



2001 CHAPTER 14

PART IV

AGENTS NOMINEES AND CUSTODIANS

Agents

Power to employ agents

11.—(1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.

(2) In the case of a trust other than a charitable trust, the trustees' delegable functions consist of any function other than—

- (a) any function relating to whether or in what way any assets of the trust should be distributed,
- (b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital,
- (c) any power to appoint a person to be a trustee of the trust, or
- (d) any power conferred by any other statutory provision or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.

(3) In the case of a charitable trust, the trustees' delegable functions are—

- (a) any function consisting of carrying out a decision that the trustees have taken;

- (b) any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land);
 - (c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose;
 - (d) any other function prescribed by an order made by the Department for Social Development subject to negative resolution.
- (4) For the purposes of subsection (3)(c) a trade is an integral part of carrying out a trust's charitable purpose if, whether carried on in the United Kingdom or elsewhere, the profits are applied solely to the purposes of the trust and either—
- (a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust, or
 - (b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.

Persons who may act as agents

12.—(1) Subject to subsection (2), the persons whom the trustees may under section 11 authorise to exercise functions as their agent include one or more of their number.

(2) The trustees may not authorise two (or more) persons to exercise the same function unless they are to exercise the function jointly.

(3) The trustees may not under section 11 authorise a beneficiary to exercise any function as their agent (even if the beneficiary is also a trustee).

(4) The trustees may under section 11 authorise a person to exercise functions as their agent even though he is also appointed to act as their nominee or custodian (whether under section 16, 17 or 18 or any other power).

Linked functions, etc.

13.—(1) Subject to subsection (2), a person who is authorised under section 11 to exercise a function is (whatever the terms of the agency) subject to any specific duties or restrictions attached to the function.

For example, a person who is authorised under section 11 to exercise the general power of investment is subject to the duties under section 4 in relation to that power.

(2) A person who is authorised under section 11 to exercise a power which is subject to a requirement to obtain advice is not subject to the requirement if he is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.

Terms of agency

14.—(1) Subject to subsection (2) and sections 15(2) and 29 to 32, the trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.

(2) The trustees may not authorise a person to exercise functions as their agent on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.

(3) The terms are—

- (a) a term permitting the agent to appoint a substitute;
- (b) a term restricting the liability of the agent or his substitute to the trustees or any beneficiary;
- (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

Asset management: special restrictions

15.—(1) The trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in or evidenced in writing.

(2) The trustees may not authorise a person to exercise any of their asset management functions as their agent unless—

- (a) they have prepared a statement that gives guidance as to how the functions should be exercised (“a policy statement”), and
- (b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with—
 - (i) the policy statement, or
 - (ii) if the policy statement is revised or replaced under section 22, the revised or replacement policy statement.

(3) The trustees must formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.

(4) The policy statement must be in or evidenced in writing.

(5) The asset management functions of trustees are their functions relating to—

- (a) the investment of assets subject to the trust,
- (b) the acquisition of property which is to be subject to the trust, and
- (c) managing property which is subject to the trust and disposing of, or creating or disposing of an interest in, such property.