

Trustee Act 2000

Chapter 29

Part I

The Duty of Care

1 The duty of care

- (1) Whenever the duty under this subsection applies to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard in particular—
 - (a) to any special knowledge or experience that he has or holds himself out as having; and
 - (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (2) In this Act the duty under subsection (1) is called "the duty of care".

2 Application of duty of care

Schedule 1 makes provision about when the duty of care applies to a trustee.

Part II

Investment

3 General power of investment

- (1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.
- (2) In this Act the power under subsection (1) is called "the general power of investment".
- (3) The general power of investment does not permit a trustee to make investments in land other than in loans secured on land (but see also section 8).
- (4) A person invests in a loan secured on land if he has rights under any contract under which—
 - (a) one person provides another with credit; and
 - (b) the obligation of the borrower to repay is secured on land.
- (5) "Credit" includes any cash loan or other financial accommodation.

(6) "Cash" includes money in any form.

4 Standard investment criteria

- (1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria.
- (2) A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.
- (3) The standard investment criteria, in relation to a trust, are—
 - (a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind; and
 - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

5 Advice

- (1) Before exercising any power of investment, whether arising under this Part or otherwise, a trustee must (unless the exception applies) obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised.
- (2) When reviewing the investments of the trust, a trustee must (unless the exception applies) obtain and consider proper advice about whether, having regard to the standard investment criteria, the investments should be varied.
- (3) The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.
- (4) Proper advice is the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment.

6 Restriction or exclusion of this Part etc

- (1) The general power of investment is—
 - (a) in addition to powers conferred on trustees otherwise than by this Act; but
 - (b) subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation.
- (2) For the purposes of this Act, an enactment or a provision of subordinate legislation is not to be regarded as being, or as being part of, a trust instrument.

Part III

Acquisition of Land

8 Power to acquire freehold and leasehold land

- (1) A trustee may acquire land in the Abu Dhabi Global Market—
 - (a) as an investment;
 - (b) for occupation by a beneficiary; or
 - (c) for any other reason.
- (3) For the purpose of exercising his functions as a trustee, a trustee who acquires land under this section has all the powers of an absolute owner in relation to the land.

9 Restriction or exclusion of this Part etc

The powers conferred by this Part are—

- (a) in addition to powers conferred on trustees otherwise than by this Part; but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation.

Part IV

Agents, nominees and custodians

Agents

11 Power to employ agents

- (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 enactment 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 rules made by the Board.
- (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 Abu Dhabi Global Market 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.

12 Persons who may act as agents

- (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).

13 Linked functions etc

- (1) Subject to subsections (2) and (5), 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.
- (3) Subsections (4) and (5) apply to a trust to which section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996 (duties to consult beneficiaries and give effect to their wishes) applies.

- (4) The trustees may not under section 11 authorise a person to exercise any of their functions on terms that prevent them from complying with section 11(1) of the 1996 Act.
- (5) A person who is authorised under section 11 to exercise any function relating to land subject to the trust is not subject to section 11(1) of the 1996 Act.

14 Terms of agency

- (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.

15 Asset management: special restrictions

- (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.

Nominees and custodians

16 Power to appoint nominees

- (1) Subject to the provisions of this Part, the trustees of a trust may—
 - (a) appoint a person to act as their nominee in relation to such of the assets of the trust as they determine; and
 - (b) take such steps as are necessary to secure that those assets are vested in a person so appointed.
- (2) An appointment under this section must be in or evidenced in writing.

17 Power to appoint custodians

- (1) Subject to the provisions of this Part, the trustees of a trust may appoint a person to act as a custodian in relation to such of the assets of the trust as they may determine.
- (2) For the purposes of this Act a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any documents or records concerning the assets.
- (3) An appointment under this section must be in or evidenced in writing.

18 Investment in bearer securities

- (1) If trustees retain or invest in securities payable to bearer, they must appoint a person to act as a custodian of the securities.
- (2) Subsection (1) does not apply if the trust instrument or any enactment or provision of subordinate legislation contains provision which (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.
- (3) An appointment under this section must be in or evidenced in writing.

