



# Ogier

## The appointment of trustees

The power to appoint trustees is often contained in the trust deed and is commonly granted to either the trustee of the trust from time to time, or a third party such as the settlor or protector of the trust. Whoever has the power to appoint new or additional trustees must take into account a variety of factors.

Recent case law has indicated the considerations that should be taken into account and that trustees – both those retiring and those being newly appointed – should be aware of to ensure any appointments are not considered to be invalid.

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97% of surveyed clients would reinstruct us, and 98% would recommend us to others

## 5 things to know about appointing a new trustee



**Fiduciary Power** – Although the power of appointment of trustee is an administrative (rather than dispositive) power, the power of appointment is considered to be fiduciary in nature



**Duties to consider when exercising fiduciary power** – As it has a fiduciary nature the power of appointment of a trustee must only be used for the benefit of the beneficiaries as a whole. The power cannot be used for the personal benefit of the power holder and the power holder (even if not a trustee) must consider their fiduciary duties when making an appointment



**No specific duty for a retiring trustee where power is exercised by a third party** – A retiring trustee is not under any specific duty in relation to the appointment of a new trustee when the power of appointment is exercised by a third party power holder



**Appointment of an unsuitable new trustee** – The appointment of an unsuitable trustee may result in the purported appointment being considered void or even voidable



**Invalid appointments** – Where the appointment of a trustee is void, a retiring sole trustee may be considered to continue to hold trust property in its fiduciary capacity as trustee until an effective appointment of a new trustee has been made



**Duty to act in good faith and in the interests of the beneficiaries as a whole** – The appointment of a trustee must be made in good faith and in the best interests of the beneficiaries as a whole



**Duty to reach a decision open to a reasonable appointor** – This duty imposes the obligation to give genuine and reasonable consideration to the appointment of a trustee



**Duty to take into account relevant matters and only those matters** – This duty requires the appointor to take only relevant matters into account and to ignore irrelevant matters



**Duty not to act for an ulterior purpose** – The appointment of a trustee should not be made for an ulterior purpose. To the extent that an appointment is made for an ulterior purpose then the appointment may be viewed as a fraud on a power and the appointment may be considered void



**Trusts (Jersey) Law 1984** – Any trustee exercising the power of appointment of a new trustee must ensure that they comply with the general trustee duties under the Trusts (Jersey) Law 1984 (as amended) including the duty to act (i) with due diligence, (ii) as would a prudent person (iii) to the best of their ability and (iv) to observe the utmost good faith



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