

THE TREASURY SOLICITOR

BONA VACANTIA DIVISION

Guidelines about the Assets of Dissolved Companies that have vested in the Crown as bona vacantia

Bona Vacantia

1. This office deals with property that is owned by the Crown as bona vacantia (which means "*ownerless property*"). Bona Vacantia is property that was owned either by a registered company that has been dissolved, or by a person who has died intestate (without leaving a Will) and with no relatives entitled to inherit their estate. To become bona vacantia the property must have been either owned by the company at the time it was dissolved, or owned by the deceased at the time of death. These Guidelines only apply to property of companies registered under the Companies Acts 1929 to 1985. There are separate guidelines about the estates of persons who have died intestate with no entitled relatives.

Dissolved Companies

2. Companies are usually formed by a number of individuals who wish collectively to form a business association. Once formed, a company is in law regarded as an artificial legal "person" with rights and obligations distinct and separate from those of the persons who formed the company. The majority of such companies are now created and formed under the Companies Act 1985, or under earlier legislation now superseded by that Act. A company can own in its own name any property, money, or other assets that a person can own. Unlike a person, a company cannot die, but its existence can be terminated either by its name being struck off the Companies' Register, or by being wound up by a liquidator and dissolved.

Dissolved Companies' Assets

3. Before a company is dissolved, the members should ensure that assets owned by the company are dealt with prior to dissolution and transferred out of the company's ownership. If this is not done, assets owned by the company at the date of dissolution will pass into the ownership of the Crown. Such assets are then known as bona vacantia which is a Latin expression meaning ownerless goods. If you wish to purchase an asset that you think might be bona vacantia you should contact the relevant Office (see paragraph 11 below).

Liabilities

4. It is only assets that pass to the Crown as bona vacantia. When a company is dissolved, most of the liabilities that the company had are extinguished. If therefore the company owed money to a creditor, that debt is extinguished by the dissolution of the company, unless the debt was secured on the company's property by a mortgage or charge. If the debt was not secured the only remedy that the creditor has is to restore the company to the Register, and then bring legal proceedings against the restored company, to enforce the debt against the company. Notes for guidance are published

by Companies House regarding the striking off, dissolution and restoration of companies (booklet number CHN27), which is obtainable from Companies House, Crown Way, Maindy, Cardiff CF4 3UZ, or from their website (www.companieshouse.gov.uk). Separate guidelines for the sale of mortgaged property (Form BVC 10) is available on our website.

Property Held on Trust

5. It is only assets that were “beneficially” owned (i.e. not held on trust by the company for the benefit of another person) by a company at the time it was dissolved which pass to the Crown as bona vacantia. If the company held assets on trust for another person, those assets do not pass to the Crown as bona vacantia. If you believe that a company was holding assets on trust for you, you should take your own independent legal advice on the matter, either from a firm of solicitors, or from your local Citizens Advice Bureau.

What we can do for you

6. Bona vacantia assets belong to the Crown, and the Crown is not obliged to deal with them in any particular way. Normally they will be disclaimed (this means that the Crown gives up its interest in the asset) or sold, and the proceeds of sale transferred to the Exchequer to be dealt with in the same way as money raised by general taxation.
7. When selling any property or rights that have passed to the Crown as bona vacantia, we have to get the best price reasonably obtainable. We will therefore seek independent advice on both the price, and the most appropriate method of sale. Guidelines for the sale of vacant land and buildings (BVC 5) are available on our website. If the property is tenanted, the usual practice of the Treasury Solicitor is to offer the freehold (or headlease) to the tenants. Separate Guidelines for the sale of tenanted property (Forms BVC 6F and BVC 6L) are available on our website. For all other assets we may have to obtain professional advice as to their open market value.

What we cannot do for you

8. The Treasury Solicitor does not manage or insure property that is owned by the Crown as bona vacantia. If you occupy all or any part of the property in question you should take immediate independent advice about the insurance and management of the property.
9. We will not usually take possession of bona vacantia property.
10. We cannot transfer property or rights with either full or limited title guarantee. This means that when we sell property or rights we do not give any guarantee or assurance that we have the legal right to sell it.

