

***Important notes on the Guidelines about Discretionary Grants
where the Dissolved Company
cannot be restored***

1. The attached Guidelines give you information you need about applying to the Treasury Solicitor for a discretionary grant. Please read the Guidelines carefully.
2. If you want to apply for a grant, please follow our requirements set out in the Guidelines and complete and return the attached questionnaire to us at 1 Kemble Street, London WC2B 4TS.
3. We need two proofs of your identity and the identity of all other parties involved (see paragraphs 12 to 15 of the Guidelines).
4. Please also complete and return to us the attached questionnaire with **FULL REPLIES**. We cannot take your application forward until you have given us **ALL** the required information.
5. You will have to contribute to our costs and disbursements for dealing with your application. This will usually be deducted from the amount of the grant.
6. We are not permitted to give you legal advice, so you should consider instructing your own solicitor if you have not already done so.
7. If you employ a solicitor to act for you, please let us know their name, address and reference as soon as possible, and show them a copy of these Guidelines.
8. These Guidelines only apply if the company **cannot** be restored to the Register. Separate Guidelines (Form BVC 2) apply if the company **can** be restored to the Register.
9. **This is a simple guide and cannot cover every circumstance. Each case will be dealt with on its own merits, and the right to vary or depart from the attached Guidelines at any time without notice is expressly reserved.**

THE TREASURY SOLICITOR

BONA VACANTIA DIVISION

Guidelines about Discretionary Grants where the Dissolved Company cannot be restored

Background

1. When a company that was registered under the Companies Act is dissolved, all its property and rights in England and Wales (but not its liabilities) pass to the Crown as bona vacantia, (meaning “ownerless property”) because of Section 654 of the Companies Act 1985.
2. If the company’s last registered office was in England or Wales (other than in the Duchies of Cornwall or Lancaster) we are nominated by the Crown to deal with its property.

What we can do for you

3. Bona vacantia property belongs to the Crown, and the Crown is not obliged to deal with it in any particular way. Normally, it will be disclaimed (i.e., the Crown gives up its rights to the property) or sold, and the proceeds of sale will be transferred to the Exchequer to be dealt with in the same way as money raised by general taxation.
4. Although bona vacantia assets belong to the Crown, the Crown can give part or all of them away by a grant from the Treasury Solicitor. This power is discretionary. No one has any right to a grant. However, the power must be exercised fairly and it is up to the Treasury Solicitor to decide whether to make a grant.
5. These Guidelines only deal with cases where it is not possible to restore the company. You can obtain guidance from Companies House, Crown Way, Maindy, Cardiff CF14 3UZ (www.companieshouse.gov.uk) on whether or not a company can be restored to the Register.

How it works

6. Our policy is to make such grants only where
 - it would alleviate hardship,
 - it would otherwise be unreasonable or unconscionable for the Crown to keep the assets, or
 - there is a compelling public interest in making the grant.
7. We will consider each case on its own merits and we will make only one grant in each case.

8. We will usually only consider applications for discretionary grants from the following people:
- a former liquidator, to distribute as if s/he were still the liquidator of the company, or
 - former members, provided that the company was solvent when it was dissolved.
9. In exceptional circumstances we may consider applications from other people.
10. We will usually only consider making grants out of money that we have received. Grants will not usually be made of other types of assets themselves, or from the proceeds of sale of other types of assets. Although we may consider applications for discretionary grants of assets other than money, it may not be practical to make such a grant if (for example) someone else has acquired some rights to the asset, or is in possession of the asset.
11. The factors that we may consider include:
- the size and nature of the bona vacantia asset
 - whether any statutory or other remedies are or have been available to the applicant
 - the extent to which the applicant has contributed to the asset becoming bona vacantia
 - the length and nature of the relationship between the applicant and the dissolved company
 - any legal obligations that the company had towards the applicant before it was dissolved
 - any hardship to the applicant caused by the asset becoming bona vacantia
 - other grounds that would make it unreasonable or unconscionable for the Crown to keep the asset
 - any public interest issues
 - whether there would have been any tax payable, either by the applicant or the company, if the asset had been distributed or dealt with in the course of either trading by the company or in the course of a winding up of the company
 - any rights to the asset that someone else may have or may be acquiring; and
 - who (if anyone) is in possession of the asset.

