

The High Court**Chancery****Record number 2013/620 Sp****In the Matter of the Trustee Act 1893 and the Rules of the Superior Courts Order 3****And in the Matter of the IATA (International Air Transport Association) Trust Fund****And in Respect of the Application by Trustees of the IATA Trust Fund for Directions in Respect of the Said Trust****Judgment of Mr Justice Peter Charleton delivered on the 28th day of January 2014**

In the interests of judicial transparency, a written judgement on this *ex parte* motion of January 27th 2014 is appropriate. The application is to wind up a trust and to distribute its proceeds.

The International Air Transport Association is a trade association of airlines and is headquartered in Montréal in Canada. It represents some 240 airlines and has a presence in about 150 countries through 101 offices spread throughout the globe. The benefits of the organisation include an efficient interface for invoicing and payment between airlines and credit terms for travel agent members. From the point of view of the travelling public, travel agencies joining IATA must have an appropriate financial bond in place. This ensures that should any travel company become insolvent, some funds will be available to repatriate holidaymakers. The concept of travel agent embraces airlines; since almost all airlines while taking bookings from outside travel agents also act as their own travel agents. Some smaller travel agents were excused the bond or insurance policy requirement provided they paid 1/8th of 1% of ticket bookings into a trust fund. For Ireland, this trust fund was administered locally and has now built up reserves of €721,165. The existence of this trust fund has been a comfort to travellers since its administration through a trust deed dated 11th October 1985. According to the affidavit of Tom Lonergan, chairman of the trustees, the fund is no longer necessary. On 20th of May 2012, IATA in Ireland received notification that the relevant bonding was to be done externally. The Court understands that an equivalent level of protection for all IATA members has now been put in place outside the jurisdiction but which covers all ticket bookings through IATA members in Ireland. It is therefore proposed to put an end to the trust and to distribute the funds.

Jurisdiction

The High Court has an inherent jurisdiction to assist trustees where the nature of the difficulty faced by the trustees is such as to require the High Court to rule on issues of especial moment. This jurisdiction is well established in the case law; *Mettoy Pension Trustees Ltd v Evans* [1991] 2 All ER 513 at 548 sets many of the situations where it is appropriate for trustees to apply to the High Court rather than make their own decision. This jurisdiction existed in English law prior to Irish independence. The 1914 edition of Halsbury's Laws of England records, at paragraph 364 of Volume XXVIII, that a court of equity may supplant the management and administration of a trust in particular situations of difficulty. These situations include in respect of trusts:

...where there is no trustee to carry it on, or where the trustee wrongfully decline to act, or is acting improperly, or where difficulties have arisen which cannot be removed without its assistance, or where the decision of the court on a doubtful question connected with the trust or on the proper administration thereof is sought by the trustees or by the *cestui que trust*.

That jurisdiction is expressly provided for in the Rules of the Superior Courts at order 54 rule 1. This provides that trustees may apply on a special summons for relief under order 3. In turn, order 3 provides for wide relief in trustee matters and includes: under rule 4 a "direction to ... trustees to do or abstain from doing any particular act..."; under rule 2 the "determination of any question affecting the rights or interests of any person claiming to be ... *cestui que trust* of any deed or instrument.."; and under rule 1 the "... administration of the trust of any deed or instrument save where there is a charge of wilful default or breach of trust." Such an application may be expensive and trustees are not entitled to waste funds. In the view of this Court, such an application can properly be made where there appears to be no possible answer to an issue; where the trustees are hopelessly deadlocked with no provision for majority or otherwise; where the meaning of a trust deed cannot be reasonably ascertained by professional advice; where the trustees are conflicted with no exemption under the trust deed and there is no other means to act; or where the trustees are exempted under the trust deed from conflict but the nature of the conflict faced by them is such as that as a matter of fact it has undermined or impaired their ability to act. This is no more than a suggested list that is set out in the context of it being the duty of trustees to safeguard the trust property and not to heedlessly expend it on court applications. In this instance, the jurisdiction is invoked because there is no clear answer to the issues arising under the trust deed and such answers as are available are all fraught with the reasonable apprehension that without the protection of the High Court the trustees may be acting incorrectly. The jurisdiction is thus properly invoked.