Jurisdiction

11. The office that is responsible for dealing with the assets of dissolved companies depends upon where the last registered office of the company was situated, and where the asset is situated. The rules are complicated, but can be summarised as follows:
 - i) If the company's last registered office and the asset was in England or Wales (other than in the Duchies of Cornwall or Lancashire) its assets are dealt with by the Treasury Solicitor.
 - ii) If the company's last registered office and the asset was in Scotland its assets are dealt with by the Queen's and Lord Treasurer's Remembrancer, of 25 Chambers Street, Edinburgh EH1 1LA.

- iii) If the company's last registered office and the asset was in Northern Ireland assets are dealt with by the Crown Solicitor of PO Box 410, Royal Courts of Justice, Belfast.
 - iv) If the company's last registered office and the asset was in the Republic of Ireland assets are dealt with by The Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8.
 - v) If the company's last registered office and the asset was in the Duchies of Cornwall or Lancashire its assets fall to be dealt with by the Duchies' solicitors, who are Messrs Farrer & Co, of 66 Lincolns Inn Fields, London WC2A 3LH. The Duchy of Cornwall comprises the County of Cornwall. The Duchy of Lancaster comprises the Counties of Lancashire, Merseyside and parts of Greater Manchester, Cheshire and Cumbria. Further details as to the precise boundaries of the Duchy can be obtained from the Duchy Office, 1 Lancaster Place, Strand, London WC2E 7ED (Tel: 020 7836 8277).
 - vi) If the company's last registered office and the asset are in different jurisdictions, the office in whose jurisdiction it is situated usually deals with the assets.
12. The jurisdiction of the Treasury Solicitor is geographical. If the asset in question is situated outside England or Wales the Treasury Solicitor has no jurisdiction to deal with the asset. If it is situated in Northern Ireland, the Crown Solicitor acts as agent for the Treasury Solicitor.

Bank Accounts

13. If a bank account is held in the name of a dissolved company, and the company is still trading, the members should restore the company to the Register if that is possible. If the company is not trading, it has been recognised that restoration is not always an economic proposition. The Treasury Solicitor has therefore been given a limited discretion to make payments to former members and liquidators of the dissolved company out of any money held in the company's bank account. If you wish to apply for such a discretionary payment you should write to the Treasury Solicitor stating the full name of the company, the company registration number, the name of the bank where the account was held, the account number, the sort code of the bank and the address of the relevant branch. Separate guidelines (Forms BVC 2 and BVC 3) on such payments are available on our website.

Flat Management Companies

14. If the dissolved company was your landlord, it probably owned either the freehold or the headlease for the building. If the company is dissolved you could find that you cannot sell your flat. In that situation the usual practice of the Treasury Solicitor is to offer to sell the freehold or the headlease to the tenants jointly, or to a new management company set up by them for that purpose upon which they are represented. In general, in the case of leases with a period of at least 60 years to run, the price is ten times the total of the annual ground rents, subject to a minimum of £500 plus costs. If you require further information on this subject separate guidelines (Forms BVC 6F and BVC 6L) are available from the Treasury Solicitor on our website.

Domain Names

15. The Treasury Solicitor is unable to sell domain names. Since October 2004 domain name registration contracts have ended immediately if the company which registered the domain name is dissolved. We are therefore no longer able to sell domain names registered with Nominet UK. Further guidance can be found at www.nominet.org.uk. Nor can we sell domain names ending in '.com', as the title to a domain name depends upon the place where the appropriate register is kept. The registry for '.com' domain

names is operated by VeriSign Inc., whose head office is in the USA. The domain name is situated, therefore, in the USA, even if it is registered in the name of a dissolved company. We can only sell assets that are situated in England and Wales.

