

THE
INVESTMENT
ASSOCIATION

SLAUGHTER AND MAY

DORMANT ASSETS SCHEME

Summary of Transfer & Agency Agreement for prospective firms

January 2024



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Purpose

The purpose of this document is to provide guidance to investment and wealth managers who are considering participating in the voluntary Dormant Assets Scheme (“Scheme”). The intention is that the Scheme will be expanded during the course of 2024 to include the investments sector.

Once an investment and wealth manager agrees to participate in the Dormant Assets Scheme, the manager (as a “Participant”) and Reclaim Fund Ltd (“RFL”) (as the operator of the Scheme) will enter into a Transfer and Agency Agreement (“TAA”).

The TAA will provide the framework within which the relationship between the Participant and RFL will be governed in relation to the transfer of dormant asset balances pursuant to the Scheme and the operation of the Scheme thereafter. The TAA comprises:

- a “common core” of provisions which apply across all sectors, and which ensure that the Scheme operates in the same way across all sectors;
- a number of sector-specific provisions, which take account of specific nuances of the relevant asset class which the Participant is transferring into the Scheme (but do not fundamentally change the fact that the Scheme operates in the same way across all sectors); and
- a number of template forms, certificates and notices which a Participant will need to use when participating in the Scheme. These are essentially the same for all sectors, although Participants must use the sector-specific version which is set out in the relevant TAA.

In addition, RFL has produced sector-specific Handbooks which sit alongside the TAA and provide practical information on, and summaries of aspects of, the Scheme.

The TAA has been negotiated at sector-level and the agreed form of the TAA will be binding on the Participant once entered into, with no scope for amendment by individual Participants.

1. Transfer of dormant assets

Under the TAA, the Participant is entitled to (at its discretion) transfer any or all of its dormant assets to RFL and RFL may (at its discretion) accept these. The TAA outlines the categories of dormant assets that can be transferred under the Scheme and the processes to be followed by the Participant in doing so.

2. Ongoing responsibilities of the Participant and RFL

The TAA sets out various ongoing responsibilities of both the Participant and RFL.

Most notably, the Participant remains solely responsible for managing and/or administering the relationship with the relevant dormant asset holder. In addition, while participating in the Scheme, the Participant will have a number of key responsibilities to ensure the smooth operation of the Scheme – for example, the Participant is responsible for retaining pre-existing records, and periodically submitting data to RFL in respect of the dormant assets, as well as dealing with any reclaims made by (or on behalf of) the relevant dormant asset holder.

RFL's responsibilities include using reasonable endeavours to co-operate with the Participant in investigating any reasonable queries or complaints raised by the Participant or by any dormant asset holder in relation to a transferred dormant asset or a reclaimed asset and reimbursing the Participant in respect of any valid reclaims which are paid out to dormant asset holders (see "Repayments and reimbursements" below).

3. Repayments and reimbursements

If a dormant asset holder (or someone who purports to be the dormant asset holder) requests repayment of or indicates an intention to transact or make a valid claim in respect of a transferred dormant asset, the Participant must promptly investigate the validity of the holder's entitlement and determine the amount owing to the holder. Subject to satisfying itself of the foregoing, the Participant, as agent of RFL, must then repay any such amount to the dormant asset holder.

If the Participant makes a repayment to a dormant asset holder during a relevant repayment period, the TAA outlines the process in terms of which a Participant should submit a "Reclaim Certificate" (on a quarterly basis) in order for RFL to reimburse the Participant in respect of the appropriate amount as set out therein.

4. Participant liability towards RFL

Maximum liability

Except for certain matters which relate to areas which cannot be capped as a matter of law or which the parties have agreed will not be capped, the Participant's overall maximum liability is limited to the greater of:

- an amount referred to as the "Liability Cap Floor Amount"; and
- 100% of the total dormant asset balances transferred to RFL by the Participant under the TAA and any other arrangements relating to the Scheme.

This cap will apply to all Participants on the same basis.

