

## **Important notes on the Guidelines about the Sale of Shares vested in the Crown as bona vacantia**

1. The attached Guidelines give you information you need about the sale of shares by the Treasury Solicitor. Please read the Guidelines carefully.
2. Please complete and return the attached questionnaire with **FULL REPLIES**. We cannot deal with the matter until we have **ALL** the required information.
3. If you intend to instruct solicitors to act on your behalf, please let us know their name, address and reference as soon as possible, and let them see a copy of these Guidelines. As the Treasury Solicitor cannot give you legal advice, you should consider instructing your own solicitor if you have not already done so.
4. Depending upon the date when the company was dissolved, it is possible that it can be restored to the Companies Register, and then the shares would automatically revert to the company. If restoration is possible, before making any decisions as to the sale or disclaimer of the shares, enquiries may need to be made of the former members or liquidator of the company to see if they intend to restore the company.
5. As well as the purchase price, the purchasers will also have to pay a minimum contribution of £250 plus VAT and disbursements towards the Treasury Solicitor's legal costs. For very complicated sales, the costs may be higher. If any offer is made to you to purchase the shares we will, therefore, firstly require an undertaking from your solicitor to pay the Treasury Solicitor's legal costs, plus VAT and disbursements, whether or not the matter proceeds to completion. **However, at this stage there is no certainty that any offer will be made to you or to anyone else to purchase the shares.**
6. As explained in the attached Guidelines, the Treasury Solicitor has the statutory power to disclaim the Crown's title to property (i.e. to give up the Crown's right to the property). We will give you four weeks to complete and return to us the attached questionnaire, before making any decisions as to how to deal with the shares.
7. **These Guidelines contain general advice and cannot cover every circumstance that may arise. It is not intended to be a complete guide. Each case will be dealt with on its own merits, and the right to vary or depart from these Guidelines at any time without notice is expressly reserved.**

## THE TREASURY SOLICITOR

### BONA VACANTIA DIVISION

#### ***Guidelines about the Sale of Shares vested in the Crown as bona vacantia***

##### **Background**

1. When a company that was registered under the Companies Acts 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 and rights.

##### **What we can do for you**

3. Bona vacantia property and rights belong to the Crown, and the Crown is not obliged to deal with them in any particular way. Normally they will be disclaimed (i.e. the Crown gives up its right to the shares) or sold, and the proceeds of sale transferred to the Exchequer to deal with in the same way as money raised by general taxation.
4. It is only the assets of a company that pass to the Crown when it is dissolved. Its liabilities are extinguished, and the Crown does not accept any responsibility for any property or rights that were owned by the company prior to its dissolution.
5. When selling property or rights that have passed to the Crown as bona vacantia, we must obtain the full open market value.
6. In a situation where the dissolved company owned shares in another live company (“the issuing company”) the Treasury Solicitor will either disclaim the shares under the statutory power of disclaimer contained in Section 656 of the Companies Act 1985, or sell the shares if they have any value.

##### **What we cannot do for you**

7. We cannot transfer the shares with any title guarantee. This means that when we sell the shares we do not give any guarantee or assurance that we have the legal right to sell them.

##### **How It Works**

8. In the case of a sale, if the issuing company is quoted on the Stock Exchange, the shares will be sold through stockbrokers.
9. If the issuing company is a private unquoted company, the Treasury Solicitor’s normal practice will be to firstly offer the shares either to the former members of the dissolved company, or back to the issuing company.
10. If we offer to sell the shares to you, the minimum price will be £500, and the sale will be on such terms and conditions as we prescribe, and strictly subject to contract until completion.

11. Before any disposal of the shares is considered, we will have to obtain professional advice from the Revenue & Customs, Capital Taxes Office, as to the value of the shareholding.
12. If we do make an offer to sell the shares, completion of the sale must take place within the time period that we prescribe. It is our practice to require that completion of the sale takes place well before the expiry of the disclaimer period, and to disclaim the shares if completion will not be possible before the end of the disclaimer period.
13. It will be for the eventual purchaser to locate the share certificates. If the share certificates cannot be traced, the purchaser will be responsible for making any necessary statutory declaration as to the enquiries that were made, and dealing with any enquiries or requisitions by the issuing company, and paying any fees for the issue of duplicate share certificates.
14. The purchaser will also be responsible for preparing the necessary Stock Transfer Form for execution by the Treasury Solicitor.

