



THE ACCOUNTANT OF COURT

## GENERAL GUIDANCE NOTE ABOUT YOUR APPOINTMENT

### What is a Section 11A Factory?

Judicial Factors may be appointed in terms of Section 11A of the Judicial Factor's Act 1889 normally but not necessarily at the instance of a creditor. In this instance the Factor acts on behalf of the creditors and has no power to administer the estate for the behalf of the beneficiaries without the authority of the Court.

These appointments are made on the estate of a deceased person. Typical reasons for such an appointment are;

- a. No Trustee or Executor has been nominated in the Trust Deed of the deceased or where the last Trustee has died without nominating a successor.
- b. The Trustee/s nominated by the deceased has declined or are refusing to accept the nomination.
- c. The Executor nominated by the deceased has failed to carry out the duties of that office.

Any person/s with an interest in the estate, or creditor/s of the deceased may petition the Court for the appointment of a Judicial Factor in terms of Section 11A of the Judicial Factors Act 1889.

It is not necessary that the estate to be insolvent for an appointment to be made under this section of the 1889 Act.

### How do I get an appointment?

Application is made by way of summary application to the Sheriff Court or by lodging a petition at the Court of Session.

The terms of such an appointment require the Factor, within 14 days from the date of his certified copy Interlocutor confirming his appointment and as issued by the Court, to insert in the Edinburgh Gazette or some other such appropriate

newspaper a Notice calling for claims upon the estate in terms of Rule 25 Judicial Factors Rule 1992 Form 4.

The Factor then should lodge in the Court process; (i) a copy of each newspaper containing the Notice and (ii) a certificate of publication by the publisher of each newspaper stating the date of publication and text of the Notice.

The period for notice of creditors to intimate their claims on the estate to the Factor is 4 months from the latest date of the advertisement (Rule 25).

It should be noted that under no circumstances should the Factor pay any creditors existing prior to the appointment however, funeral expenses may be paid by the Factor, if necessary, without the approval of the Court.

### **How do I administer the estate?**

Upon receipt of the claims, as referred to above, the Factor is required to determine whether the claims submitted ought to be accepted or rejected based upon the examination of the documentation produced.

The Factor will then rank the claims as secured, privileged, preferred or ordinary. This is necessary in insolvent cases and immaterial if the estate is solvent. Where the Factor has received all claims and finds that the estate as solvent he is required to notify the Accountant of such.

Both types of estates follow different administrative procedures.

### **How do I manage a Solvent estate?**

The Factor lodges with the Accountant an Account of his Intromissions to a current date along with his adjudication on and ranking of the claims received and all supporting documentation. This should be accompanied by a formal State of Funds and Scheme of Division signed by the Factor.

The Accountant will prepare a report thereon which is revised by the Factor and thereafter issued by the Accountant for lodgement by the Factor in the Court Process along with the Factor's principal State of Funds and Scheme of Division.

The Factor shall then, in accordance with Rule 30 Judicial Factors Rules 1992, send to each of the persons who have lodged a claim on the estate a Notice by first class post stating;

- a) that the State of Funds along with the Accountant's report thereon have been lodged in Court
- b) the amount for which the creditor has been ranked i.e. the amount of the dividend due ( for solvent cases this is 100p in the £)

- c) that the claim has been rejected or
- d) that no funds remain available for division
- e) any objections must be lodged within 28 days.

The Factor is then again required to lodge a Notice of this in the Edinburgh Gazette and give Notice by first class post to any person who he believes may be either a creditor or an interested party of the estate or a creditor or any interested party in the succession of a deceased's estate that no dividend has been allocated to them in the State of Funds and Scheme of Division lodged with the Court.

The proposed division will be approved upon the expiry of the 28 period of Notice if no objections have been lodged with the Court. Otherwise the Court will hear any objection and rule on their determination and the resultant alterations.

The Factor then forwards a copy of the Court Interlocutor approving the proposed Scheme of Division to the Accountant and settles each of the creditors' claims in accordance therewith. An account in these terms is then prepared and lodged for audit along with a receipt as obtained from each of the creditors paid. The sums required to be retained to meet the closing expenses of the factory will be advised to the Factor at the audit of this Account.