In terms of the latest draft of the TAA, the investments sector and RFL have agreed that, as of 5 June 2023, the Liability Cap Floor Amount is £100,000,000. This Liability Cap Floor Amount will be adjusted upwards on 1 February 2024 and on each anniversary thereafter in line with CPI.

The liability cap operates to provide a maximum overall liability which the Participant has under the TAA towards RFL. The liability cap does not mean that RFL can automatically claim losses at the full value of

the liability cap if the Participant does something wrong – the value of any claim would need to reflect RFL's losses as a result of such incident, and the nature of the warranties given by the Participant that relate to the liability cap (such as data accuracy warranties) means that, in practice, such a claim would likely be significantly lower than the liability cap. See also the “Background and rationale” section below.

The structure of the Participant's liability cap under the TAA is also in line with a typical structure for a commercial agreement. The TAA provides an aggregate (overall) cap and, once the Participant's transferred dormant asset balances exceeds the amount of the cap of £100,000,000, as adjusted from time to time (i.e. the lower of the limits), the amount of overall liability will increase in line with the amount that a Participant transfers into the Scheme. This is justified based on the potential risks and benefits to the parties under the Scheme, and the fact that these increase in line with a higher transfer value. As mentioned above, the liability cap also contains a number of typical exclusions and RFL's liability cap is set at the same level as the Participant's cap.

Background and rationale

The liability provisions under the TAA are the outcome of a detailed risk assessment by RFL and endorsed by HM Treasury (as RFL's ultimate parent) following extensive engagement with the industry. Prior to the introduction of the new TAA in 2023 (which is intended to be used once the expanded Scheme opens to the investments sector in 2024), the Scheme had, since 2011, operated on the basis of unlimited Participant liability.

One of the purposes of the TAA is to outline the Participant's performance obligations to support the successful operation of the Scheme by RFL for the benefit of all Participants, and RFL places considerable reliance on the actions of, and information provided by, Participants. Generally speaking, the obligations of the Participant under the TAA are matters which (but for the transfer of the dormant asset balances to the Scheme), the Participant would in any event be fully responsible for towards its customers (on a potentially unlimited basis).

5. Miscellaneous

Term

The TAA has an initial term of five years - although the amount and regularity of dormant asset transfers throughout such term is entirely at the Participant's discretion. The initial five-year term will extend automatically by one year on a rolling basis unless either the Participant or RFL give notice not to extend the initial term or renewal period.

It should be noted that, in respect of dormant assets which have already been transferred to the Scheme prior to termination or expiry of the TAA, the Participant's obligations (e.g. in relation to managing and administering the customer relationship, keeping records and dealing with reclaims) will continue after such termination or expiry of the TAA. However, the Participant will no longer be able to transfer additional dormant assets to the Scheme from the date of expiry / termination.

Publication of Scheme details by RFL

The TAA also grants RFL certain publication rights, including the right to publish an annual report setting out the names of the participating institutions (including the Participant), an account of dormant asset balances transferred by each participating institution, and an account of reclaimed balances in respect of each participating institution and repaid (or credited) by each participating institution to each relevant dormant asset holder.

This summary has been produced by the IA as a guide only of certain legal terms in the TAA that may be of interest to Participants when considering whether to participate in the Scheme and is not intended to be a comprehensive and all-inclusive summary of all the provisions in the TAA. The TAA includes further provisions relating to the terms that have been summarised in this guide, as well as standard terms and conditions typically found in commercial contracts.

The guide is not intended to provide regulatory or legal advice and will need to be interpreted in the specific context of each potential participant, subject to such participant's own judgement. Each potential participant is encouraged to read the full TAA and seek its own independent advice where necessary.

Whilst Reclaim Fund Ltd has reviewed this summary, neither Reclaim Fund Ltd nor the IA accepts any responsibility for its contents.

The guide is published in January 2024 and takes effect from that date.

With thanks to Slaughter and May.



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