THE QUEEN'S AND LORD TREASURER'S REMEMBRANCER

POLICIES

Bona vacantia **("BV") means ownerless goods and in Scotland, all ownerless goods are the property of the Crown in accordance with the maxim "*quod nullius est fit domini regis*" (that which belongs to no-one becomes the King's). The Crown takes this property as the head of the national community, for the benefit of the national community and receipts from the disposal of BV are paid into the Scottish Consolidated Fund.**

Included under the BV umbrella is the property of dissolved companies, limited liability partnerships and other dissolved bodies, the property of missing persons, estates for which there is no will and no known spouse, civil partner or blood relative who would be entitled to succeed to the estate (Ultimus Haeres or "UH" estates), and treasure trove.

The Queen's and Lord Treasurer's Remembrancer ("QLTR") is the Crown's representative in Scotland who deals with BV. While the function of the QLTR generally is to dispose of BV for the benefit of the public purse, the Crown is not obliged to deal with any BV in any particular way and does not undertake to dispose of BV to any particular person for any particular price or at any particular time.

The QLTR, where appropriate, follows the principles set out in the Scottish Public Finance Manual.

The QLTR Office which deals with all BV in Scotland is located at Scottish Government Building, 1B-Bridge, Victoria Quay, Edinburgh, EH6 6QQ – tel 0844 561 3899 (calls cost 7p per minute plus your phone company's access charge) or 0131 243 3210; email COQLTR@copfs.gsi.gov.uk; website www.qltr.gov.uk.

The QLTR's policies apply in Scotland only. BV matters in England and Wales are dealt with by the Government Legal Department, Bona Vacantia Division, One Kemble Street, London WC2B 4TS (other than as regards the Duchies of Cornwall or Lancaster), and in Northern Ireland by the Crown Solicitor, Royal Courts of Justice, Chichester Street, Belfast BT1 3JY.

These policies will be updated from time to time to reflect current practices and relevant law. If anyone has any comments on these policies please let us know – contact details are above.

Fees will be kept under review and will be adjusted from time to time. Cheques payable in respect of all BV should be drawn in name of "The Queen's and Lord Treasurer's Remembrancer".

Please Note:

The purpose of this document is to set out our approach to the property and rights that pass to the Crown as *bona vacantia.* It is not the QLTR's role to give legal advice to those approaching the QLTR and they will need to take their own specialist advice. This document is not legislation and should not be read or interpreted as if it was. It is intended to provide general guidance only and the QLTR reserves the right to change or depart from the guidance in this document at any stage.

National Ultimus Haeres Unit

Any potential UH estate will be investigated initially by the National Ultimus Haeres Unit, which is part of the Crown Office and Procurator Fiscal Service, and the matter should therefore be reported to them. The QLTR website hosts information regarding estates being investigated by NUHU.

Their contact details are:

National Ultimus Haeres Unit
Procurator Fiscal Office
Cameronian House
3/5 Almada Street
Hamilton
ML3 0HG

Tel: 0844 561 4846 (calls cost 7p per minute plus your phone company's access charge); email: _NationalUltimusHaeresUnit@copfs.gsi.gov.uk.

TREASURE TROVE

The law relating to treasure trove and the procedures for reporting, processing and allocating treasure trove are set out in *Treasure Trove in Scotland - a Code of Practice* which is available on the Treasure Trove Unit's website: **www.treasuretrovescotland.org**, the QLTR's website, or from the QLTR Office.

BV

BV1. ASSETS OF DISSOLVED COMPANIES, LLPs etc.

The assets of dissolved companies vest in the Crown pursuant to section 1012 of the Companies Act 2006 (or its statutory predecessors, as appropriate). The QLTR's policies in relation to property vesting in the Crown following the dissolution of a company also apply in relation to property vesting in the Crown following the dissolution of a limited liability partnership or other body, subject to such adjustment as may be

considered by the QLTR to be appropriate to reflect any difference in circumstance between such a body and a company.

It is only the assets which become the property of the Crown under the provisions of the various Companies Acts. The Crown does not become liable for the debts of a dissolved company, LLP etc and does not take on the personality of the dissolved company or become liable for its obligations.

The QLTR is not automatically notified of the dissolution of a company and does not hold information on the property of dissolved companies. The QLTR can only deal with the assets of dissolved companies which have been brought to the QLTR's attention. The interested party is expected to have carried out a thorough search into the ownership of the property they are interested in and will be asked to produce the evidence they have to show that the dissolved company owned the asset.

BV2. FEES

The following fees will normally apply-

- for granting a standard Disposition on a sale - £650 (unless we already hold a general Deed of Gift for all property in respect of the dissolved company (see QLTR Conveyancing Procedures at the end of these policies) when the fee will be £500)
- for transactions where the Crown has agreed to forgo any benefit in a property on it being suggested that a genuine error has occurred - £750 (or £900 if a Deed of Gift is required)
- for granting an Assignation of a trade mark or patent - £500
- for the discharge of a Standard Security - £500
- for the renunciation or assignation of a lease - £500
- for the QLTR's consent to Administrative Restoration of a dissolved company - £100 or £125 for the expedited service (Note: (1) if that fee has been paid but it is then established that the QLTR cannot assist – for example the dissolved company's property is in England – then we will refund the fee under deduction of a £25 administration fee; (2) see the QLTR's website for information regarding the QLTR's consent to the administrative restoration of a company including what should be submitted to the QLTR, and the adjustments to those arrangements where the expedited service is being sought)
- for a discretionary payment following the dissolution of a company where the company can be restored (see Section BV9 "DISCRETIONARY PAYMENTS") - £300
- otherwise according to circumstances.

Outlays are payable in addition.