Proof of identity

12. In considering your application, we will need to see satisfactory proof of identity including:
- current passports or UK photocard driving licences of all the parties applying for the grant, and
 - a utilities bill or bank statement (not more than 3 months old) addressed to each of the parties at their home address.
13. Either the originals must be produced, or copies certified as true copies by a practising solicitor, accountant, doctor or high street bank manager. The copies should be certified by stating that:
- 'I hereby certify that this document represents a true and complete copy of the original now produced to me'*
14. The person certifying the documents should sign and date them, and state their full name and business name and address.

15. If one or more of the parties involved is a company, we will need the same proof of identity for the officers or members of the company with whom we are dealing.

What to do next

Members

16. In the case of an application **by former company members**, you will need to provide us with a Statutory Declaration signed by **all** of the former members (or by the personal representatives of any members who have since died) in the presence of a practicing solicitor. Guidance on the formalities required for Statutory Declarations is set out below in the section headed "Statutory Declarations".
17. A Statutory Declaration supporting an application for a discretionary grant must include all of the following statements (where appropriate):
- that collectively you and they were the only members of the company at the date of its dissolution,
 - that there were no outstanding creditors of the company at the date of its dissolution **or** that all creditors have since been paid in full,
 - that if creditors come forward, you will return any grant made on demand,
 - who the grant should be made payable to,
 - that you acknowledge that our proper legal costs plus disbursements will be deducted from any grant, and
 - that (if appropriate) the company was not registered for Value Added Tax (VAT).

The Statutory Declaration **must** also address the relevant factors in paragraph 11 above.

18. You will also need to provide:

- a) a letter from HM Revenue & Customs confirming that the company did not owe any corporation tax or National Insurance contributions at the date of its dissolution,
- b) a letter from HM Revenue & Customs confirming that the company did not owe any VAT at the date of dissolution (if appropriate),
- c) proof of identity as set out in paragraphs 12 to 15 above, and
- d) an office copy of the grant of Probate or Letters of Administration in respect of any deceased members (if appropriate).

19. We will make grants only to members (or their personal representatives) who were registered as members of the company at the date of its dissolution in the '*Register of Members*' filed at Companies House. Former directors of the company are not eligible for a grant unless they were also members.

20. In the case of companies where the Companies House records indicate that the formation agents were the last and only members, usually only they are entitled to apply for a discretionary grant. Such cases should be brought to our attention as soon as possible.

Liquidators

21. Applications **by former liquidators**, will need to be accompanied by a Statutory Declaration, which has been signed in the presence of a practicing solicitor.
22. A Statutory Declaration in support of an application for a discretionary grant must include all the following statements (where appropriate):
- that you were the liquidator of the company at the date of its dissolution,
 - that any grant will be distributed as if you were still the liquidator of the company,
 - that you acknowledge that our proper legal costs plus disbursements will be deducted from any grant, and
 - who the cheque should be made payable to.

The Statutory Declaration **must** also explain why you are seeking a payment, covering the relevant factors in paragraph 11 above.

Other applicants

23. **Other applicants** will need to provide a Statutory Declaration, which has been signed in the presence of a practicing solicitor.

24. A Statutory Declaration in support of an application for a discretionary grant must:

- set out all the facts that you believe demonstrate the exceptional circumstance that would make it unreasonable or unconscionable for the Crown to keep the money or asset that you are claiming,
- cover the relevant factors for the making of a grant as set out in paragraph 11 above,
- acknowledge that you will pay our proper legal costs plus disbursements before any grant is made, or that these will be deducted from any grant we make, and
- tell us whom the grant should be made to (if appropriate).

Statutory declarations

25. A practising solicitor must witness the Statutory Declaration in support of the application. The full name of the solicitor who witnesses the Statutory Declaration and the name and address of the solicitor's practice must be clearly shown on the Statutory Declaration. Statutory Declarations that appear to the Treasury Solicitor not to comply with these requirements will not be accepted. The Treasury Solicitor acts only for the Crown and cannot offer you advice on how the Statutory Declaration should be drafted. You must take your own independent legal advice on the form, content and effect of the Statutory Declaration.

