

Appointing Creditors as Executors Under Section 19(c) of the Administration of Estates Act

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INTRODUCTION

Section 19(c) of the Administration of Estates Act¹ (“the Act”) is a relatively unknown provision which, under certain circumstances, allows creditors to assume executorship of a deceased estate. Although it is often viewed more as a procedural rule for resolving situations where executorship is contested, in practice it can operate as a pathway for creditors to take control of estate administration.

THE BASIC MECHANISM

Section 19 applies where more than one person is nominated for appointment as executor. In such cases, the Master must work through a hierarchy of preference: surviving spouse (or nominee), then heir (or nominee), and then, under section 19(c), creditor (or nominee).

A creditor's opportunity therefore arises only in the absence of a nominated spouse or heir. In this event, the Master is directed to give preference to the creditor.

On the surface, this places creditors in a strong position - particularly in estates where heirs are inactive, unknown, or simply uninterested in taking on the administration.

WHAT COUNTS AS A “CREDITOR”?

The Act itself does not narrowly define “creditor” for purposes of section 19(c), but generally the category includes persons with liquidated claims, institutions such as banks or SARS, and any party with a provable financial claim against the estate. It's important that the claim is provable because an undisputed debt puts the creditor in a far better position than a contested or uncertain one.

IT'S NOT AUTOMATIC

Although section 19 uses the word “shall”, that obligation is qualified and comes with a proviso: the Master may, in terms of section 19(ii), pass over any of the listed persons “for good reason”.

This means that a creditor does not have an entitlement to appointment but rather a conditional preference, and even then, only if the right conditions are met. The Master will assess whether the appointment is appropriate in the circumstances, and that assessment can go either way.

CAVEATS

Given that Executorship is a fiduciary duty, conflict of interest is the paramount concern. A creditor, by definition, has a personal financial interest in the estate in that they want to maximise recovery, while the executor's duty is to treat all creditors and heirs fairly. Where this tension is too pronounced, the Master could decline the appointment.

Disputed claims are another red flag. If the creditor's claim is challenged, unclear, or potentially overstated, appointment becomes difficult to justify. The creditor would effectively be adjudicating the validity of their own claim, which would give rise to a clear-cut conflict of interest.

While the Master's discretion is broad, it is also subject to the Promotion of Administrative Justice Act² (“PAJA”). The Master may bypass a creditor where there is conflict between stakeholders, complexity requiring independence, or any indication that the appointment would compromise proper administration. That discretion must be exercised rationally and in a procedurally fair manner, since it falls within the ambit of PAJA.

Appointment does not end the inquiry. Even where a creditor is granted executorship, the position is not secure *ipso facto*. Section 54 of the Act permits the removal of an executor, and in *Letterstedt v Broers*³ it was confirmed that fiduciaries may be removed where there is a mere reasonable apprehension of risk to proper administration, even in the absence of explicitly proven misconduct.

WHEN DOES THIS ACTUALLY MATTER?

Section 19(c) becomes particularly relevant in insolvent or debt-heavy estates, estates where heirs are absent or disengaged, and situations where a creditor wants to retain some control over the recovery process. If used strategically, it can help ensure that administration proceeds efficiently and with a focus on debt settlement.

CONCLUSION

Section 19(c) creates a useful, albeit qualified avenue for creditor involvement at the highest level of estate administration. Although it is not widely invoked, in the right circumstances it can be extremely useful.

To boil it down: a creditor can only be appointed in the absence of spouse or heir nominations; the preference is not absolute; and the potential for conflict of interest will be the foremost concern in deciding whether or not the appointment holds.

¹The Administration of Estates Act 66 of 1965.

²The Promotion of Administrative Justice Act 3 of 2000.

³*Letterstedt (Now Vicomtesse Montmortf v Broers and Another* 1884 PC 327.



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