If we instruct external solicitors or other agents to act for us in the transaction – for example for a more complex transaction, sales involving competitive bids, transactions involving or affecting a lease, a sale securing future gain from development consent or the like (often referred

to as a clawback arrangement), or the disposal of intellectual property rights - their fees and outlays will be payable in addition.

The above fees may be increased for a particular transaction if it is expected to be or becomes more complex or time consuming, or if we are put to extra work by those approaching us – for example if there are delays in answering correspondence from us.

Fees will be kept under review and will be adjusted from time to time.

No VAT is payable on a fee (other than our agents fees or our outlays where the VAT we pay will also be payable).

BV3. PRICE

The QLTR will normally sell the assets of a dissolved company at a price recommended by the District Valuer or other appropriate valuer, to the person who has brought the Crown's ownership of the property to the QLTR's attention (see Section BV4 "DISPOSAL OF HERITAGE").

The sale price of a **Trade mark, Patent or Artist's Resale Right** (where copyright still subsists) - £2000 or market value, whichever is higher. We will normally seek advice regarding disposal of intellectual property.

No VAT is payable on a Price.

BV4. DISPOSAL OF HERITAGE

The QLTR does not undertake to deal with a property in any particular way, and does not undertake to dispose of a property to any particular person at any particular time or for any particular price, or at all.

An Asset Register of heritable properties reported to the QLTR which have fallen to the Crown where the potential disposal of the subjects is being considered can be found on the QLTR's website.

We will require to see the relevant titles in relation to heritable property (ie land and buildings) and appropriate Property Searches and Reports. Unless there is a suitable plan in the titles to identify the subjects, we will also require a plan to identify heritable property (with dimensions unless this is clear from the plan). Interested parties must also provide a location plan of the area unless the location will already be clear from the titles or the plan referred to above, and (if helpful) photographs.

We are guided by the District Valuer ("DV"). The DV will be instructed once the interested party has agreed in writing to reimburse the QLTR for the DV fee. The DV fee is payable whether or not that party subsequently agrees to buy at the DV figure. We will only release the valuation once the DV's costs have been met.

The DV instructions may include any known relevant considerations.

Relevant considerations will include the identity and contact details of the interested party, information on proposed use, whether the party is an adjacent proprietor, whether there are rights of way or access is taken to other properties over the ground and whether there is a risk that the ground may be contaminated**.**

We will seek advice from the DV whether there may be other interest in the subjects or whether another form of disposal (such as an open market sale) might be a more appropriate way to dispose of the Crown interest. The QLTR also reserves the right not to proceed with a disposal and to take action other than a disposal (for example to disclaim the property).

In a non competitive situation, any sale by the QLTR to those approaching the QLTR regarding a property will usually proceed by way of a sale at the DV valuation without missives.

If other interest in the subjects comes to our attention before the first party has advised that they would wish an opportunity to purchase the subjects at the valuation assessed by the DV, the QLTR may decide to dispose of the property by competitive bid, by placing the property on the open market or some other appropriate action. If there is a delay at any stage by a party who has approached the QLTR about, or indicated interest in subjects, or their agents, the QLTR reserves the right to consider the QLTR's position further including whether to consider an alternative way to dispose of the Crown interest or to disclaim the property.

Where heritage is disposed of by competitive bid, it is normally a condition that the successful purchaser will be liable for the DV fee. In the event of competitive bids, the QLTR will usually instruct a private firm of solicitors to act as the QLTR's agent.

In appropriate cases the QLTR may require the purchaser to enter into a clawback arrangement with the QLTR to protect the public purse against a future uplift in value of the subjects – that might happen for example if planning permission is obtained after the QLTR has disposed of the subjects. Such an arrangement will enable the QLTR to share in the uplift in value for an appropriate period. The QLTR will take advice from the DV as to what terms would be appropriate in a particular case. The QLTR will instruct a private firm of solicitors to act as the QLTR's agent to document the clawback arrangement and to take a standard security over the property to secure the sums due under the arrangement.

Where the QLTR is approached about heritable property, whilst the QLTR will wish to seek to be satisfied as to whether it is appropriate for the QLTR to deal with a property, it is for those making the approach and their professional advisers to satisfy themselves as to title. That will therefore be reflected in the warrandice granted on a sale of any such property by the QLTR, which will be limited to simple warrandice (which is an undertaking that the seller will not in future voluntarily do anything to prejudice the right granted by a deed to a purchaser). It has never been the QLTR's policy to provide letters of obligation and accordingly the QLTR

will not register advance notices under the Land Registration etc. (Scotland) Act 2012.

BV5. APPROACH TO QLTR WHERE IT IS SUGGESTED A GENUINE ERROR HAS ARISEN

Where the QLTR is approached because it is suggested there has been a past conveyancing error - for example the price has been paid in full but title has not, as intended, passed from seller to purchaser and that can no longer be corrected as the seller was a company which has been dissolved – the QLTR may not consider it appropriate to seek to profit from such a genuine error. However, where those approaching the QLTR are connected in some way to the dissolved company, the exercise of the remedies provided by the companies' legislation within the timescales set out in the legislation may be considered to be (or to have been) their remedy. Similarly, if the error is of more recent origin, those approaching the QLTR may have to look to their claim against those who acted for them.

A full explanation will be expected to allow the QLTR to be able to bring consideration to the matter to confirm, as far as is possible, that a genuine error has arisen and that the QLTR is being approached as a last resort to seek a resolution. That explanation should:

- be accompanied by supporting evidence, such as evidence to demonstrate that the price has been paid in full,
- provide relevant titles and searches (and a plan of the subjects if appropriate) to confirm where title presently rests,
- cover the following matters as part of the explanation being provided to the QLTR:
    - an explanation of whether those affected have any other remedies and if so why it is not considered appropriate to pursue those – the QLTR would not for example expect to be used as a mechanism by a former director or shareholder to avoid the need to petition the courts to restore a company (or equivalent)
    - if those approaching the QLTR were connected to a former company (or equivalent) left with title to subjects, confirmation with supporting evidence that the company was not insolvent and had no unpaid creditors at dissolution
    - confirmation with supporting evidence that during the period that title was in name of a (by then) dissolved company (or equivalent) outgoings for the subjects were being met (eg council tax/rates),
- an indication of the current value of the subjects, with evidence to support that should also be provided (that will enable the matter to be considered at the appropriate level of authority within the QLTR).