The trust deed

The period of the trust deed was to be from the 11th day of October 1985 for a period of 21 years. On September 26th 2006, the trustees extended that period by 10 years through a simple vote. In 2012, as noted, the existence of alternative measures of protection through IATA internationally rendered it both unnecessary and futile for the trust to continue. The original subscribers included airlines operating in Ireland at that time such as Air France and Aer Lingus. Under clause 2 the declaration of trust was made by the subscribers in the following terms:

In pursuance of the said design and in consideration of the premises it is hereby agreed and declared that the trustees shall stand possessed of the trust fund upon trust as to investments or property other than money in their absolute discretion either to permit the same to remain as invested or to sell convert into money all or any such investments and upon trust us to money with the like discretion to invest the same in their names or under their control in any of the investments hereinafter authorised with power at the like discretion from time to time to vary or transpose any such investments for others of a nature hereby authorised.

Clause 5 provides that the trustees are to stand possessed of the trust fund and the income thereof during the trust period and may add to the accumulations of capital as they think fit. Clause 5(a) is germane as to what is to happen to the funds upon the trust being wound up:

... at the expiration of the trust period (in default of an appointment made pursuant to the provisions of clause 6 hereof) the trustees shall stand possessed of the trust fund to the order of the retail agent.

Clause 6 deals with powers of appointment. It seems possible pursuant to one of the subclauses thereof to transfer funds to the benefit of another fund established:

... under which any one or more of the beneficiaries is or may be interested notwithstanding that such other trust may also contain trusts... in favour of some other person or persons or objects and so that after such transfer the money investments and properties so transferred shall cease to be regarded as held under the terms of this deed...

Because of this clause the possibility therefore arises of transferring the trust fund to IATA headquarters in Canada. All of the relevant parties are on notice of this application and none of them either feel that this is appropriate or beneficial to any of the objects of the trust. While these objects are not stated expressly in the deed, they emerge as the clear backdrop against which the express provisions are to be interpreted.

Instead, the plan is to wind up the trust, and this is what the trustees seek from the High Court, and to redistribute the funds to the benefit of the members of IATA in Ireland. Insofar as there is a conflict between clause 6 and clause 5 (a), given that the trust was set up for a limited period of 20 years and has been extended, it will come to an end through efflux of time in any event. The trust is now being wound up and therefore clause 5(a) becomes operative. Given that the monies now stand to the benefit of the trust, it is clear that these are held "to the order of the retail agent." This means, in this context, the subscribers.

This is where the real difficulty arises. There are three potential interpretations to the meaning of the clause. Though the term used "the retail agent" is not defined, the background makes it clear that IATA members subscribing a small amount on the sale of each ticket are the only possible beneficiaries on the winding up of the trust to which this reference could apply. Three possible interpretations as to distribution arise. These are:

1. To divide the fund between all the agents who were IATA accredited as of October 2012 and who had made contributions to the fund and make the distribution pro rata in accordance with the contributions made over the years since 1985. This, however, would involve working out who had made what contributions over 27 years. Only the most meticulous organisations would retain the relevant records and the accessing of these, if archived, would involve enormous work disproportionate to the cost.
2. To divide the fund in equal shares between all agents who were IATA accredited as of October 2012 and who had made contributions to the fund. The difficulty with this is that some agents may have joined just a month previously and a disproportionate disbursement would be made to them in an amount equal to those who had been paying for over a quarter of a century.
3. To divide the fund between all agents who were IATA accredited as of October 2012 and who had made contributions to the fund using a distribution pro rata in accordance with the number of years for which each agent was a contributor.

The latter solution is the only one which makes sense. While no perfect distribution of funds is possible, the most equitable distribution would involve the largest amount going to those airlines and other travel agents which have contributed to the fund over the most number of years. The general calculation indicates a disbursement of perhaps €500 per agent per year.

Order

The court will therefore order:

1. That the trust fund established by indenture of trust dated 11 October 1985 be wound up.
2. That the monies held within the said trust fund should be distributed in accordance with the terms of this order.
3. That the trustees should have the reasonable costs of this application, which costs are to be taxed in the interests of transparency.
4. That the trustees should write to each retail agent, as at exhibit TL9 in the affidavit of Tom Lonergan, seeking a statement from the auditor confirming that they were IATA accredited as of 1st October 2012 and that they made contributions to the IATA trust fund and the period of years during which they made such contributions; such information to be provided within 60 days, otherwise the distribution will be made excluding such agent.
5. That upon the expiry of the said 60 days, after deduction of reasonable legal, accounting and administrative fees pertinent to the IATA trust fund, thereafter the money standing to the benefit of the said trust fund will be distributed, on a pro rata basis according to the number of years in which each retail agent was a contributor, to the retail agents who have replied and to satisfy the criteria of being IATA accredited at the relevant date and have made contributions to the trust fund.
6. There is liberty to apply.