

2004 Pension Lawyers Association Conference
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PREPARING FOR THE FUTURE.

Topic: What duties may trustees delegate?
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Employer /
Organisation: Sanlam Life: Law Service

What duties may trustees delegate?

Agenda

- introduction
- may duties be delegated?
- delegation v abdication
- what qualities must delegated person have?
- may a discretion be delegated?
- board's role where a duty was delegated
- discussion:
 - which sec 7D duties may be delegated?
 - may duty to allocate death benefits be delegated?
 - may board grant individual investment choice?
- questions

Introduction

- dilemma: numerous and complex duties
- but trustees may lack expertise
- or don't have time

May duties be delegated?

- rules must authorise
- must be prudent to do so - what would prudent trustee do under the circumstances?
- must be reasonable to do so - serve legitimate objective - means adopted must be proportional thereto - rights impaired as little as possible
- must not amount to abdication

Delegation v Abdication

- delegation is the appointment of another, for whose acts one will be responsible, to act on one's behalf
- abdication is the appointment of another to act instead of oneself, so as to relieve oneself of responsibility

What qualities must delegated person have?

- expertise, skills and knowledge to perform task
- if not, trustees may be personally liable

May a discretion be delegated?

- not improper *per se* - almost every act involves discretion
- “undoubtedly one of the most important factors in determining whether a trustee is guilty of an improper delegation in employing an agent is the amount of discretion involved in the matter entrusted to the agent.” (*The Law of Trusts*)

What is board's role where duty was delegated?

- retains primary responsibility and accountability
- controls in place
- supervise
- revoke delegation if necessary

Discussion: Which sec 7D duties may be delegated?

- keep proper registers, books and records
- employ proper control systems
- provide adequate and appropriate information to members
- ensure that contributions are paid timeously
- obtain expert advice where necessary
- comply with Pension Funds Act and other applicable laws

Discussion: May duty to allocate death benefits be delegated?

- distribute amongst dependants/nominees in such proportions as the board may deem equitable (sec 37C)
- high degree of discretion
- 37C requires board to perform duty

Discussion: May duty to allocate death benefits be delegated? (cont)

- three points of view:
 - no delegation permissible
 - practical necessities imply power to delegate (if rules allow)
 - may delegate, but only to trustee(s) (if rules allow)
- fund in any event bears ultimate responsibility

Discussion: May board grant members individual investment choice?

- primary power or merely subordinate power via delegation?
- two schools of thought:
 - PF Act does not prevent giving primary power
 - sec 7C implies board must select investments - but may delegate to qualified member

Discussion: May board grant members individual investment choice? (cont)

“However the trustees in my view cannot abdicate all responsibility for the investment performance once they have delegated this duty. They retain the residual duties as regards the investment of the fund’s monies as one of the key operations of a fund, which the trustees must direct, control and oversee. Part of their duty of diligence, care and good faith involves a consideration of whether the person to whom the power of investment is delegated is a suitable person. Furthermore it must involve the duty to monitor the performance of the delegee.”

(Adjudicator in Twerefoo v Liberty Life)

Discussion: May board grant members individual investment choice? (cont)

- how does board ensure that power to select investments is delegated to a “suitable person”?

Questions