In the event the QLTR is satisfied that it would be appropriate for the Crown not to seek to profit from the error, those approaching the QLTR in relation to the matter will have to bear in mind the statutory regime

within which the QLTR is operating in relation to the property of a dissolved Company – see Section BV8 "COMPANY RESTORATION" below.

If satisfied that would be appropriate, the QLTR may be prepared to disclaim the property which might enable those suffering the error to seek either a vesting order to the property (see section 1021 of the Companies Act 2006) or to invoke the legislative provisions for prescriptive claimants – see also Section BV7 "PRESCRIPTIVE CLAIMANTS" below - set out in sections 43-45 of the Land Registration etc. (Scotland) Act 2012. If an application under those provisions leads to the interest being registered it will be marked as "Provisional" in the Land Register until the prescriptive period (with possession) has run but the applicant may be able to arrange for their own title insurance.

The QLTR may exceptionally (for example where the period for a disclaimer has expired), be prepared to consider granting a conveyance for nil or minimal consideration provided the Crown's position is appropriately protected. That would include the provision at the cost of those approaching the QLTR of indemnity insurance acceptable to the QLTR against the risk of a subsequent claim against the QLTR. For such a disposal the QLTR will require to employ solicitors to act for and to provide advice to the QLTR and their costs and outlays (in addition to the QLTR's fee and outlays) would also require to be met. The QLTR would also likely need a professional valuation of the subjects, again at the cost of those approaching the QLTR.

BV6. DISCLAIM

An asset which falls to the QLTR can be disclaimed either at common law or under section 1013 of the Companies Act 2006. Where that Act applies, the QLTR usually has a three year period from the date on which the Crown's ownership of the property was brought to the QLTR's notice or, if later, from when it was established that the Crown owned the property, in which to disclaim.

A Disclaim Notice under the 2006 Act is published in the Gazette. A copy of the notice of disclaim is also usually given to known interested parties.

Disclaim is at the discretion of the QLTR. No exhaustive list can be set out as to the circumstances where the QLTR might consider it appropriate to disclaim a property, but such circumstances may include where the property or interest has no value or is a liability or where that is considered appropriate because the QLTR considers that the Crown interest in a property has only arisen from a genuine error.

BV7. PRESCRIPTIVE CLAIMANTS – SECTIONS 43-45 OF THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

This mechanism makes statutory provision for the situation where a person is seeking to register an *a non domino* title (a title not granted by the person with the right to the subjects which can become good if registration is followed by possession for the prescriptive period).

Where the QLTR is notified under this statutory mechanism (the QLTR will be notified where the property is *bona vacantia*), the QLTR will adopt the same approach as for the situation where the Keeper of the Registers of Scotland had directed any person, under the practice applying prior to the 2012 Act, to the QLTR where they were attempting to register or record an *a non domino* disposition affecting any *bona vacantia*.

The QLTR would appreciate being approached about the matter in advance of any notification under section 43 of the 2012 Act with relevant titles, searches and an explanation as to why it is considered that the property may be *bona vacantia*. At the very least those items should be provided along with the section 43 notification to the QLTR. It must be appreciated that the QLTR usually has no prior knowledge of the subjects in question and those items are required to bring consideration to the matter.

In a case where it is suggested the Crown interest arises because no title to the subjects can be traced in the property registers, the QLTR will expect evidence of appropriate efforts to trace a title. We will therefore expect to see evidence of investigations by appropriately qualified persons (such as professional title researchers or Registers of Scotland themselves) who in either case will have been provided with an appropriate budget to enable full and proper investigation into the title position to have been carried out,

Failing that, it is likely that the QLTR will respond requesting those items (or requesting evidence of appropriate efforts to trace a title) and without reasonable sight of those items it can be anticipated that the QLTR is likely to consider it appropriate to object under section 45 of the 2012 Act when subsequently notified by the Keeper of any application.

Reference is also made to the QLTR's policies on the disposal of heritable property and in particular that the QLTR normally expects to do so for value (in the event that the QLTR considers it appropriate to consider a disposal to those making the approach). As such it is unlikely to be considered appropriate for an applicant to be able to seek a title to *bona vacantia* under sections 43-45 of the 2012 Act. That was also the QLTR's policy in regard to any attempt to record or register an *a non domino* title prior to this legislation.

The main exception to that is where it is suggested a relevant genuine error has arisen - see Section BV5 "APPROACH TO QLTR WHERE IT IS SUGGESTED A GENUINE ERROR HAS ARISEN" above. Where it is suggested that such an error has arisen and the Crown is being invited to forgo potential benefit, the QLTR would expect to be approached in advance of the section 43 notification to the QLTR. The approach should include all of the documents, information, evidence and explanation referred to in Section BV5. If not provided so that the QLTR has to request these items, that is likely to be reflected in the fee the QLTR will charge for considering the matter if ultimately the QLTR is prepared to consider forgoing the potential Crown benefit.

