

Trustee Investment Fact Sheet



INTRODUCTION

The Trustee Act 2000 laid down in law the requirements to which all trustees have to adhere. This Fact Sheet is designed to provide an outline of the key issues which we feel need to be considered in matters relating to trustee investment.

Prior to the Act most trustees appointed stockbrokers whose standard recommendation had been a portfolio of individual UK securities. The Act's requirements make such arrangements inappropriate in many cases. Instead, increased emphasis has been placed on the diversification and tax-efficiency of investments, which commends the use of packaged investment products, the selection of which depends on the type of trust involved. As a result of this it is more important than ever for trustees to seek appropriate investment planning advice.

TRUSTEES' STATUTORY POWERS AND DUTIES

The Act opened up the investment opportunities to trustees to *"make any kind of investment that he could make if he were absolutely entitled to the assets of the Trust"*.

Certain types of investments are not permitted to trusts. These include Individual Savings Accounts (ISAs), Venture Capital Trusts, Enterprise Investment Schemes and Property Enterprise Trusts.

Trustees are permitted to invest in assets which may be expected to produce either an income or capital return. There are, however, a number of safeguards within the Act to ensure that the general power of investment is exercised responsibly:

- Trustees must act in the best interests of present and future beneficiaries and to avoid any conflict between their duties as trustees and their personal interests.
- Trustees must have regard to the *'standard investment criteria'*. The key points are the:
 - Type of investment
 - Size and risk profile of the Trust
 - Tax treatment of different investments
 - Diversification of assets
 - Balance between income and growth appropriate to the needs of the Trust
 - Ethical considerations - if stipulated - but not to the detriment of the risk profile of the Trust
 - Keeping investments and their tax status under review
- Trustees must not allow their own political, social or moral views to influence their judgment as to what is in the best interests of beneficiaries.
- There is a duty not to hoard cash unless it is required for use by a beneficiary in the very near future.
- The Act requires trustees to obtain and consider "proper" investment advice, so as to ensure that account is taken of the *'standard investment criteria'*.

The Act defines "proper" advice as meaning *"the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment."* It is therefore important that trustees should only appoint appropriately qualified independent financial advisers who are authorised to provide advice from the whole of the market.

THE TAXATION OF TRUSTS

Trustees must also give consideration to tax and administrative costs in choosing between alternative types of investment. Furthermore, an investment portfolio structured to mitigate tax will need to be reviewed in the light of periodic changes in the tax rules. Tax legislation is continually evolving, so in order for trustees to ensure they meet with their obligations under the Act, they should ensure they either have a detailed understanding of current tax law, or seek professional advice.

There are a number of different types of taxes which can apply to trusts. Their rates and application can differ to that of an individual's. For example:

- **Income tax.**
 - Discretionary Trusts suffer a Rate Applicable to Trusts (RAT) of 50% on savings income and 42.5% on dividends, but enjoy a *Standard Rate Allowance* on income (currently the first £1,000) on which tax is paid at 20%.
 - Interest In Possession or 'non-discretionary' Trusts suffer 20% tax on income from savings and no further liabilities on dividends.
- **Capital Gains Tax (Discretionary Trusts)**
 - The Annual Exemption is 50% of that available to individuals.
 - All trusts are treated similarly and suffer tax at the flat rate of 28%, with no reclaim permitted to beneficiaries.
 - Assets transferred into all Trusts other than Bare Trusts are eligible for CGT Holdover Relief from 22 March 2006. Previously this had only been available for transfers into Discretionary Trusts.
- **Inheritance Tax**
 - Discretionary Trusts (and A&M Trusts created after 22 March 2006) are subject to periodic and exit charges.

In summary, the key issues that trustees need to consider when investing their trust's assets are:

- Identify and quantify the risk profile of the trust before considering what types of investment to make.
- Ensure appropriate measures are taken to account for any short term income or capital requirements from the trust before committing monies into long term investment strategies.
- A sound knowledge of all available investment vehicles (tax wrappers) is vital in order to maximise the returns available to the trust.
- Awareness on whom tax may be assessable, i.e. the trustees, beneficiaries or settlor.
- A sound understanding of the correlation between different asset classes and a methodology of designing a suitably diversified portfolio is essential.
- Regular reviews of the trust investments.

HOW CAN CLAIRVILLE YORK ASSIST TRUSTEES?

As qualified independent financial advisers we are ideally suited to the role of advising Trustees. We not only have many years experience in such matters but being independent means we have the ability to consider products from all providers and investment companies, plus the skills to ensure that the most appropriate tax wrappers are utilised.

The investment, portfolio construction and fund research and selection processes for trusts are similar to that of individual clients which are clearly explained in our process documents, which are available on request. Furthermore, we work in conjunction with the trustees' legal and other advisers to ensure the advice provided meets with the powers and intentions of the trust instrument or Deed, and is appropriate to the short, medium and long term objectives of the trust. Importantly, where appropriate, we carry out the ongoing reviews of the trust investments.

We also assist in the completion of trust tax returns, where required.

Version 1.1 230610

No responsibility can be accepted for the accuracy of the information in this facts sheet and no action should be taken in reliance on it without advice.
Please remember that past performance is not necessarily a guide to future returns.
The value of units and the income from them may fall, as well as rise. Investors may not get back the amount originally invested

CLAIRVILLE YORK LIMITED, THE BELLBOURNE, 103 HIGH STREET, ESHER, SURREY, KT10 9QE
TEL: 01372 470477 – Fax: 01372 469777 – E-MAIL cyfsi@cyfsi.co.uk
Clairville York Limited – Authorised and Regulated by the Financial Services Authority