



THE ACCOUNTANT OF COURT

GENERAL GUIDANCE NOTE ABOUT YOUR APPOINTMENT

What is a Partnership Factory?

Such appointments are made at Common Law and in terms of Section 35 of the Partnership Act 1890.

These appointments usually arise where:

- (a) there is a dispute between partners
- (b) the relationship between the partners is affecting the running of a business
- (c) Partners are being refused their rights as partners to the business.

Appointments are usually made after dissolution for the purpose of winding up the partnership. Frequently dissolution and the appointment of a Factor are craved in the same petition.

The first step in establishing the estate would be for the Factor to obtain a copy of the most recent partnership accounts.

How do I administer the estate?

Usually at appointment stage it will be unclear whether the partnership estate is solvent or not. Thus it becomes the Factor's first priority to establish the partnership assets and liabilities and to ensure that all income due to the estate is ingathered.

Any liabilities which exist at the date of the factory appointment must not be settled by the Factor unless he is certain that sufficient funds exist to enable him to do so. However, all necessary expenditure incurred after the appointment date may be settled.

The Factor is required to prepare and lodge Accounts of Intromissions on an annual basis. The Accountant whilst auditing the accounts lodged will be monitoring the Factor's progress with the administration of the estate with a

view to termination of the case and will actively ensure, if necessary, that the Factor maintains a proactive role in seeking same.

In some instances the former partners may reach an agreement between themselves as to how the estate ought to be distributed. The Accountant will require to see such an agreement in writing along with all supporting evidence and to give prior approval to same. Thereafter the closing expenses will be ascertained and the Factor advised accordingly. The Factor is then expected to prepare and lodge a final account showing the distribution of the estate in terms of the partners' agreement and closing with only those sums as advised being retained.

How do I manage a Solvent estate?

All accepted debts should be paid. These are debts which have been confirmed as such by the Accountant of Court after sight of sufficient documentation to instruct same. The Factor is then left to consider how best to distribute the surplus estate between the former partners and to thereafter prepare a Scheme of Division.

There are 3 different scenarios which may occur here, the first of which is the most common:

Scheme of Division is accepted by former partners.

This is the most straightforward scenario where the partners agree upon the distribution of the estate.

The Factor lodges a penultimate account. Sum to be reserved for commission and expenses is advised at audit. Final account is lodged showing the distribution of the estate per the agreed Scheme of Division minus all closing expenses retained and shown in the estate at close of the final account. Factor is requested to instruct the petition for his judicial discharge.

Scheme of Division NOT accepted by partners

The Factor will lodge a penultimate account. He will be advised of commission and closing expenses to be retained.

The Factor will petition the Court for his judicial discharge based upon his Scheme of Division. The former partners will have a copy of both the Petition and the Scheme of Division intimated to them and may lodge any objections with the Court who will then rule thereon.

The Factor will proceed with the distribution of the estate based upon the Scheme of division as approved by the Court and in terms of the Court Interlocutor issued. He will lodge his final account for audit.

Scheme of Division unable to be prepared

Where the Factor, for whatever reason, is unable to prepare a Scheme of Division he must petition the Court for an Action of Multiplepinding. The Court will decide on the Scheme of Division in due course.

How do I manage an Insolvent estate?

All assets should be realized where practicable and all expenses incurred necessarily during the period of the factory paid. The Factor will be required to adjudicate on all claims existing as at the date of appointment.

However, where a Factor is appointed at common law he has no power to adjudicate on claims or give preferences.

Creditors with an entitlement to interest are entitled to add that interest to their claim to the date of payment. This puts other creditors at a disadvantage but they may either apply for a Section 11A appointment (see leaflet) or for sequestration.

The Factor is required to satisfy himself that any claim received is due but he has no power to adjudicate on the claims received or to give preferences. If a creditor does not agree with the Factor as to the sum due it is up to them to take action as he sees fit.

However, any secured creditor is entitled to the extent of their security. Should it not be possible to realise the full amount of the security then the balance would rank along with all other claims.

Once the claims are established and agreed by the Accountant the Factor will be required to prepare and lodge a penultimate Account. At the audit of this account he will be advised of the sums to be retained in respect of his final commission and all other closing expenses. Thereafter he will be requested to prepare and lodge a Scheme of Division showing the proposed distribution between the creditors. Once approved, by the Accountant, the Factor may distribute the estate on that basis. A final Account will then be lodged. Where a creditor has not been paid 100p in the £ he may pursue any of the partners individually for the balance which remains due.

Where can I obtain further information?

The Accountant of court staff will be happy to answer any enquiry about how to go about making an application and about what happens afterwards. The Sheriff Courts and the Petition Dept. at the Court of Session should be able to assist in the application or discharge procedures.

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Office of the Accountant of Court (Scotland)

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