Please particularly note:

- If the QLTR is prepared to consider forgoing the potential Crown benefit (on grounds of relevant error), the QLTR will have an administration fee (see Section BV2 “FEES” above) for consideration of the approach
- In that event, the QLTR is likely to consider it appropriate to disclaim any Crown interest in the property - see Section BV5 above and this is also likely to be considered appropriate against the terms of section 44 of the 2012 Act
- where those affected are connected with the dissolved company, restoration under the mechanisms in the companies legislation is likely to be considered to be their remedy - on restoration that would remove the QLTR's locus; the QLTR does not consider that the QLTR should be used as a device simply to avoid the payment of any penalties which would arise on administrative restoration of the company or to save the need for those behind the former company to petition the courts to achieve restoration upon which they can then deal with their own property
- the provisions in the 2012 Act introduce a requirement for 1 year’s possession prior to an application which did not previously apply; that is a statutory requirement and not a matter in respect of which the QLTR has any locus.

Any objection by the QLTR to an application by a prescriptive claimant should not be construed as an act of possession by the QLTR. Any such objection is under reservation of all options of the QLTR (including the QLTR’s discretion to disclaim any property falling to the Crown as *bona vacantia*).

BV8. COMPANY RESTORATION

When a company is restored to the Register of Companies, the QLTR is obliged to pay to the company the amount received for the sale of its assets under deduction of the expenses incurred in connection with the property (see section 1034 of the Companies Act 2006).

If a company is seeking Administrative Restoration, and the company’s assets have vested in the Crown, in addition to the QLTR’s fee for written consent to the restoration (see Section BV2 “FEES” above), the QLTR will require prior payment of all expenses incurred by the QLTR in connection with the company’s property.

Where a Company has been administratively restored and seeks repayment of funds held by the QLTR a £50 administration fee will be deducted.

Further information about approaching the QLTR for consent to the administrative restoration of a dissolved company is on the QLTR’s website – click on the tab for “Bona Vacantia” and then the link to “Company – Administrative Restoration”.

In the circumstances where the only asset of a dissolved company held by the QLTR is bank funds and the company is restored by Petitioning the Court in order to seek those funds, a £100 administration fee will be deducted.

BV9. DISCRETIONARY PAYMENTS

For companies which have been struck off the Register of Companies or dissolved under the Companies Act 2006 (or its predecessors) and which can still be restored to the Companies Register, the QLTR operates a policy of discretionary refund of company monies from funds held.

If a company can be restored to the Register (whether by administrative restoration or on application to the courts), that is the company's proper remedy to regain possession of its assets. However, the QLTR recognises that restoration of a company, particularly through the courts, can be burdensome and the legal costs for such an action might be significant. As a concession, the QLTR will consider an application for a discretionary payment of the company funds held to a maximum of £1,500 (for applications received after 11 April 2014). As its name suggests, such a payment is entirely at the discretion of the QLTR. There is no entitlement to such a payment in the companies legislation. If the QLTR is prepared to make a discretionary payment in a particular case, only one payment will be made in respect of each company.

Proof of the identity of all former members of the company is required in the form of current passport or UK photocard driving licence (or equivalent) and a utility bill/bank statement (not more than three months old), or copies certified to be a true copy by a solicitor, for each applicant.

Applications will normally only be considered from all of the former company members (provided the company was solvent when it was dissolved) or former liquidator to distribute as if he or she was still the liquidator of the company.

Applicants will require to indemnify the QLTR from any claims which may arise – for example if the company is subsequently restored to the companies register.

In the case of companies which can be restored to the register, an administrative fee (see Section BV2 "FEES" above) will be deducted from any discretionary payment (that fee will however be reduced by any amount we hold in respect of the dissolved company beyond £1,500 to reflect that a discretionary payment will not exceed £1,500 even if the QLTR holds funds greater than that). No discretionary payment will be considered where the funds we hold are £300 or less. The £1,500 limit reflects the anticipated potential costs of applying to the sheriff court to seek to restore a company and also that there is a risk to the Crown in making a discretionary payment if the dissolved company was

subsequently restored to the companies register (see Section BV8 "COMPANY RESTORATION" above). The limit will be reviewed periodically.

Where former company members are seeking a discretionary payment, all former members of the company will require to approach the QLTR (or the QLTR will require to be shown satisfactory evidence from any member not seeking to share in a discretionary payment that they do not wish to do so and will not seek to restore the company as well as the documents to confirm their identity) and will also require to provide the following-

- evidence that they were the only members of the company at the date of dissolution
- confirmation that there were no outstanding creditors of the company at the date of dissolution, or that all creditors were paid in full
- if a payment is not to be split equally between all former members, agreement between all former members as to the division of any discretionary payment
- a signed and independently witnessed statement from any former company member who does not wish a share of any discretionary payment undertaking that they will not apply to have the company restored to the register, and
- an indemnity to repay the sums in the event the company is restored to the register. Note: QLTR have a *pro forma* indemnity which we will provide.

Former liquidators will require to provide a sworn statement that-

- they were the liquidator of the company at the date of dissolution
- they will not apply for the company to be restored to the register, and
- any payment will be distributed as if they were still the liquidator of the company.

Where the dissolved company was a charity, the QLTR will not consider it appropriate to make a discretionary payment to the former members of the dissolved company. The QLTR may be prepared to consider such a payment (within the limits set out above), to any charity to which the other assets of the dissolved company were transferred with the agreement of OSCR subject to evidence there are no outstanding creditors of the dissolved company, an undertaking from its former members that they will not seek to restore the company and provision of an acceptable indemnity to protect the Crown's position if the former company was subsequently restored to the companies register.

Where the company cannot be restored at the instance of its former members or directors or of any liquidator of the former company, the QLTR will consider each case on its merits. At that point those connected to the former company will already have had at least 6 years in which to restore the company pursuant to the mechanisms in the companies legislation which is the remedy which that legislation provides. On any approach the QLTR will expect a full exposition of the surrounding

circumstances and background, including why the company was allowed to be dissolved, whether it was solvent at the time of dissolution, why the company was not timeously restored and why those approaching the QLTR consider it appropriate to invite the QLTR to consider a discretionary payment (for example to alleviate hardship).

