

TRUSTEE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Agents, Nominees and Custodians

Section 19: Persons who may be appointed as nominees or custodians

74. For the better protection of the beneficiaries section 19 restricts the persons who may be appointed nominee or custodian under sections 16, 17 and 18 to persons who are either carrying on business as a nominee or custodian (whether with or without other activities), are a body corporate controlled (see below) by the appointing trustees, or a solicitors' nominee company recognised under section 9 of the Administration of Justice Act 1985, (section 19(1), (2) and (3)). It is intended that the use of such bodies corporate will allow trustees to use special purpose vehicles for nominee or custodianship purposes. In addition, trustees of charitable trusts (other than exempt charities) must comply with any guidance about the selection of a nominee or custodian issued by the Charity Commissioners (section 19(4)). Subject to these constraints, a trustee which is a trust corporation may be appointed a nominee or custodian as may two or more trustees (whether or not trust corporations) if they are to act jointly. However, a single trustee other than a trust corporation may not be appointed (section 19(5)). Section 19(6) provides that a person appointed as custodian or agent may also be appointed nominee by the trustees. Section 19(7) makes similar provision in relation to appointments of custodians. These provisions replicate the effect of section 12(4) in relation to the appointment of agents.
75. The terms "charitable trust" and "exempt charity" are defined in section 39(1) of the Act.
76. The test for determining whether a body corporate is controlled by trustees for the purpose of section 19(2)(b) is defined in section 840 of the Income and Corporation Taxes Act 1988 (see section 19(3)). This section provides that "control" in relation to a body corporate means the power of a person to secure (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person. Control may therefore be direct or indirect.