then list out the following documents as means of evidence of ownership or having the legal right over the unclaimed moneys:

1. a copy of the form UMA 7, duly completed and signed;
2. the <u>original</u> (*the Registrar's emphasis*) document showing ownership on the money to be claimed;
3. a photocopy of the claimant's identity card. In the case of a foreign national, a photocopy of the pages in his passport showing the passport number, country of issue, name and photograph of holder.
4. in the case of a corporations or businesses, the employee of the claimant corporation or business must sign the UMA 7 form, stating clearly his name and position, and the claimant corporation's or business' rubber stamp must be affixed on the form.
5. in the cases where the claimant is not the original owner but has a legal right over it, the following documentary proof is necessary:
    a. letter of authority from the original owner authorising the agent's claim on behalf of the original owner; or
    b. Letters of Administration; or
    c. Grant of Probate; or
    d. Power of Attorney; or
    e. Forms E/F under the Small Estates (Distributions) Act 1955;[13] or
    f. a Court Order.

In addition, with effect from 1st July 2007, all unclaimed moneys refunds issued by the Registrar have been credited directly into the claimants' bank accounts through electronic funds transfer. As such, claimants are also required to include:

6. a copy of their bank statement / bank account; and

7. fax number or email address.

Finally, when a claim is made by third party claimants (i.e. agents acting on behalf of another person, business or corporation), the original claimant is required to fill in an indemnity bond, promising to indemnify the Registrar of any action taken against him for the refund.

The Problems

For the most part, the documents required to process a claim are not contentious. The biggest problem for any claimant lies with the documentation under point 2) above, i.e. the original documentation showing ownership, and final point above, the indemnity bond. These will be examined in turn.

Proof of ownership

Having the original documents showing proof of ownership is likely when you know what you have lost. As has been discussed through this book, when money has been left unclaimed for some time, it is likely that the money is forgotten, along with any documents showing proof of ownership.

The UMA Guidelines state:

> *Where the claimant is unable to produce the original document showing ownership of the money to be claimed… he has to obtain a letter of confirmation (providing details of the money being claimed) from the entity that forwarded the unclaimed moneys to the Registrar.*

This does not provide total relief to those seeking to reclaim their unclaimed moneys, because:

1. They might not know who owes them the money;

2. If they *actually are aware of* what is owed to them, going back to the original debtor is a possibility. However, they then need to tell the original entity in what year the money fell due and also what it was for;

3. If they do manage to give the details in point two above, the entity in question needs to find the documents indicating that the funds had been transferred to the Registrar. So there is the issue of:

    a. the entity actually being able to find these records and process them for you, or

    b. whether the entity has destroyed the records already. As discussed in Chapter Four "Reporting and Submission of Unclaimed Moneys", most businesses do not keep their financial records beyond seven years.

    c. what happens when the entity is the Accountant-General (who is also the Registrar of Unclaimed Moneys). According to TPR Network (M) Sdn Bhd, there were almost one thousand Unclaimed Moneys Gazette in 2006 with "*Jabatan Akauntan Negara Malaysia*" (Accountant General's Department of Malaysia) listed as the reporting entity.

In addition to the above difficulties, a claimant with no original document proving ownership has the problem that the original debtor, the entity which made the deposit to the Registrar, *is not obliged by law or otherwise*, to assist the claimant in any way. Nowhere in the UMA does it state the entity has the duty to do anything once it has fulfilled its obligations of reporting and submission.

As such, it is perfectly acceptable for the entity to turn the claimant away, telling him that it has more pressing matters to deal with,than dig through its archived financial records, which may be already in storage in a warehouse elsewhere.

Although the situation outlined above is rare, in practice, entities have not usually turned claimants away. Rather, the entities to place little priority on tracing the original records and composing a letter of confirmation for the claimant. In cases of bad filing or recording, the simple matter of obtaining these documents can take years.[14]

It is difficult to understand why the Registrar will not accept, as a simple case of documentation, the entry in the Gazette as proof of entitlement to claim. As discussed in Chapter One "History of Unclaimed Moneys", s. 119 of the Interpretation Acts 1948 & 1967[15] states that all printed copies of the Gazette are "…*prima facie* evidence of the proclamations, regulations, orders, appointments, notifications and other publications therein printed, and of the matters and things contained in such proclamations, regulations, orders, appointments, notifications and publications respectively."

Perhaps the Registrar's requirements might be justified prior to 2002, when there was a time lag of about one year between the reporting and the submission of unclaimed moneys. As such, a claimant might have reclaimed the moneys directly from the entity during that one year notice period. However, since the 2002 amendments, the reporting and submission of unclaimed moneys occur at the same time, and as such, there is no time during which a claimant could reclaim the sums from the entity in question.