An administrative fee will be deducted from any discretionary payment in those circumstances.

BV10. LIVE BANK ACCOUNT OF, OR OTHER FUNDS HELD FOR, DISSOLVED COMPANY

When a company is dissolved, any funds in its bank account fall to the Crown. The bank should immediately freeze the company bank account and send the contents to the QLTR. Cheques should be made payable to "The Queen's and Lord Treasurer's Remembrancer" and be accompanied by a letter setting out the name, company number and date of dissolution of the company.

If we discover any such bank account which is apparently still operating, we will ask the bank to remit the balance to us. We may ask the Bank to account for its dealings with the account.

Similarly, any other funds which are held for a dissolved company should be remitted to the QLTR with a letter setting out the name, company number and date of the dissolution of the company and confirmation as to who held the funds and information as to why the funds were held. Details of any payments out of the funds after dissolution should also be provided. Again, we may ask the fund holder to account for any dealings with the fund.

BV11. ARRANGEMENTS WITH GOVERNMENT LEGAL DEPARTMENT

Where an English or Welsh registered company has an interest in heritage in Scotland (e.g. owns land or has a lease or a Standard Security over Scottish property), the matter should be raised with the QLTR. Likewise if a Scottish registered company has a similar interest in England or Wales, the matter should be raised with Government Legal Department, or if in Northern Ireland, the Office of the Crown Solicitor for Northern Ireland. The same arrangements apply to corporeal moveable property (such as equipment, vehicles or goods).

Where funds belonged to a dissolved English or Welsh registered company they are dealt with by Government Legal Department. Where funds belonged to a dissolved Scottish registered company they are dealt with by the QLTR.

Funds belonging to a dissolved foreign registered company held in Scotland (e.g. in a Scottish bank account), are collected by us as BV at common law.

Where Scottish heritage is registered in name of a dissolved foreign company, that heritage may be BV at common law – but whether it is appropriate for the QLTR to consider dealing with that property may depend on the law of the country in which the company was registered or constituted.

BV12. PROPERTY OF A MISSING PERSON

The property of a missing person falls to the Crown at common law. We expect the interested party to provide evidence of appropriate searches as to the person's whereabouts (or their successors or representatives) or an explanation with supporting authority as to why the person (or their successors or representatives) could no longer make up title to or deal with the property, before considering whether to deal with the property as BV.

The QLTR Office would be happy to be approached to discuss what searches and investigations might be appropriate as circumstances arise.

BV13. CASH ASSETS OF INDIVIDUALS OR TRUSTEES

Monies due to an individual or group of individuals (eg trustees) who cannot be traced are BV at common law. We will accept them if we are satisfied that sufficient efforts have been made to trace the true owners.

We will accept the following as BV at common law-

- a cash legacy or residue payment due to an individual under a Will, or a payment due under the Scots law of intestacy, if the entitled individual is known to exist and we are given evidence to satisfy us that they cannot be traced. (Our acceptance of these funds will allow the firm of solicitors administering the estate to complete its winding up and close their accounts).
- miscellaneous client balances from solicitors or others.

Solicitors may wish to refer to the Law Society of Scotland's Guidance for cash balances against "Rule B6: Accounts, Accounts Certificates, Professional Practice and Guarantee Fund" on their website.

When the funds are remitted, we will require the following information-

- name of client/beneficiary of funds and any information as to what the funds relate to,
- last known address of client/beneficiary of funds,
- details of the efforts made to trace the client/beneficiary of funds.

If however you do not have this information, and will not be able to obtain it, your cheque submitting the funds to us should be accompanied by a written explanation of that and why that has arisen in this case (for example that all records have been destroyed so the client/beneficiary cannot be identified).

Cheques should be made payable to “The Queen’s and Lord Treasurer’s Remembrancer”.

Please note that we do accept composite cheques for several balances, provided they are accompanied by a breakdown which includes the above details for each balance.

BV14. REFUNDS OF BV MONEY

When asked to refund BV money due to an individual or trustees (see Section BV13 “CASH ASSETS OF INDIVIDUALS OR TRUSTEES”), or held following the disposal of the property of a missing person (see Section BV12 “PROPERTY OF A MISSING PERSON”), we will-

- require proof of entitlement of the claimant to the funds, or their entitlement to have dealt with the property, as the case may be
- where appropriate, require an indemnity* from (or on behalf of) the entitled party
- deduct outlays and £50 for admin costs, or if the funds were raised through sale of heritable property on our instructions, deduct outlays and £650 for admin costs (unless admin costs for the sale of heritable property were recovered from the purchaser)

*NOTE: It is our practice to refund BV money held to the person/organisation who forwarded the funds to us in the first instance. However, if this is not possible and the funds are being refunded direct to an individual/trustee, we will require an indemnity in respect of the sum to be refunded.

No interest is paid on monies refunded.

No VAT is payable on the admin fees being deducted.

Normally no payment will be made more than 10 years from the date of receipt of the funds by the QLTR. Any claim received outwith that period will be considered according to circumstances.

BV15. DISPOSAL OF AMENITY LAND

Once a building company has completed development of an area and sold off all the individual plots, it may continue to own the amenity areas which were not sold off to the individual owners. Where the building company has been dissolved, the Crown will have right to those amenity areas.

The QLTR will have to consider whether it is appropriate for the QLTR to deal with such an area (and if so how). The QLTR may consider it appropriate to disclaim the interest. The QLTR recognises that amenity areas within a residential estate can be sensitive matters. The QLTR will however need to resolve the Crown interest in the area, and where it cannot be disclaimed the QLTR will require to seek a disposal of the Crown interest and cannot do so in a way which might expose the QLTR to

liability to account to the developer if it is subsequently restored to the companies register (see Section BV8 COMPANY RESTORATION above).

To enable consideration to be brought to any approach asking the QLTR to sell or to facilitate a transfer of title to any amenity area, it can be anticipated that the QLTR will require the interested party to-

- provide the items referred to in Section BV4 DISPOSAL OF HERITAGE, to prove that title to the area has not already been transferred;
- exhibit a copy of the title to a sample plot in the development from the building company to the first buyer of that plot and a copy of any Deed of Conditions affecting that plot;
- establish whether the local authority maintains the area.

Depending on the circumstances the QLTR may require those approaching the QLTR to provide evidence that any adjoining proprietor/s, or a residents' body formed for the purpose in respect of the development, do not wish to purchase the area or to seek to acquire a title to it on an appropriate basis.

The interested party must satisfy themselves that any burdens do not restrict the intended use of the ground. We will not do so. The purchaser will be required to take the title as it stands. That will therefore be reflected in the warrandice granted on a sale of any such property by the QLTR, which will be limited to simple warrandice (which is an undertaking that the seller will not in future voluntarily do anything to prejudice the right granted by a deed to a purchaser).

BV16. OUTSTANDING SECURITY OR CHARGE ON LAND FALLING TO THE CROWN

The Companies Act provides only that the assets of the dissolved company are to be treated as BV. The Crown, therefore, has no liability for the company's debts and takes the assets free of any debt. However, the QLTR cannot give a clear title when there is an existing security. It will normally be the responsibility of the interested party to negotiate the discharge of the security with the heritable creditor.

If there is inadequate value in the property against the amount due under the security then the QLTR may in any event decide to disclaim.

BV17. DISCHARGE OF SECURITY IN WHICH CROWN IS CREDITOR

Where the QLTR is approached to execute a Discharge of an outstanding Standard Security (usually where the creditor under the security was a company which has now been dissolved), the QLTR is only likely to consider it appropriate to do so on payment of all sums due under the security (the QLTR will require evidence of what is due under the security if an all sums security), production of strong evidence (in terms satisfactory to the QLTR) that all sums due under the security have been

repaid or on the QLTR being satisfied by those making the approach that the security has prescribed.

If the Standard Security was granted in respect of future development value and there is no proof that the extra sums have been paid, the District Valuer will, if appropriate, be instructed to provide a current valuation of the property, which will include consideration of the current planning status.

The QLTR may require an indemnity or insurance where the QLTR agrees to grant a discharge against the creditor's reappearance or it being restored to the Companies Register (where it was a dissolved company).

If the QLTR cannot be satisfied by those approaching the QLTR that sums or obligations do not remain due or outstanding under the security, consideration may require to be given by those seeking to have the security lifted to other possibilities such as indemnity insurance, restoring the company or the mechanism in section 18(2)-(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970. It is strongly recommended that any debtor under any such security take their own advice as to their position. The QLTR would expect to have been approached in advance of any consignation or application to the court under that mechanism where it is considered the interest of the creditor has fallen to the Crown as BV.

BV18. CROWN AS LANDLORD OF A CROFT OR AN AGRICULTURAL HOLDING

Crofting law and agricultural holdings are specialist areas of law and the QLTR will normally expect to take specialist legal advice in order to consider options.

BV19. CROWN AS LANDLORD OR TENANT OF A LEASE

Where appropriate, the QLTR will take the advice of the District Valuer, or other valuer, as to the value of the landlord's or tenant's interest in a lease, taking account of any relevant terms of the lease.

Where the tenant under a commercial lease is a dissolved company it is likely that the QLTR would expect to disclaim any such interest which is raised with the QLTR under section 1013 of the Companies Act 2006. It will be for landlords and their advisers to consider the implications of that in terms of the 2006 Act. The QLTR can, on request, give an indication of the considerations which would arise in regard to any approach to the QLTR to seek a renunciation (or assignation) of any such interest.

BV20. SERVICE ON LORD ADVOCATE OF CALLING-UP NOTICE OR NOTICE OF DEFAULT

Sections 19(3) and 21(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 provide for service of a Calling-up Notice or Notice of

Default on the Lord Advocate. These Notices are passed to the QLTR Office to be dealt with as agent for the Lord Advocate.

Net funds recovered by the Creditor in excess of the sums due under the Security should be remitted to us as BV of the dissolved company.

BV21. SERVICE ON LORD ADVOCATE OF PETITION FOR RESTORATION OF A COMPANY

Petitions for the restoration of a company to the register of companies served on the Lord Advocate will be passed to the QLTR Office to be dealt with. The QLTR would not normally expect to oppose a petition for restoration on principle but will seek payment of any expenses incurred in connection with the disposal of the company's property. The QLTR will require to be provided with a written undertaking to be paid these expenses, failing which the QLTR will oppose the petition.

BV22. RIGHTS OF PRE-EMPTION AND REDEMPTION

Where a right of pre-emption lies with the QLTR, whether or not the QLTR might expect to exercise that right is likely to depend on whether benefit would likely accrue to the Crown from doing so.

Where a right of redemption lies with the QLTR, matters will be dealt with on a case by case basis.

UH MATTERS

Information on our website

Our website will be updated periodically to identify:

- estates notified to the National Ultimus Haeres Unit (NUHU) after 1 April 2011 (and some earlier cases) and with them for investigation as potential UH estates (but which have not yet been reported to the QLTR);

- estates reported to the QLTR by NUHU after 1 April 2011 but not yet determined if a UH estate so administration has not yet commenced – we will not normally commence administration for 12 weeks after an estate is reported to us by NUHU to give a further period to intimate a claim to us before administration commences;

- estates reported to the QLTR after 1 April 2011 which were not accepted as UH estates;

- estates in the course of administration by the QLTR; and

- estates on which administration has been completed and which remain available for claim (NOTE: this covers estates completed

from August 2003 other than estates below £2000 which are only included where administration was completed after 31 March 2011).

