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Navigating the world of ethical investing as a Guernsey Trustee

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The context: the rise of ethical investing

The investment landscape has undergone significant changes in recent years as the demand and opportunities for ethical investment have soared. Existing and sustainability-conscious millennial investors alike are increasingly opting for socially responsible investing (**SRI**) – an investment discipline that considers environmental, social and corporate governance (**ESG**) criteria with the aim of achieving both long-term competitive financial returns as well as a positive societal and/or environmental impact. Spurred by both an intention to support businesses, non-profit organisations and funds that actively work towards positive change for communities and the planet, and a desire to divert capital away from industries and corporations whose practices or output is harmful, SRI-driven investors are growing in number and their preferences are in turn affecting service providers and advisers.

The role of the trustee

Guernsey trustees will very commonly be involved at some level with investing trust assets, either directly (in which case they may be assisted by the guidance of investment advisers) or indirectly (having for example delegated the task to investment managers such as private banks specialising in wealth management). Either way, trustees remain subject to a duty to act in the best interests of the beneficiaries, which will include ensuring that the trust fund is managed in a careful and fully-justifiable manner. The starting point in the Trusts (Guernsey) Law, 2007 is that trustees must "*preserve and enhance, so far as is reasonable, the value of the trust property*", although in practice the application of this provision is often excluded in the terms of Guernsey trust instruments. However, trustees may be held to account if investments perform badly, so a well-informed and prudent approach is essential.

The issues in practice

With this in mind, how should a trustee respond to beneficiaries who express strong views as to

ESG criteria determining the way in which the trust fund is invested? Trustees will always need to be able to demonstrate (by way of comprehensive written records such as minutes and resolutions) that every fiduciary decision they make – including how to invest trust assets – resulted from thorough deliberations which took into account all relevant (and no irrelevant) factors. In such a scenario, a trustee may wish to consider the following issues by way of example:

- The performance of the proposed socially responsible investment (noting that ethical investments commonly achieve competitive returns and therefore it should not be assumed that by accommodating ESG criteria into its investment policy the trust fund will perform less well than if it were invested more "traditionally");

- Whether investing the trust fund in a manner that is morally acceptable (or rather, perhaps, not morally repugnant) to one or more beneficiaries can properly be said to be acting in their best interests and for their benefit, and therefore capable of offsetting any potential loss of investment return (noting that the concept of "benefit" has been widely construed in case law, and that a beneficiary's benefit from SRI will likely increase proprtionately with the strength of their views on the issue);

- The proportion of the beneficiaries whose moral and ethical interests are aligned in the context of SRI (noting that variance in the views of the beneficiaries can perhaps be provided for by way of creating sub-funds or through other structuring/wealth management devices which operate to segregate the trust fund appropriately); and

- The ever-changing nature of industry and corporate activity which responds in accordance with technological advances and social pressure and behaviours, meaning that a close eye must be kept on the most effective way of achieving SRI at any given point.

As with all exercises of fiduciary powers, investment decisions must be made on a case by case basis and there is no formula that can be applied across the board. Trustees need to undertake a balancing exercise, seeking to achieve good investment outcomes through strategies that are ethically aligned with the beneficiaries' views while ensuring that they are not exposing themselves to accusations of negligence. Guernsey trustees are fortunate to have access to leading advisers in the sphere of investment generally and SRI specifically who can assist them to navigate this complex landscape as it continues to develop.

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