The Indemnity Bond – UMA 8

Historically, the UMA 8 was established under rule 6 of the Unclaimed Moneys Regulations 1976, which states:

> 6. *The Registrar may require any claimant to sign an indemnity bond in the form of UMA 8 of the Schedule before any unclaimed moneys are payed to the claimant…*

As has been discussed, the 1976 Regulations were abolished by the 2002 UMA. Again, although the regulations have been deleted, the form is still used in practice. The UMA Guidelines state:

> *If the claim is for the refund of moneys wrongly sent to the Registrar as unclaimed moneys, documentary evidence to show proof that the money originally sent by the entity actually belongs to the entity has to be furnished. In addition the entity is also required to fill in an indemnity bond.*

From this, it appears that the form of UMA 8 was originally intended for use when an entity (the depositing organisation), for some reason, asks to take back money that it had previously deposited with the Registrar. Historically, it was not designed for use by claimants. However, in recent years, the Registrar has been requiring claimants, particularly when acting through third party agents and representatives, to complete the UMA 8 as well.

The UMA 8 states:

> I,_____, NRIC No _____, of _____, on my own behalf/on behalf of company/firm

> _____, who is claiming unclaimed moneys of the amount RM_____, which has been deposited by company/firm_____, in consideration of the Registrar of Unclaimed Moneys making payment of the stated unclaimed moneys, hereby agree to hold harmless and indemnify the Registrar of Unclaimed Moneys of all costs, losses and other incidental expenses arising out of any action, proceeding, claim or demand brought by any person against the Registrar of Unclaimed Moneys by virtue of this payment to me.

Notwithstanding this practice, s. 13(2) of the UMA states:

> *Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person that other person shall not be entitled to the payment thereof, but such person may have recourse against the claimant to whom the unclaimed money has been paid.*

As can be seen, the UMA protects the Registrar from any further demands once payment has been released to a claimant. The Act already affords the Registrar total protection once he releases the unclaimed moneys, and that all claimants after this has only recourse against the first claimant. Therefore, it is not clear why the Registrar requires the UMA 8 as part of the claims documentation.

Miscellaneous Problems

There are two other requirements which immediately brings to mind potential problems for claimants.

The first problem is having to give a copy of their bank statement or bank account. Firstly, some people, especially businesses, are not keen on divulging their financial records to outsiders. However, this is solved by blanking out the actual banking statement, leaving the details on the top of the statement for the Registrar as verification of their account. However, the necessity of obtaining the bank statement is questioned. If a claimant gives the Registrar a demand in writing to transfer the funds to certain bank account, surely the Registrar has no right to question the demand? The Registrar is either a debtor or a trustee of the claimant, and as such a written demand that the funds should be transferred to a specified account is sufficient.

Secondly, some people do not have bank accounts. This is especially so with people who work as labourers, temporary workers and estate workers. This creates a two-fold obstacle for the claimant:

1. opening a bank account, or
2. getting the Registrar to accept instructions to pay into a nominee's account.

The other problem in terms of the Registrar's requirements is the fax number *or* email address of the claimant. Again, not everyone has a fax number or email address, especially those workers outlined above. Furthermore, with Internet penetration only in the urban areas for those who are better off, requesting either a fax number of email address marginalizes the greater number of Malaysians living in the rural areas.

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FOOTNOTES

[1] see the previous s. 10(4) of the Act.

[2] see s. 10(4) of the UMA.

[3] see s. 10B of the UMA.

[4] see Chapter One "History of Unclaimed Moneys", *supra.*

[5] *supra.*

[6] Keeping in mind that, the publication in the Gazette is one year after your moneys became legally 'unclaimed moneys' for the purposes of the Act. See Chapter Two "Definition of Unclaimed Moneys" (*supra*).

[7] see "Dewan Rakyat Quicker Payment of Unclaimed Monies", the New Straits Times, 29th March 2007.

[8] Perhaps no re-engineering is even necessary, just the correct 'front' or user-defined module needs to be incorporated only.

[9] see s. 14(1) of the Unclaimed Moneys (Amendment) Act 2002 (Act A1161).

[10] see s. 15 of the UMA.

[11] see r. 5 of the Unclaimed Moneys Regulations 1976.

[12] see *post*.

[13] Act 98.

[14] In some cases, there will be a change of staff in the entity, causing even greater delays in obtaining the letter of confirmation.

[15] Act 388.

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