

TRUSTEE INVESTMENT GUIDE

Trustees' legal obligations have become more onerous

Trustee Obligations

Trustees have always had an obligation to invest trust assets in accordance with the trust deed and any statute or common laws in place at the time (including any court orders).

By law, trustees managing the investment affairs of a trust have to act:

- **Impartially and fairly**
- In the **best interests of all beneficiaries** (both present and future)
- **With the “care, diligence and skill that a prudent person of business would exercise in managing the affairs of others”** for whom they feel morally bound to provide. If a trustee has relevant special skills, an even higher duty of care is required appropriate to a prudent person with those professional skills

Several recent court cases have clarified what these legal obligations mean and made their implementation all the more onerous in practice by establishing high standards of conduct for trustees to adhere to in the management of a trust's investment affairs.

Trustees are not required to avoid risk but rather invest to yield the best return to all beneficiaries having regard to the trusts risk profile. It is important to note that the prudence of trustee's decisions is measured primarily by the investment process used rather than by the actual financial outcomes achieved as a result of any particular investment decisions. To ensure legal compliance and for other reasons, it is recommended that at least one of the trustees is a professional (lawyer, accountant or financial adviser).

Prudent Investment Process

The 3 basic steps to a prudent and successful investment process

To comply with the requirements of the prudent investment rules, trustees should implement a 3 step investment process as follows:

I. Establishment of the Trust's Investment Objectives

These must be formalised in writing in relation to the requirements of the trust deed and balance the needs and wishes of all beneficiaries (both current and future) and for example, not just for the sole benefit of current beneficiaries. This can present trustees with a real challenge as beneficiaries often have conflicting investment requirements for income, capital growth, liquidity and tax efficiency as well as tolerance for risk and portfolio volatility. These trade-offs can become particularly complicated when beneficiaries live in different countries

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and tax jurisdictions.

Trustees should review and change these objectives as the law and beneficiaries' circumstances change

II. Development and Implementation of an Investment Strategy or Policy

This strategy should satisfy the investment objectives of the trust in terms of preservation of capital and capital growth, adequacy of current income and liquidity and, overall portfolio risk in relation to the investment horizon

Once again, trustees should review and change the strategy as the law and beneficiaries' circumstances change

III. Ongoing Investment Portfolio Management and Administration

Trustees must regularly evaluate and review the performance of the investment portfolio and its compliance with the investment strategy or policy. It is unlikely, an annual review on its own will be regarded as sufficient for this purpose.

It is important that this is a consultative process involving all trustees and that all decisions are recorded in writing in respect to changes in circumstances, objectives, strategy or policy. Trustees should also record they have considered all matters in relation in the Trustee Acts as well as current conditions in capital markets.

Adhering to a disciplined investment process is the only way for trustees to ensure they meet their obligations and ensure the trust has the best possible chance of satisfying the future needs of the beneficiaries. Unfortunately, it can be very challenging for trustees to develop, justify and maintain an investment process without the experience, impartiality and systems provided by independent advisors.

Trustees are therefore recommended to seek the professional advice and support they need to ensure their ultimate investment success and to avoid the potential legal liabilities that can arise in the absence of a prudent investment process. By doing so, they firstly relieve themselves of this burden in a practical sense and secondly, in terms of their legal responsibilities (providing it was reasonable for them to have acted on the advice received).

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A formal investment strategy is fundamental

The Investment Strategy or Policy

The investment strategy is a formal written investment plan that sets out the trust financial objectives and how these will be achieved taking account of:

- **The capital available for investment and the beneficiaries needs for income** i.e. whether it is an accumulative investment strategy or a distributive one
- **The trust investment horizon and tolerance for risk.** Trustees must balance the investment portfolio's risk and return relative to this risk profile. They are required to invest in a manner that is reasonable in relation to it and consistent with the trust's objectives. Unless authorised by the trust deed, trustees must not make speculative investments
- **Liquidity needs of the trust** (both short term and longer term)

Beneficiaries may request access to trust documentation and the investment strategy document can be used by trustees to demonstrate to them the clarity and prudence with which investment decisions have been made. In this sense, it is an important risk management tool for trustees.

In making the decisions on asset allocation across the asset classes and selection of individual investments within each asset class, trustees should follow proven investment principles and strategies to optimise the trust's return relative to its risk profile.

Portfolio Management and Administration

Portfolio management is too time consuming for most trustees

In our volatile world, successful investment performance cannot be achieved by an "invest and forget approach". Portfolios must be closely monitored and managed to ensure they remain aligned with the investment strategy relative to the constantly changing circumstances shaping investment markets. This can be a complex and time-consuming task for trustees.

Trustees also have an obligation to keep appropriate records of their investment transactions and investment portfolio.

Most trustees are simply too busy or do not have efficient systems to undertake this record keeping requirement. Equally, they would also like to:

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- **Reduce their brokerage costs**
- **Maintain maximum security** and protection for the trust investment holdings
- **Avoid exposure** to estate and inheritance tax regimes on their overseas investments (particularly USA registered investments)
- **Take advantage** of high yielding cash accounts in all the main currencies

Trustee's can achieve all these goals through a comprehensive private wealth management service. It is recommended that trustees consider the benefits of this service to lessen their personal trust management and administrative burden. It also can simplify the process of retiring and appointing new trustees.

For a fuller discussion of this service, refer to our Advisory Services Guide