



H.M. RECEIVER GENERAL

BONA VACANTIA POLICY: ASSETS OF STRUCK OFF COMPANIES

This policy sets out how HMRG will deal with assets of companies that have been dissolved or struck off the Alderney and Guernsey company registers, as the case may be.

Under:

- a) s369 of the Companies (Guernsey) Law 2008, where a Guernsey company has been struck off or dissolved, or
- b) section 107(9) of the Companies (Alderney) Law, 1994, where an Alderney company has been struck off and dissolved –

'all property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) shall, unless Her Majesty's Receiver General directs otherwise, become bona vacantia belonging to the Crown.

HMRG will usually only '*direct otherwise*' when the property and/or rights are unsuitable for the Crown to hold, such as foreign realty. However, in all cases, HMRG must be notified of the property and/or rights that would otherwise fall to be *bona vacantia* and must expressly disclaim, in order for this to be effective.

If HMRG does not '*direct otherwise*' then the property and/or rights will become *bona vacantia* belonging to the Crown.

HMRG would usually expect a person seeking to recover *bona vacantia* to restore a company, where this is possible.

However, HMRG is willing to consider applications for discretionary grants in the circumstances set out in this policy. This guidance details when HMRG might make a discretionary grant after a company has been struck off or dissolved. It does not provide guidance if you are seeking to recover property after a company has been restored to the register.

1. The entitlement to a discretionary grant

There is no entitlement to a grant from *bona vacantia* funds; a grant will only be made at the sole discretion of HMRG. If HMRG decides to make a discretionary grant, this will only be done once for a dissolved company.

Whether HMRG will make a discretionary grant will depend upon the facts of each case and whether or not the company can or cannot be restored to the register (see paragraphs 3 and 4 below).

HMRG will usually only consider making a discretionary grant out of money that vests as *bona vacantia*, and will not usually consider other types of assets.

2. Who may apply for a discretionary grant

To apply for a discretionary grant, the applicant must usually fall into one of the categories below in respect of the relevant company:

- > a former shareholder
- > a former liquidator
- > a former administrator

Former directors of the company cannot apply unless they were also shareholders of the dissolved company.

3. Applying for a discretionary grant when a company can be restored

HMRG will not make a discretionary grant if a company can be restored to the register administratively.

If it is not possible to restore the company administratively, but it can be restored through the Courts, then HMRG will consider making a discretionary grant if:

- > the process through the Courts is likely to cost more than money sought to be recovered,
- > the applicant undertakes not to restore the company in the future.

The maximum amount of money that the applicant could receive is £3000.

4. Applying for a discretionary grant when a company cannot be restored

HMRG will not usually make a discretionary grant unless one or more of the factors below are satisfied:

- > paying the grant would alleviate hardship,
- > it would otherwise be unreasonable or unconscionable for the Crown to keep the assets,
- > there is a compelling public interest in making a grant.

The application must contain strong evidence supporting the applicant's reasoning for satisfying the above criteria. HMRG will assume the application contains all relevant facts and make the decision from the application alone.

5. Fee for discretionary grants

If the criteria for a discretionary grant are met, then a grant will only be made if the applicant agrees to pay a contribution towards HMRG's legal costs and disbursements for dealing with the application (this will usually be £300 (unless the applicant is advised to the contrary before a decision to make a discretionary grant has been made), so if the amount claimed for is less than this, then HMRG will not make a grant).

In the case of a company which can be restored, if the amount claimed for is over £750, then HMRG will keep levy a fee of 5% of the amount, after deducting legal costs and disbursements. This is to help protect the Crown against any claims from potential creditors in the future.