19 Persons who may be appointed as nominees or custodians

- (1) A person may not be appointed under section 16, 17 or 18 as a nominee or custodian unless one of the relevant conditions is satisfied.
- (2) The relevant conditions are that—
 - (a) the person carries on a business which consists of or includes acting as a nominee or custodian;
 - (b) the person is a body corporate which is controlled by the trustees.
- (3) For the purposes of determining whether a body corporate is controlled by trustees,

in relation to a body corporate ("company A"), "control" means the power of a person ("P") to secure—

- (a) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate; or
 - (b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of company A are conducted in accordance with P's wishes, and in relation to a partnership, "control" means the right to a share of more than half the assets, or of more than half the income, of the partnership.
- (5) Subject to subsections (1) and (4), the persons whom the trustees may under section 16, 17 or 18 appoint as a nominee or custodian include—
- (a) one of their number, if that one is a trust corporation; or
 - (b) two (or more) of their number, if they are to act as joint nominees or joint custodians.
- (6) The trustees may under section 16 appoint a person to act as their nominee even though he is also—
- (a) appointed to act as their custodian (whether under section 17 or 18 or any other power); or
 - (b) authorised to exercise functions as their agent (whether under section 11 or any other power).
- (7) Likewise, the trustees may under section 17 or 18 appoint a person to act as their custodian even though he is also—
- (a) appointed to act as their nominee (whether under section 16 or any other power); or
 - (b) authorised to exercise functions as their agent (whether under section 11 or any other power).

20 Terms of appointment of nominees and custodians

- (1) Subject to subsection (2) and sections 29 to 32, the trustees may under section 16, 17 or 18 appoint a person to act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.
- (2) The trustees may not under section 16, 17 or 18 appoint a person to act as a nominee or custodian 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 nominee or custodian to appoint a substitute;
 - (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary;

- (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

Review of and liability for agents, nominees and custodians etc

21 Application of sections 22 and 23

- (1) Sections 22 and 23 apply in a case where trustees have, under section 11, 16, 17 or 18—
 - (a) authorised a person to exercise functions as their agent; or
 - (b) appointed a person to act as a nominee or custodian.
- (2) Subject to subsection (3), sections 22 and 23 also apply in a case where trustees have, under any power conferred on them by the trust instrument or by any enactment or any provision of subordinate legislation—
 - (a) authorised a person to exercise functions as their agent; or
 - (b) appointed a person to act as a nominee or custodian.
- (3) If the application of section 22 or 23 is inconsistent with the terms of the trust instrument or the enactment or provision of subordinate legislation, the section in question does not apply.

22 Review of agents, nominees and custodians etc

- (1) While the agent, nominee or custodian continues to act for the trust, the trustees—
 - (a) must keep under review the arrangements under which the agent, nominee or custodian acts and how those arrangements are being put into effect;
 - (b) if circumstances make it appropriate to do so, must consider whether there is a need to exercise any power of intervention that they have; and
 - (c) if they consider that there is a need to exercise such a power, must do so.
- (2) If the agent has been authorised to exercise asset management functions, the duty under subsection (1) includes, in particular—
 - (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 15;
 - (b) if they consider that there is a need to revise or replace the policy statement, a duty to do so; and
 - (c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.
- (3) Subsections (3) and (4) of section 15 apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under that section.
- (4) "Power of intervention" includes—

- (a) a power to give directions to the agent, nominee or custodian;
- (b) a power to revoke the authorisation or appointment.

23 Liability for agents, nominees and custodians etc

- (1) A trustee is not liable for any act or default of the agent, nominee or custodian unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1—
 - (a) when entering into the arrangements under which the person acts as agent, nominee or custodian; or
 - (b) when carrying out his duties under section 22.
- (2) If a trustee has agreed a term under which the agent, nominee or custodian is permitted to appoint a substitute, the trustee is not liable for any act or default of the substitute unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1—
 - (a) when agreeing that term; or
 - (b) when carrying out his duties under section 22 in so far as they relate to the use of the substitute.