#### **What To Do Next**

15. We have to make a number of enquiries before we can decide how to deal with the shares and at this time there is no certainty that any offer to sell the shares will be made to you.
16. In the meanwhile, please complete and return the attached questionnaire with full replies.

#### **Money Laundering**

17. 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.
18. 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**

19. You may want to take professional advice on the important information in this document. It is not our role to give you legal advice – we provide 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. If you wish to pursue the matter you may wish to refer it to your own solicitors, and show them a copy of these Guidelines. They will then be able to give you further assistance.
20. This guidance does not represent a binding offer or any professional undertaking to sell the shares. We reserve the right to disclaim the Crown's claim to the shares without notice at any time under Section 656 of the Companies Act 1985. If the shares are disclaimed, we will send a copy of the formal Notice of Disclaimer to all interested parties of whom we are aware.
21. The Treasury Solicitor cannot exercise the power of a shareholder by voting at a company meeting, or appointing a proxy to vote. This is because under Section 372 of the Companies Act 1985 only a member of the company is entitled to attend and vote at a meeting, or entitled to appoint a proxy to attend and vote. Although the shares may have vested in the Crown as bona vacantia, neither the Treasury Solicitor nor the Crown is a member of the issuing company, and will not become a registered member.

The Treasury Solicitor cannot therefore exercise any of the powers of a member, but can only dispose of the shareholding, either by sale or disclaimer.

22. It is up to the purchaser to deal with the registration of the Transfer Form. We will not be able to offer any assistance with regard to the registration of the Transfer Form, or dealing with any enquiries or requisitions raised by the issuing company. The purchaser will also be responsible for paying any fees due for registering the transfer.
23. We give no express or implied warranties regarding the shares or the transfer of them, and you will have to deal with any subsequent disputes that may arise from the assignment of the shares.
24. If the shares are sold back to the issuing company, we will require a warranty that:
  - i) all the requirements of Chapter VIII of the Companies Act 1985 relating to an “off-market purchase” by a company of its own shares has been complied with, and
  - ii) the purchase is made out of distributable profits of the issuing company, as defined in the Companies Act 1985, and in accordance with Section 162 of the 1985 Act.

#### **Further Information**

You can find copies of all the documents referred to in these Guidelines, and more information about bona vacantia from our website at [www.bonavacantia.gov.uk](http://www.bonavacantia.gov.uk). Information is also available in large print, audio tape and Braille formats.

#### **Please Note**

**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.**

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## QUESTIONNAIRE

<b><u>Questions</u></b>	<b><u>Answers</u></b>
<ol style="list-style-type: none"> <li>1. Are the shares quoted on the stock market?</li> <li>2. Please forward the original share certificates if they are in your possession, or let me have any information you have as to where they are?</li> <li>3. Please provide a copy of the share register of the issuing company as evidence that the dissolved company was registered as holder of the shares.</li> <li>4. Please supply details of any dividends which were declared by the issuing company during the preceding 3 years, and details of any dividends that are payable to the Crown as bona vacantia, since the date of dissolution.</li> <li>5. If the company was unquoted, please supply a copy of the last 3 years audited accounts of the issuing company, so that the value of the shares can be calculated.</li> <li>6. Please supply a copy of any restrictions relating to the transfer of the shares that are contained in the Articles of Association of the issuing company. If there is any requirement that the shares should be offered to existing shareholders at a price to be agreed with the Board of Directors or assessed by the company's auditors, the purchaser will be responsible for obtaining that agreement or assessment.</li> </ol>	

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

Signed: ..... Date: .....

Name: [in BLOCK CAPITALS]

Address: