**THE REGISTER OF CONTROLLED INTERESTS IN LAND (“ROCI”)**

**WHAT DOES IT MEAN FOR MEMBER CHURCHES OF THE BAPTIST UNION OF SCOTLAND?**

**WHAT IS ROCI?**

**ROCI** or, if you prefer trendy acronyms, “**Rocky**”, is not a revival of the series of films about a boxer who gets knocked down, but gets up again. However, as you will read below, ROCI packs a powerful punch and ignoring it can have painful consequences, **especially for unincorporated churches**. Nevertheless, taking the initiative in the early rounds will put ROCI back in its corner, and after that the occasional mild skirmish should keep ROCI at bay.

ROCI is the **Register of Persons Holding a Controlled Interest in Land** established under the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 (Scottish Statutory Instrument 2021 No 85), as updated by similarly named Amendment Regulations (SSI 2021 No 495).

*NB:*

* *This article is the briefest of summaries of selected parts of the Regulations which may be of most interest to churches in membership of The Baptist Union of Scotland (“BUS”), and does not pretend to be in any way comprehensive. The Regulations must be referred to for fuller detail.*
* *Before delving further into this article, you may find it helpful to read the article elsewhere on this website entitled “****Who are the Church’s Trustees?****”. Please take particular note of the distinction between the “General Purpose Trustees” and the “Title Trustees” of the church.*

**WHEN DOES ROCI ENTER THE RING?**

* ROCI is already here. It opened on **1st April 2022** (“**the Commencement Date**”).
* However, there is effectively a 12 months “grace period”. ROCI will not be enforced, and substantial fines levied for non or erroneous registration, until **1st April 2023** (“**the Enforcement Date**”).

**WHY IS ROCI HERE?**

This is all part of the Scottish Government’s drive for greater transparency, not only in the ownership of heritable property (land and/or buildings), but as to who controls, manages and takes the decisions in relation to heritable property. The Land Register of Scotland (for registered titles) and the General Register of Sasines (for recorded, but unregistered, titles) tell us in whose name(s) title was registered or recorded (perhaps decades or centuries ago), but do not reveal who now holds the controlling power over that property.

The beneficial purpose of enabling communities to engage with faceless trusts that own vast tracts of land or key buildings within their locality can be acknowledged. However, perhaps rather unfortunately, churches can be ensnared by the possibly unintended consequences of the wide framing of the Regulations.

**CAN ROCI BE AVOIDED?**

Yes!

* ROCI takes on only a limited range of opponents. Incorporated churches, that is:
  + Scottish Charitable Incorporated Organisations (“**SCIOs**”); or
  + Charitable Companies limited by Guarantee (”**CLGs**”)

are regarded as already being subject to a sufficient transparency regime and therefore do not have to effect any registration under ROCI in relation to their properties. As SCIO is by far the more common incorporated charitable structure of choice for Baptist churches, I will refer from now on to SCIOs, but the same principles apply to CLGs.

* ROCI’s swinging haymaker does not land until the Enforcement Date. Therefore if your church is currently constituted as an Unincorporated Voluntary Association (“UVA”), then if:
  + the church is restructured as a SCIO; **and** (this is a very important **and**)
  + the heritable properties of the UVA have been conveyed to the SCIO;

**prior to the Enforcement Date** then there will be no need to effect any registration under ROCI.

* Accordingly:
  + this can be added to the list of reasons why you might consider restructuring your church as a SCIO (see the separate article on this website)
  + if you have started the SCIO restructuring process, but this has become becalmed for whatever reason, you may wish to revive this to ensure that the process can be completed prior to the Enforcement Date

*If your church has already restructured as a SCIO* ***and*** *its properties have been conveyed by the trustees of the UVA to the SCIO, you can stop reading here. If your church is still a UVA (even if you are in the process of restructuring as a SCIO), then keep reading……*

*Before going any further, I should state very clearly that my purpose in writing this article is not to create more work for solicitors or to encourage churches to incur legal expenses when their preference would always be to direct financial resources towards more apparently useful aspects of the ministry and mission of the church. However, having:*

* *engaged with these Regulations for several months*
* *undertaken personal consultations with the relevant staff at the Registers of Scotland*
* *participated in the pre-release testing of the new registration system*
* *successfully made the multiple submissions needed in relation to one property to comply with the requirements of ROCI*

*I have been forced to the unavoidable conclusion that unless a church leadership group has a strong understanding of title deeds and trusteeship in general, and a particular knowledge of the title deeds of their own church’s heritable properties, then, rather than trying to take on ROCI themselves, the limited time and resource of the leadership group would probably be more efficiently deployed in instructing suitably qualified solicitors to conduct, or at least guide them on, the ROCI road to registration.*

*Therefore you could stop reading here and simply instruct the church’s solicitors to attend to this. However, reading further may help in understanding what information your solicitors may require and why, and thus minimise the time and consequent cost involved in the process.*

*Please believe me. I have tried to make this explanation as short and simple as possible! However, because:*

* *the Regulations have not been written with Baptist church title deeds in mind; and*
* *although some common threads emerge, Baptist church title deeds produced by different solicitors in different eras with different levels of competence and understanding of how Baptist churches operate, end up being so different from each other with so many different combinations of possibilities;*

*it is not feasible to produce clear and comprehensive guidance that will meet every situation, and even the limited amount I do say will be hedged with some complex and technical concepts. Please bear with me……*

**WHAT IS ROCI RECORDING?**

ROCI is a record kept by the Registers of Scotland of persons who:

* are owners or tenants of a heritable property (“tenants” relates to recorded or registered leases of over 20 years. As that will rarely apply to church properties, I will from now on refer to owners only, but the same principles would apply to relevant tenancies); and
* in respect of that property, there is an “**Associate**” (see below).

In relation to UVAs:

* The owners (known as “**Recorded Persons**”) hold title to the property as trustees on behalf of the members of a UVA.
* The Associates are responsible for the general control and management of the UVA, but do not have a recorded or registered title to the property.

Please refer back to my article on “**Who are the Church’s Trustees?**”.

* Recorded Persons are the approximate equivalent of **Title Trustees** as explained there
* Associates are the approximate equivalent of **General Purpose Trustees** as explained there

But of course it could not be as simple as that. We have to draw a distinction between:

* The original Title Trustees in whose names title was taken whenever the property was acquired (maybe decades or centuries ago) and whose names therefore still appear in the General Register of Sasines or in the Land Register of Scotland. Let us call them the **Original Title Trustees.**
* The current successors in their respective offices of the Original Title Trustees. Let us call them the **Current Title Trustees.**

If the Original Title Trustees are still the Current Title Trustees, and are the same people as the General Purpose Trustees, then there are no Associates, as those responsible for the general control and management of the UVA do have a recorded or registered title to the property, and thus there is no need to register under ROCI.

In virtually every case, except for some limited instances of very recently acquired properties, there will be a divergence between the Original Title Trustees and the General Purpose Trustees. Therefore the General Purpose Trustees will be Associates and that will trigger the requirement to register under ROCI. With me so far??

**WHO HAS TO REGISTER UNDER ROCI?**

Responsibility rests with each of the **Recorded Persons**, who will be:

* The Original Title Trustees in so far as still alive **and** continuing in office as trustees; or
* If there are no Original Trustees alive **and** continuing in office, the Current Title Trustees.

Each of the Recorded Persons is responsible for registering all the information relating to a particular property, which will inevitably lead to a lot of duplication.

**WHAT INFORMATION DOES THE RECORDED PERSON HAVE TO REGISTER?**

* Recorded Person’s name and address
* Sufficient information to identify the heritable property:
  + If it is registered in the Land Register of Scotland, the Title Number will be enough.
  + If it is still in the General Register of Sasines (ie recorded, but not yet registered), a full address and post code will usually suffice. An area map will come up on screen and you will be asked to verify that this is indeed the correct location (a detailed title boundary plan is not required).
  + Capacity in which the property is owned-in this case as trustee of the UVA.
* In respect of each Associate:
  + Name and address.
  + Date of birth (this information is not published on ROCI and is simply for internal verification that the Associate is a real human being).
  + The date (if known) when the Associate’s link with the Recorded Person was formed. This would usually be the later of:
    - the date of acquisition of the property; and
    - the date on which the Associate was appointed as a General Purpose Trustee.
  + Any **unique reference number** allocated to that Associate (this should be in place if the Associate’s details have been registered before-most likely by one of the other Recorded Persons).

As regards who are the Associates whose details require to be given:

* You could not go wrong if you listed all the General Purpose Trustees, as these are the people responsible for the general control and management of the administration of the UVA. However, for once the Regulations come to the assistance of a UVA church by saying that for the particular purposes of ROCI “**a person is responsible for the general control and management of the administration of a body if they hold an office or other official position in that regard (such as chair, treasurer or secretary, however that may be described)**”. Thus, although it may seem rather inconsistent with the egalitarian nature of the church leadership group, you can with a clear conscience save yourself some work by just giving details of the following:
  + **Treasurer** (or equivalent)
  + **Secretary** (or equivalent)
  + **Chair** (possibly the current Minister/Pastor), but if such an office does not really exist, do not trouble to make one up-the Treasurer and Secretary (or equivalents) would be enough
* If there are no Original Title Trustees still alive and continuing in office as trustees, then you must include as Associates all the Current Title Trustees, in so far as not already included as Associates. Therefore for example if your Current Title Trustees include all the Deacons, you would also have to list all the Deacons as Associates and you could not get by with just the Treasurer, Secretary and Chair (or equivalents).

**WHERE DOES THE RECORDED PERSON GO TO REGISTER?**

* If solicitors are carrying out the registration on the church’s behalf, then they will already have their own online account with the Registers of Scotland.
* If the church is doing the registration itself, the Recorded Person can go to [www.rci.ros.gov.uk/login](http://www.rci.ros.gov.uk/login) and create a public account which can then be logged into. Remember that each Recorded Person will need their own separate account.
* Thereafter it is simply a matter of filling in the information requested on screen:
  + You begin with the Recorded Person and then the property, before doing separate entries for each Associate.
  + The system is relatively intuitive and should take you smoothly from page to page.
  + It is possible to save a draft entry and return to complete it later. However, you will have to click through all the previously submitted information again, and you may have to re-enter addresses.
* Each Recorded Person will have to laboriously submit relatively similar information.

**WHAT ABOUT CHANGES TO INFORMATION IN ROCI?**

If there are alterations to information already in ROCI, such as:

* changes of address and other details of Recorded Persons or Associates
* addition or removal of Recorded Persons or Associates
* property being conveyed away, which might (for example) be as a result of:
  + sale; or
  + transfer to a SCIO;

then the appropriate Recorded Person should register the information in ROCI **within 60 days**. Associates must provide Recorded Persons with the information necessary to update ROCI. Even if solicitors have carried out the initial registration, the church may feel able to attend to such updating itself, though legal advice should be sought if there is any doubt. For a new property being acquired, there may be a discussion between solicitors and church as to who attends to any required ROCI registration. If Original Title Trustees and Associates are the same, there may not be a need to register initially, but that day will surely come.

**WHERE CAN THE CHURCH LOOK FOR ASSISTANCE?**

* Due to the complexity of the Regulations, and how these apply differently to different churches, BUS staff will not be able to provide churches with advice on ROCI registration (apart from pointing you to this article).
* Churches should consider seeking advice from their usual solicitors (especially if they hold the title deeds to the church properties) or from other solicitors of their own choice. It would be useful to ensure that the solicitors instructed have a reasonable understanding of ROCI and its specific application to Baptist church title deeds.
* Without wishing in any way to interfere with existing church/solicitor relationships, my own company Diakoneo Legal Services Limited (“DLS”) would be happy to advise on matters relating to ROCI, if so requested.

**HOW MUCH WILL LEGAL ADVICE COST?**

* Impossible to predict in any given case, **as everything will depend on whether title and other information is available and clear in its terms**, so that Recorded Persons and Associates can be readily identified.
* If the necessary information is clear and available, then fees should be relatively low.
* If title and other research is necessary to establish the required information, then fees will increase correspondingly, but generally it is good and helpful for the church leadership group to know as much as possible about the contents of the title deeds to the church’s properties.
* DLS would be willing to provide an initial Zoom consultation free of charge and then give an estimate of fees once the scope of the work required has been ascertained, and I would expect that many other solicitors would offer something similar.
* The Registers of Scotland will not make any charge for registering in ROCI.

**WHAT SHOULD THE CHURCH LEADERSHIP GROUP DO NOW?**

* As regards initial registration in ROCI, this is “unofficial advice”, but I would suggest not registering right away. This is a totally new system, and there are bound to be technical difficulties and inefficiencies, before it begins to settle down. I expect that “cloning” and other techniques allowing repeated information to be copied across will be introduced and/or improved.
* You will require to ensure that ROCI registration is completed well before the Enforcement Date of 1st April 2023, and therefore you might want to diary in a date between say, 1st July 2022 and 1st October 2022, to kick start this process.
* **However, you may wish to consider the following for immediate action:**
  + **Make sure you know where the title deeds to all the church’s properties are located, so that when you do choose to initiate the registration process, the necessary information is ready to hand.**
  + **Would it be beneficial to initiate or revive the process of restructuring as a SCIO in order to complete this before the Enforcement Date, and so avoid ROCI (and any sequels)?**

**THE FINAL BELL**

Nothing in this article should be regarded as legal advice to any particular church. Each church is responsible for making its own registration(s) in ROCI, and should take whatever legal or other advice is required for that purpose.

Apologies if reading this has been like going 15 rounds with Rocky Balboa. I do not make the law. I only endeavour to explain it. If you have not yet been knocked out or thrown in the towel, and if in the words of Elton John, you are still standing, well done! You can take a rest now.

**Alan Holloway**

**Solicitor to The Baptist Union of Scotland**

[**alan@diakoneolegal.co.uk**](mailto:alan@diakoneolegal.co.uk)