Supplementary

24 Effect of trustees exceeding their powers

A failure by the trustees to act within the limits of the powers conferred by this Part—

- (a) in authorising a person to exercise a function of theirs as an agent; or
- (b) in appointing a person to act as a nominee or custodian, does not invalidate the authorisation or appointment.

25 Sole trustees

- (1) Subject to subsection (2), this Part applies in relation to a trust having a sole trustee as it applies in relation to other trusts (and references in this Part to trustees—except in sections 12(1) and (3) and 19(5)—are to be read accordingly).
- (2) Section 18 does not impose a duty on a sole trustee if that trustee is a trust corporation.

26 Restriction or exclusion of this Part etc

The powers conferred by this Part are—

- (a) in addition to powers conferred on trustees otherwise than by this Act; but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation.

Part V

Remuneration

28 Trustee's entitlement to payment under trust instrument

- (1) Except to the extent (if any) to which the trust instrument makes inconsistent provision, subsections (2) to (4) apply to a trustee if—
 - (a) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to or on behalf of the trust; and
 - (b) the trustee is a trust corporation or is acting in a professional capacity.
- (2) The trustee is to be treated as entitled under the trust instrument to receive payment in respect of services even if they are services which are capable of being provided by a lay trustee.
- (3) Subsection (2) applies to a trustee of a charitable trust who is not a trust corporation only—
 - (a) if he is not a sole trustee; and
 - (b) to the extent that a majority of the other trustees have agreed that it should apply to him.
- (5) For the purposes of this Part, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with—
 - (a) the management or administration of trusts generally or a particular kind of trust; or
 - (b) any particular aspect of the management or administration of trusts generally or a particular kind of trust,and the services he provides to or on behalf of the trust fall within that description.
- (6) For the purposes of this Part, a person acts as a lay trustee if he—
 - (a) is not a trust corporation; and
 - (b) does not act in a professional capacity.

29 Remuneration of certain trustees

- (1) Subject to subsection (5), a trustee who—
 - (a) is a trust corporation; but
 - (b) is not a trustee of a charitable trust,

is entitled to receive reasonable remuneration out of the trust funds for any services that the trust corporation provides to or on behalf of the trust.

- (2) Subject to subsection (5), a trustee who—
 - (a) acts in a professional capacity; but
 - (b) is not a trust corporation, a trustee of a charitable trust or a sole trustee,is entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if each other trustee has agreed in writing that he may be remunerated for the services.
- (3) "Reasonable remuneration" means, in relation to the provision of services by a trustee, such remuneration as is reasonable in the circumstances for the provision of those services to or on behalf of that trust by that trustee.
- (4) A trustee is entitled to remuneration under this section even if the services in question are capable of being provided by a lay trustee.
- (5) A trustee is not entitled to remuneration under this section if any provision about his entitlement to remuneration has been made—
 - (a) by the trust instrument; or
 - (b) by any enactment or any provision of subordinate legislation.
- (6) This section applies to a trustee who has been authorised under a power conferred by Part IV or the trust instrument—
 - (a) to exercise functions as an agent of the trustees; or
 - (b) to act as a nominee or custodian, as it applies to any other trustee.

30 Remuneration of trustees of charitable trusts

- (1) The Board may by rules make provision for the remuneration of trustees of charitable trusts who are trust corporations or act in a professional capacity.
- (2) The power under subsection (1) includes power to make provision for the remuneration of a trustee who has been authorised under a power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument—
 - (a) to exercise functions as an agent of the trustees; or
 - (b) to act as a nominee or custodian.
- (3) Rules under this section may—
 - (a) make different provision for different cases;
 - (b) contain such supplemental, incidental, consequential and transitional provision as the Board considers appropriate.

31 Trustees' expenses

- (1) A trustee—
 - (a) is entitled to be reimbursed from the trust funds; or
 - (b) may pay out of the trust funds,
expenses properly incurred by him when acting on behalf of the trust.
- (2) This section applies to a trustee who has been authorised under a power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument—
 - (a) to exercise functions as an agent of the trustees; or
 - (b) to act as a nominee or custodian, as it applies to any other trustee.