UH1. UH FEES

From -[TBC] fees are as set out below. For any UH estate on which the QLTR completed administration prior to [TBC] the previous fees will continue to apply. Details of the previous fees can be provided on request.

Fees charged on completion of administration of Estate

A fee of 10% of the estate held at the point of completion of administration of the estate will be charged subject to:

- a minimum fee of £300 (even if the estate is less than £3,000); and
- a maximum fee of £3,000 (in cases where there is no heritable property included in the estate), or £4,000 (in cases where there is heritable property included in the estate).

If additional estate comes to attention after administration has been completed then an additional fee according to circumstances may be charged.

Fee for checking documents in support of a claim

An additional fee may be charged for checking the documents supporting a claim of the estate by a spouse, civil partner or a blood relative (see Section UH7 PAYMENT OF UH ESTATE below) if all the documents required in support of a claim have not been submitted and we have to request these or if points arise from our examination of the documents.

Fees will be kept under review and will be adjusted from time to time.

UH2. INITIAL INVESTIGATION OF ESTATE

If a person dies intestate without known blood relatives or surviving spouse or civil partner the fact should be reported immediately to the National Ultimus Haeres Unit ("NUHU"). Contact details for that Unit can be found at the front of these Policies. That Unit will investigate the deceased's background and circumstances and collect for safe keeping appropriate documents, papers and valuables. If it appears to be a UH estate NUHU will report the details to us.

Friends, solicitors, local authorities, hospitals or care homes should **not** attempt to ingather the estate themselves.

NUHU will take particular note of the existence of a co-habitee who intends to make a claim under section 29 of the Family Law (Scotland) Act 2006 (see Section UH8 below).

UH3. ACCEPTANCE AS UH ESTATE

An estate cannot be accepted as a UH estate if-

- there is a valid Will, even if the executor cannot be found
- the estate is insolvent
- there is a blood relative or spouse or civil partner with a known address.

When an estate is reported to us by NUHU we add details to our website (see above under "UH MATTERS – Information on our website").

We will not normally now commence our administration of an estate before 12 weeks have elapsed from the date the estate is reported to us by NUHU. That period is to allow a further opportunity for an entitled person to claim the estate before our administration commences. Any person who therefore considers that they can claim an estate are encouraged to intimate that to us without delay.

Once administration of an estate has commenced, it will be administered to conclusion (and the appropriate fee charged), even if a relative appears in the course of that work.

UH4. ADMINISTRATION OF ESTATES

Administration means that all the known assets belonging to the deceased are ingathered, and all known debts due by the deceased are paid from the estate. Debts will be paid when we are in possession of sufficient funds to enable us to do so. This can occasionally lead to a delay in payment if we are waiting for funds.

Heritage is sold in accordance with Section UH5 below.

The arrangements for the disposal of the deceased's personal belongings, other than jewellery and photographs, are made by NUHU. Depending on the value, they may be sold, distributed to local charity shops or otherwise disposed of. NB: we only retain photographs and jewellery items.

If the estate remains unclaimed after 5 years (previously 2 years) from completion of the administration jewellery will, where appropriate, be disposed of under the direction of an auctioneer. Any sums realised from the sale of individual items will then be credited to the estate. Other jewellery from estates will be periodically sold at auction as a block (usually just for the value of the metal) and in that event sums realised will not be attributed to an estate. The QLTR may seek to pass photographs to any interested institution, otherwise they will be destroyed.

UH5. SALE OF HERITAGE

Heritage will be advertised on the open market for sale cleared of the deceased's belongings. It will also be included in the Asset Register of heritable property falling to the Crown on the QLTR's website.

UH6. CLAIMING UH ESTATES - TIME LIMIT

See above (UH Matters – Information on our website) for the information available on our website regarding UH estates which have not been claimed.

In view of the information now on the QLTR's website, from July 2012 the QLTR has discontinued the quarterly newspaper advertisement of individual estates on which administration had been completed but which had not yet been advertised in the press. The QLTR will place an advert periodically in a newspaper to draw wider attention to the information which can be found regarding UH estates on the website.

Enquiries about Confirmation to a deceased's estate should be directed to the Commissary Office at the Sheriff Court for the area where the deceased resided.

Normally no claims on UH estates will be accepted after the later of 10 years from the date of death or 2 years after completion of administration. Any claim received outwith that period, including a claim in satisfaction of prior or legal rights (these are rights of the spouse, civil partner or children/descendants of the deceased), will be considered according to circumstances.

UH7. PAYMENT OF UH ESTATE

Subject to what follows, the QLTR will pay over the net estate held following completion of administration to the party confirmed as executor (usually as executor-dative unless a Will has subsequently been discovered). The executor must provide us with personal identification in the form of passport/UK photographic driving licence (or equivalent), a recent (not more than three months old) utility bill/bank statement (or copies certified to be a true copy by a solicitor), the principal Confirmation document and (if applicable) a copy of the executed bond of caution. In addition, documentary proof of the blood line to the deceased in the form of original (or copies certified to be a true copy by a solicitor) birth, marriage and death certificates and a family tree showing the executor's relationship to the deceased will be required.

Where the net estate held by the QLTR is less than £2,000, as an alternative to confirmation being obtained, payment can be made to a claimant who could have been appointed executor-dative against an indemnity. The supporting documents (other than a confirmation and copy bond of caution) referred to in the preceding paragraph are also required (ie regarding ID, documentary proof of the bloodline and a family tree).