### **How do I Adjudicate on the Claims received?**

Only a Judicial Factor appointed in terms of a Section 11A appointment is entitled to adjudicate on claims.

In all insolvencies, creditors are invited to lodge claims with Judicial Factors. These claims must condescend with the extent to which there is indebtedness as at the date of the Factor's appointment.

A claim is in two parts, the first being either an Affidavit or a statutory Notice of Claim with the second being documentation to vouch the grounds of debt. This should ensure that the debt was incurred prior to the date of the Factor's appointment. In the case of a deceased's person's estate this should also confirm that the debt was incurred prior to the date of death. The voucher should also clearly indicate the goods or services supplied.

The Factor must rank all accepted creditor claims in the appropriate categories: Secured, Privileged, Preferred, Ordinary, Postponed and Rejected.

Secured Debts – The most common type of secured debt is a Standard Security over heritable property. The Secured Creditor's title to the heritage is superior to that of the Factor and in reality the claim does not require formal adjudication. The Factor does have an interest where the sale proceeds of the heritage exceed the value of the Standard Security as any excess sum falls to the factory estate. Where the sale proceeds are insufficient to meet the Secured Creditors claim then any balance remaining will rank as an Ordinary claim.

Privileged – These are statutory debts and each of the following has the same ranking as the other; Inland Revenue, Customs & Excise, Department of Work & Pensions and the remuneration of employees where preference is extended to a sum not exceeding £800 in respect of services rendered to the debtor during the period of 4 months preceding the date of the debtor's death.

Ordinary Claims – these include all other admissible claims not included above.

Postponed Debts – these fall into 2 categories; a) a person who has loaned money to the debtor in consideration of a share of profits or a rate of interest on the loan which varied according to the profits of the business and b) any loan made to the debtor by his or her spouse.

Rejected Claims – all claims not falling into any of the aforementioned rankings are rejected.

### **How do I deal with any surplus estate?**

Any estate remaining, with the prior approval of the Court, will be distributed among the beneficiaries of the estate in accordance with the terms of any existing Will. The Factor is required to verify the identity of the beneficiaries and locate their whereabouts.

The Factor will be required to draft and lodge a Report on the Surplus estate remaining advising how he intends to dispose thereof, the reasons therefor and the sums due to each of the beneficiaries.

The Accountant will prepare a Report on the Factor's determination and the principal revised report will be returned to the Factor for lodgement by him in the Court Process. Once again objections are expected to be lodged with the Court within a 28 day period.

The Factor then lodges a copy of the Court Interlocutor approving his division of the surplus estate with the Accountant and proceeds to pay the sums due to the beneficiaries as directed by the Court Interlocutor.

Any sums due to beneficiaries which prove to be untraceable may be either (i) consigned with the Accountant of Court (see Consignations leaflet) or (ii) may be the subject of an Indemnity Policy.

Once the surplus estate has been distributed the Factor lodges a final Account with the Accountant for audit purposes closing with only those sums advised to be retained to meet the closing expenses of the administration.

Upon completion of the audit the Factor is advised to instruct his Legal Agents to proceed with a petition to the Court in respect of obtaining his judicial discharge from office.

### **How do I manage an insolvent estate?**

The procedure is as outlined above except with the calculation of a dividend to the creditors perhaps being necessary where there are insufficient funds to pay any claims received in full.

There will no requirement to administer any surplus estate.

### **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.

### **Where can I get further help or information?**

Office of the Accountant of Court (Scotland)

For information visit the website:

[www.scotcourts.gov.uk/the-courts/more/the-accountant-of-court](http://www.scotcourts.gov.uk/the-courts/more/the-accountant-of-court)

or contact the office at:

Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR

Telephone: 01324 678300

Fax: 01324 678365

Email: [judicialfactories@scotcourts.gov.uk](mailto:judicialfactories@scotcourts.gov.uk)



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