32 Remuneration and expenses of agents, nominees and custodians

- (1) This section applies if, under a power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument, a person other than a trustee has been—
 - (a) authorised to exercise functions as an agent of the trustees; or
 - (b) appointed to act as a nominee or custodian.
- (2) The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if—
 - (a) he is engaged on terms entitling him to be remunerated for those services; and
 - (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.
- (3) The trustees may reimburse the agent, nominee or custodian out of the trust funds for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

Part VI

Miscellaneous and Supplementary

35 Personal representatives

- (1) Subject to the following provisions of this section, this Act applies in relation to a personal representative administering an estate according to the law as it applies to a trustee carrying out a trust for beneficiaries.

- (2) For this purpose this Act is to be read with the appropriate modifications and in particular—
- (a) references to the trust instrument are to be read as references to the will;
 - (b) references to a beneficiary or to beneficiaries, apart from the reference to a beneficiary in section 8(1)(b), are to be read as references to a person or the persons interested in the due administration of the estate; and
 - (c) the reference to a beneficiary in section 8(1)(b) is to be read as a reference to a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.

39 Interpretation

- (1) In this Act—

"asset" includes any right or interest;

"functions" includes powers and duties;

"trust corporation" has the same meaning as in the Trustee Act 1925; "trust funds" means income or capital funds of the trust.

- (2) In this Act the expressions listed below are defined or otherwise explained by the provisions indicated—

asset management functions	section 15(5)
custodian	section 17(2)
the duty of care	section 1(2)
the general power of investment	section 3(2)
lay trustee	section 28(6)
power of intervention	section 22(4)
the standard investment criteria	section 4(3)
subordinate legislation	section 6(3)
trustee acting in a professional capacity	section 28(5)
trust instrument	sections 6(2) and 35(2)(a)

43 Short title

This Act may be cited as the Trustee Act 2000.

SCHEDULE 1
APPLICATION OF DUTY OF CARE

Section 2

Investment

1

The duty of care applies to a trustee—

- (a) when exercising the general power of investment or any other power of investment, however conferred;
- (b) when carrying out a duty to which he is subject under section 4 or 5 (duties relating to the exercise of a power of investment or to the review of investments).

Acquisition of land

2

The duty of care applies to a trustee—

- (a) when exercising the power under section 8 to acquire land;
- (b) when exercising any other power to acquire land, however conferred;
- (c) when exercising any power in relation to land acquired under a power mentioned in sub-paragraph (a) or (b).

Agents, nominees and custodians

3

(1) The duty of care applies to a trustee—

- (a) when entering into arrangements under which a person is authorised under section 11 to exercise functions as an agent;
- (b) when entering into arrangements under which a person is appointed under section 16 to act as a nominee;
- (c) when entering into arrangements under which a person is appointed under section 17 or 18 to act as a custodian;
- (d) when entering into arrangements under which, under any other power, however conferred, a person is authorised to exercise functions as an agent or is appointed to act as a nominee or custodian;
- (e) when carrying out his duties under section 22 (review of agent, nominee or custodian, etc).

(2) For the purposes of sub-paragraph (1), entering into arrangements under which a

person is authorised to exercise functions or is appointed to act as a nominee or custodian includes, in particular—

- (a) selecting the person who is to act;
- (b) determining any terms on which he is to act; and
- (c) if the person is being authorised to exercise asset management functions, the preparation of a policy statement under section 15.

Compounding of liabilities

4

The duty of care applies to a trustee—

- (a) when exercising the power under section 15 of the Trustee Act 1925 to do any of the things referred to in that section;
- (b) when exercising any corresponding power, however conferred.

Insurance

5

The duty of care applies to a trustee—

- (a) when exercising the power under section 19 of the Trustee Act 1925 to insure property;
- (b) when exercising any corresponding power, however conferred.

Reversionary interests, valuations and audit

6

The duty of care applies to a trustee—

- (a) when exercising the power under section 22(1) or (3) of the Trustee Act 1925 to do any of the things referred to there;
- (b) when exercising any corresponding power, however conferred.

Exclusion of duty of care

7

The duty of care does not apply if or in so far as it appears from the trust instrument that the duty is not meant to apply.