Disclaimers

16. The Treasury Solicitor, liquidators and trustees in bankruptcy all have a statutory power of disclaimer. As explained in paragraph 6 above, this means the right to give up their interest in the property.
17. The provisions relating to disclaimers by the Treasury Solicitor, liquidators, and trustees in bankruptcy are complex, and depend on:
 - i) whether the interest disclaimed is freehold or leasehold;
 - ii) where the land is situated;
 - iii) where the last registered office of the company was situated; and
 - iv) who makes the disclaimer.
18. If a liquidator or trustee in bankruptcy disclaims leasehold property, the lease may vest in the Crown as bona vacantia at Common Law. If the company's last registered office was in England or Wales it is dealt with by the Treasury Solicitor.
19. If the Treasury Solicitor disclaims leasehold property, the lease comes to an end, but this does not affect any liabilities that the former tenant (or any guarantor) may owe to the landlord for previous breaches of covenant. The statutory provisions are set out in Section 657 of the Companies Act 1985, and Section 179 of the Insolvency Act 1986 (which is incorporated into the Companies Act), on which you should take your own independent legal advice.
20. In the case of freehold property the effect of any disclaimer is that the freehold title is extinguished. In the case of property situated in the Duchies, it is then dealt with by Messrs Farrer & Co. If it is situated elsewhere in England or Wales it is dealt with by the Crown Estates' solicitors who are Messrs Burges Salmon of Narrow Quay House, Narrow Quay, Bristol BS1 4AH.
21. Separate guidelines about disclaiming property (Form BVC 7) is also available on our website.

Clubs and Societies

22. Clubs and Societies may be registered under the Friendly Societies Act 1974, the Friendly Societies Act 1992, the Industrial & Provident Societies Act 1965, or the Building Societies Acts.
23. Registration under the 1992 Act and the 1965 Act confers corporate status on the Society. Registration under the 1974 Act confers certain privileges, but not corporate status. They cannot therefore be registered as the owner of an asset in their own name, so accordingly when they are dissolved there are no assets that can pass as bona vacantia.
24. These Acts make provision for the termination or dissolution of the societies registered under them, but (unlike the Companies Act) do not provide expressly for any assets which are left outstanding on de-registration to become bona vacantia. Although there is no statutory vesting as bona vacantia, the assets of Societies registered under the

1992 Act or the 1965 Act may in some circumstances vest as bona vacantia at Common Law (see paragraph 28 below).

25. Another point to notice is that a Society registered under the 1995 Act must have the word "*Limited*" at the end of its name, unless the Registrar is satisfied that it is a charity. Where a Society has been registered without the word "*Limited*" there is a strong presumption that it is a registered charity. The Charity Commission will distribute the assets of a charity that has been dissolved to another charity having a similar purpose. Such cases should therefore be referred to the Charity Commission.
26. A Society whose registration has been cancelled can appeal against that cancellation within a short time period, but (unlike a company) there is no right to have it restored to the appropriate Register.
27. If you write to us about the assets of a dissolved Society, you need to tell us under which Act it was originally registered. We also need evidence to establish that the Society has been dissolved. Usually a copy of the relevant Certificate of De-Registration from the Financial Services Authority will be sufficient evidence of dissolution.
28. Having established that the Society has ceased to exist, you should check to see if there was a Court Order, or a written instrument or resolution expressly dealing with the distribution of the Society's assets. If there was no such document, you should look at the Society's Rules to see what provision they make (if any) for the distribution of the Society's assets on dissolution. If they do not contain any such provision, then prima facie the assumption is that the assets should be shared amongst those persons who were members of the Society at the time it was dissolved.
29. Only if there were no members at that point in time, or if the Rules expressly provide that the assets of the Society must not be distributed to the members, can the assets vest as bona vacantia at Common Law.
30. If you believe that the assets of a dissolved Society may have vested as bona vacantia, you should provide us with the following information and documentation:-
 - The Act under which the Society was registered,
 - The address of the last registered office of the Society,
 - A copy of the Certificate of De Registration,
 - Details of any former names of the Society,
 - The names and addresses of the last members of the Society,
 - A copy of the Rules of the Society,
 - Evidence of the Society's ownership of the relevant asset. In the case of land and buildings this means Official Copies and Title Plan (if the title is registered), or (if the title is not registered) the title deeds, culminating in a Conveyance or Lease to the Society.
 - The name and address of any persons who are currently using the asset or occupying the property.
 - In the case of land or buildings, answers to the questionnaire at the end of our Guidelines BVC 5. In the case of other assets, answers to the questionnaire at the end of the relevant Guidelines to be found on our web site.

Money Laundering

31. 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.
32. 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

33. 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 the 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.

Further Information

34. 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. Information is also available in large print, audiotape 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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