



THE ACCOUNTANT OF COURT

## GENERAL GUIDANCE ABOUT JUDICIAL FACTOR APPOINTMENTS

### What is a Judicial Factory?

It is an order from the Court appointing an Officer to conserve and manage an estate where a particular problem has been identified and which is without legal protection and administration. It also says what the appointed person or persons can actually do.

### When is a Judicial Factory necessary?

1.
  - a) Where a Solicitor has failed to a material extent to comply with the provisions of the Solicitors Accounts Rules and/or
  - b) In connection with his practice as a Solicitor
2.
  - a) At the instance of a creditor. It is not necessary that the estate be insolvent or thought to be so.
  - b) At the instance of a person with an interest in an estate where there is:
    - (i) no settlement appointing Trustees to manage the estate;
    - (ii) the persons nominated to act as Trustee have refused the nomination;
    - (iii) the Trustee is refusing to act.
3.
  - a) where there is a dispute between Partners.
  - b) The relationship of the partners is affecting the business.
  - c) Partners are being refused their rights as Partners in the business.
4.
  - a) on a deceased person's estate.
  - b) On a Perpetual Trust.
  - c) Any other type of Judicial Factory appointment not already covered by Nos. 1-8.
5. Where the individual over whom the appointment has been made has been convicted of a drugs related offence.

6. Such appointments are made over the estate of a Limited Company on an Ad-Interim basis and to fulfill a specific purpose. Each circumstance differs and must be treated on its own merit.
7. For investigation into the estate of a:
  - a) recognized body
  - b) registered Charity
  - c) non-registered Charity operating as such in Scotland
  - d) A non-registered body which appears to be a Charity, is established under the law of Scotland, is managed or controlled in Scotland, or has property in Scotland.
8. On the estate of a Child in terms of the Children(Scotland) Act 1995 at the behest of the Accountant of Court and where the level of estate exceeds the value of £50,000.

The over-riding factor in the administration of any Judicial Factor appointment is to attain a solution to the particular issues which resulted in the necessity of an appointment.

The Judicial Factor is required to work towards such an end.

### **What types of Appointments are there?**

Judicial Factors may be appointed in terms of the following:

1. Section 41 of the Solicitors (Scotland) Act 1980 at the instance of the Law Society of Scotland.
2. 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.
3. Section 35 of the Partnership Act 1890.
4. At Common Law and in some cases under (2) above.
5. The Proceeds of Crime (Scotland) Act 2002 (ch43).
6. Ad-Interim appointments can be obtained on the estates of Limited Companies or where there is an urgent need to protect the estate.
7. The Law Reform (Miscellaneous) Provisions (Scotland) Act 1990.
8. The Children (Scotland) Act 1995.

### **How can I be appointed?**

By either the lodgement of a Petition at the Court of Session or by Summary Application at the Sheriff Court within the jurisdiction of the main party or asset of the estate.

### **How much will it cost?**

There are various costs to be considered;

1. Court fees
2. A fee to register the bond of Caution with the Accountant of Court
3. Legal fees if a Solicitor is employed to process the application through the Court. It is necessary that an Edinburgh Solicitor be engaged in the case of Court of Session appointments.

### **Will I need a Bond of Caution?**

Yes. A Bond of Caution must be obtained in respect of all types of Judicial Factor appointment. The Bond of Caution is usually obtained to provide insurance cover for the value of the total estate and must be lodged with the Office of the Accountant of Court within one month of the date of the Interlocutor appointing the Judicial Factor.

In certain circumstances may also be possible to accept the factor's professional indemnity insurance (PI).

The Accountant of Court has no power to prorogate (extend) the time limit for the lodgement of the Bond of Caution.

### **How long does the appointment last?**

1. Until the dispute has been settled and the estate distributed to the entitled parties
2. the Judicial Factor wishes to have his appointment recalled and another appointed in his place or
3. the Judicial Factor dies
4. Exhaustion of the funds held in the estate.

### **Who can be a Judicial Factor?**

A Judicial Factor is usually a qualified Solicitor or Chartered Accountant but in some cases a family member may be appointed.

Although the basic purpose of each Judicial Factor is to manage and administer the estate until such times as it is able to be transferred to the correct recipient/s there are different guidelines employed by the Accountant of Court for the administrative procedures used for of each type of appointment.

## **Will anyone check what I am doing?**

Yes. The Accountant of Court supervises the acting's of Judicial Factors appointed by the Court. The Judicial Factor will be required to prepare and lodge an Inventory of Estate with the Accountant of Court declaring what estate is being looked after and the purpose of the appointment. The Judicial Factor will also be required to keep good records and each year prepare and lodge an Account of Intromissions with the Accountant of Court for audit purposes.

## **How will I get paid?**

1. Any legal work to be charged to an estate will be the subject of an Account of Expenses which will be lodged with the Accountant of Court and then remitted to the Auditor of Court for taxation purposes. This applies to all legal work including that incurred pre-appointment.
2. Any fee or commission due to the Judicial Factor for the work carried out since the Date of Appointment is fixed by the Accountant of Court. The fee is calculated using detailed Time records kept by the Judicial Factor covering the period of the Account and if necessary, the correspondence files relative to that same period. The Accountant of Court is only able to award a fee to the Judicial Factor based upon fixed rates and not upon commercial rates.

## **How do I obtain my discharge from office?**

Upon completion of the purpose of the appointment the Judicial Factor may obtain his judicial discharge from office by the same manner in which he was appointed. It is necessary to lodge either a Petition or Summary Application with the same Court which granted the appointment.

The costs for this procedure will be similar to those incurred in seeking the appointment and will form a proper charge against the factory estate, after taxation.

Prior to a Judicial Factor receiving a discharge he will be required to produce, to the Accountant of Court a Clearance Certificate from the Controller of Taxes at the Inland Revenue in respect of Income Tax.

Before any beneficiaries are paid the Judicial Factor is required to produce a Clearance Certificate in respect that all Estate Duty, Capital Transfer tax and Inheritance Tax have been paid.

## **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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