No interest is paid on a UH estate. Funds are held in a Government Banking Service account which does not bear interest. The QLTR is not subject to the Law Society Rules on administration of executry estates.

If additional estate is subsequently received, the QLTR will normally expect the executor-dative to obtain an eik and bond of caution in respect of the additional funds. Where the additional estate is less than £2,000 however, and this does not have tax implications, the QLTR may consider paying the additional estate to the executor-dative against a suitable indemnity. An additional fee may be deducted by the QLTR.

UH8. CO-HABITEE'S RIGHTS UNDER THE FAMILY LAW (SCOTLAND) ACT 2006 ("THE ACT")

Section 29 of the Act gives a co-habitee the right on intestacy to apply to a court for financial provision from the deceased's net estate within six months of the date of death.

If an estate has been passed to NUHU for investigation where there is a co-habitee who intends to make such an application, it is essential that the co-habitee advises NUHU of that intention in writing as soon as possible to prevent the disposal of property of the deceased which might be the subject of the application to the court.

On receipt of the written notification, we will suspend further action pending either the order or interim order of the court, or the expiry of the prescribed time limit (six months from the date of death) if no such application has been made and intimated to us.

If an application to the court is successful, and we hold funds which are covered by the court's order, they will be paid over on production of the court order.

UH9. DISCRETIONARY PAYMENT TO PARTY WHO IS NOT AN ENTITLED INTESTATE HEIR

The QLTR may consider applications for a discretionary payment from an estate on grounds of:

(a) relationship;

(b) services rendered to the deceased; or

(c) the intention of the deceased regarding the disposal of his or her means and estate.

We will ask for independent and other evidence to support the request.

When considering a discretionary payment on grounds of relationship, the QLTR would want to be satisfied that there were benevolent grounds for considering a payment. Such grounds might arise out of hardship or

unfairness in a particular matter raised with the QLTR. The QLTR would be looking for some form of social element to the relationship between the deceased and a claimant. That might, for example, arise where the claimant was a stepchild of the deceased intestate, or where a claimant had always been treated by the deceased as though they were the deceased's child or part of their family.

In the case of services rendered, evidence of the applicant's contribution to the deceased's quality of life will be required.

In the case of the deceased's intention, applications for a discretionary payment fall into 2 broad categories:

- the deceased left some form of testamentary writing bequeathing all or part of his or her estate to certain parties which, for one reason or another, was not a valid testamentary writing;

- the deceased left no such testamentary writing but it is alleged that the deceased made oral statements of his or her intentions.

If the estate remains unclaimed, such a request will be considered two years after administration of the estate was completed.

If a discretionary payment is made, and a subsequent claim is received from an executor, the estate held by the QLTR is the sum held at the date of the claim by the executor.

UH10. SERVICE ON LORD ADVOCATE OF CALLING-UP NOTICE OR NOTICE OF DEFAULT OF A STANDARD SECURITY WHERE THE GRANTER IS DECEASED

Service of a Calling-up Notice or a Notice of Default on the Lord Advocate is made in accordance with sections 19(3) and 21(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970. It will be for those acting for the creditor to consider how the 1970 Act requires those notices to be served and whether the mechanism of service on the Lord Advocate is available in a particular case.

These Notices are passed to the QLTR Office to be dealt with as agent for the Lord Advocate and we may request sight of a copy of the death certificate (because that very often discloses registration of the death by a relative). We recognise that ultimately it is a matter for the courts in any particular case as to whether a notice has been validly served for the purposes of the legislation.

Net funds recovered by the Creditor in excess of the sums due under the Security should, if agreed with us to be appropriate, be remitted to us (although they may require to be reported in the first instance to NUHU for investigation as to whether a UH estate might be in view).

UH11. DISCLAIM OF INHERITANCE IN FAVOUR OF ANOTHER FAMILY MEMBER

Family members often decide to take no benefit from a deceased's estate, in favour of another family member.

If the document declaring the family member's intention has not been carefully prepared, and the legal effect of the document is to renounce rights of succession, those rights fall to the Crown.

In such circumstances, where the true intention of the renouncing party is clear and is vouched, the QLTR will provide a letter stating that the QLTR makes no claim on the estate with the intention that the share reverts to the free estate for distribution to the other claimants. A fee of £250 will be charged to cover consideration of the approach, and supporting papers, and the preparation of the letter.

QLTR CONVEYANCING PROCEDURES

Before the QLTR can deal with heritable property as *bona vacantia* the QLTR requires to complete title.

The firm of Solicitors acting for the prospective purchaser of *bona vacantia* heritage (or acting for the QLTR for a UH estate or where that arises for a sale of BV) extends a draft Royal Warrant (which in essence is the Sovereign's instruction to the Keeper of the Registers of Scotland (ROS) to grant title to the relevant heritable property of the dissolved Company or the missing person or the estate of the UH deceased to the QLTR).

The Royal Warrant also contains the specific conveyancing description of the property which the QLTR now proposes to sell.

The accuracy of that draft description is checked by ROS, then the engrossed Warrant is sent to London for execution on behalf of the Sovereign.

On receipt of the signed Royal Warrant by the Keeper, the Keeper issues a Deed of Gift in name of the Sovereign to the QLTR.

The Deed of Gift is the QLTR's title. The Disposition will narrate the deduction of the QLTR's title via the Deed of Gift. We will provide a certified copy of the Deed of Gift.

Please note that the process from the time of approval by ROS of the extended draft Royal Warrant to the delivery to the QLTR by the Keeper of an executed Deed of Gift takes between six and eight weeks. It cannot be accelerated.

We supply a pro forma of each of the Royal Warrant and the Disposition from the QLTR for use by solicitors.

Interested parties should note that property offered by the QLTR is sold as seen. It is for the purchaser to be satisfied as to the state of the property and the fixtures and fittings.