



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 3

INVESTMENT POWERS OF TRUSTEES

94 Exercise of power of investment

After section 4 of the Trusts (Scotland) Act 1921 (c. 58) insert—

“4A Exercise of power of investment: duties of trustee

- (1) Before exercising the power of investment under section 4(1)(ea) of this Act, a trustee shall have regard to—
 - (a) the suitability to the trust of the proposed investment, and
 - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.
- (2) Before exercising that power of investment, a trustee shall (except where subsection (4) applies) obtain and consider proper advice about the way in which the power should be exercised.
- (3) When reviewing the investments of the trust, a trustee shall (except where subsection (4) applies) obtain and consider proper advice about whether the investments should be varied.
- (4) If a trustee reasonably concludes that in all the circumstances it is unnecessary or inappropriate to obtain such advice, the trustee need not obtain it.
- (5) In this section, “proper advice” means the advice of a person who is reasonably believed by the trustee to be qualified by the person’s ability and practical experience of financial and other matters relating to the proposed investment.

4B Exercise of power of investment: power to appoint nominees

- (1) The trustees of a trust may, for the purpose of exercising the power of investment under section 4(1)(ea) of this Act—
 - (a) appoint a person to act as their nominee in relation to such of the trust estate, heritable as well as moveable, as they may determine, and
 - (b) take such steps as are necessary to secure the transfer of title to that property to their nominee.
- (2) A person may not be appointed as a nominee unless the trustees reasonably believe—
 - (a) that the appointment is appropriate in the circumstances of the trust, and
 - (b) that the proposed nominee has the skills, knowledge and expertise that it is reasonable to expect of a person acting as a nominee.
- (3) The power to appoint a nominee is subject to any restriction or exclusion imposed by or under—
 - (a) the trust deed, or
 - (b) any enactment (within the meaning of the Scotland Act 1998 (c. 46)).
- (4) An appointment as a nominee shall—
 - (a) be made in writing,
 - (b) be subject to the trustees' retaining power to—
 - (i) direct the nominee, and
 - (ii) revoke the nominee's appointment, and
 - (c) subject to subsection (4), otherwise be on such terms as to suitable remuneration and other matters as the trustees may determine.
- (5) The trustees may not appoint a nominee on any of the following terms unless it is reasonably necessary for them to do so—
 - (a) a term permitting the nominee to appoint a substitute,
 - (b) a term restricting the liability of the nominee, or of any substitute, to the trustees or to any beneficiary,
 - (c) a term permitting the nominee, or any substitute, to act in circumstances capable of giving rise to a conflict of interest.
- (6) While a nominee continues to act for the trust, the trustees shall—
 - (a) keep under review the arrangements under which the nominee acts and how those arrangements are being put into effect,
 - (b) if circumstances make it appropriate to do so, consider whether there is a need to exercise their power—
 - (i) to direct the nominee, or
 - (ii) to revoke the nominee's appointment, and
 - (c) exercise either or both of those powers if they consider that there is a need to do so.

4C Declaration of power to delegate investment management functions

- (1) It is declared that the trustees of a trust have and have always had the power, subject to any restriction or exclusion imposed by or under the trust deed or any enactment, to authorise an agent to exercise any of their investment management functions at the agent's discretion or in such other manner as the trustees may direct.
- (2) In this section—
 - “enactment” has the same meaning as in the Scotland Act 1998 (c. 46), and
 - “investment management functions” means functions relating to the management of investments of the trust estate, heritable as well as moveable.”