26. By way of an indication and not by way of advice, the Statutory Declaration should commence with the words;

'I [full name] of [full address] solemnly and sincerely declare....'

and end with the words:

'and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835'

Declared at

this day of 200.

before me

Solicitor/Commissioner for Oaths'

Money laundering

27. In accordance with good practice, and with the aim of preventing money laundering, the Treasury Solicitor operates in accordance with the principles laid down in Part VII of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

28. For that reason, the Treasury Solicitor makes such enquiries as are deemed necessary to comply with the Act and the Regulations, including obtaining evidence of identity from those with whom we do business and retaining such evidence in accordance with our record-keeping procedure.

Please note

29. You should take professional advice on the important information in this document. It is not our role to give you legal advice. We provide this information as guidance only. We accept no liability for its accuracy and we reserve the right to change or depart from the guidance at any stage.
30. We will not usually make a grant if the applicant knew (or ought reasonably to have known) that the asset had passed to the Crown as bona vacantia following the dissolution of the company, and did not have the company restored to the register when it was possible to do so, unless there are valid reasons. The normal operation of the law of bona vacantia does not, by itself, amount to a valid reason.
31. Once you have provided us with the appropriate Statutory Declaration, we will consider your application for a discretionary grant on its merits. We will make a decision based on all the information available to us, and we will then tell you our decision as soon as possible.
32. If we have not yet received a cash balance from the company's bank, please provide us with the dissolved company's bank account number, sort code and branch name and address.
33. If we do make a grant, you will be required to pay our proper costs and disbursements. We do not charge VAT on these costs. Our costs will usually be deducted from the amount of the grant that we make.
34. In deciding the amount of a grant, we will take into consideration any tax liability that would have been payable if the company had not been dissolved and the asset had been transferred to the applicant by the company. We will also take into account any interest that would have been payable on the unpaid tax.
35. We need the specific consent from the Treasury before we can make a grant of more than £50,000. In these cases, the Treasury may also require a proportion of the fund to be kept by the Crown as the "*Crown's Share*", although in certain circumstances the Treasury may agree to waive this.
36. If it is possible that you have a claim against another person for any loss suffered as a result of the dissolution of the company, the application will not be considered until that possibility has been resolved
- 37. We emphasize that any grants we make and the terms upon which any grant is made are entirely discretionary. If we are not satisfied on any of the above points we will not make a grant.**

Further information

You can find copies of all the documents referred to in these guidelines, and more information about bona vacantia on our website at www.bonavacantia.gov.uk. Information is also available in large print, audio tape and Braille formats.

The purpose of these guidelines is to set out our approach to the property and rights that pass to the Crown as bona vacantia. This document is not an Act of Parliament and it should not be read or interpreted like one. It is intended to provide general guidance only, and it is not a statement of policy.

We will consider each matter on its facts and decide each case on its merits. Our decisions will be based on all the information available to us and we will tell applicants about our decisions as soon as possible. When dealing with any property and rights that pass to the Crown, we act fairly and impartially but in such a way as to not prejudice the interests of the Crown. We aim to be fair in all our dealings and not to take an unfair advantage or to favour one party over another.

All rights reserved

These Guidelines are subject to Crown Copyright and must not be altered, amended, deleted or added to.

©

QUESTIONNAIRE

<u>Questions</u>	<u>Answers</u>
1. What was the full registered name and number of the dissolved company?	
2. Where was the last registered office of the company?	
3. What was the date of dissolution of the company?	
4. If the asset in question is money, what is the full name and address of the Bank or Building Society where the money is deposited?	
5. What is the sort code and account number?	
6. Approximately how much money was deposited in the name of the company?	
7. If the asset is not money please give full details of the type of asset, and evidence that the company owned it at the date of dissolution.	
8. Were you a member or liquidator of the company? If so, please provide evidence of your membership or appointment.	
9. Have you supplied the name, address and reference of your solicitors?	
10. Have you enclosed the necessary proof of identity?	
11. Have you completed the necessary Statutory Declaration?	

The above answers are true to the best of our belief and knowledge.

Signature:Dated:

Name [in BLOCK CAPITALS]

Address