



COVID-19: Trustee checklist

Considerations for trustees when reviewing their investment portfolio and overall trust investment strategy in response to COVID-19

Investment considerations

- **Investment strategy** – review the existing investment strategy of the trust, and whether it is still appropriate and achievable in the current circumstances.
- **Income entitlement** - review the trust terms and consider if they provide for a level of entitlement to income that may be difficult or impossible to achieve in the current market.
- **Beneficiaries' requirements** - consider the needs of different beneficiaries and how competing needs (income versus capital) may be met in a period of low capital values and rapidly fluctuating investment markets.
- **Powers of investment** - note any restrictions on the trustees' powers of investment under the trust deed (for example, whether the settlor or protector has power to direct investment by veto or otherwise) that may affect the trustees' ability to change the investment strategy in the current situation.
- **Scope of investments** – check if there are any restrictions on the scope of the trustees' powers to invest – a requirement to invest in a family company, for example, or a duty to invest in, or avoid investing in, specific classes of investment. Any such restrictions may hamper the trustees' ability to alter their strategy to react to changing market conditions.
- **Discretionary mandate** - where relevant, review the trustees' existing investment mandate with the discretionary investment managers and consider if it requires amendment to adapt to COVID-19 related conditions.
- **Trust deed** – consider whether a variation of the trust deed may be appropriate to respond to the current situation, for example to lift restrictions on the trustees' powers to invest, to vary income vs capital entitlement of beneficiaries etc.



- **Meeting** – where the COVID-19 crisis is expected to require significant changes to the trustees' investment strategy and/or impact the ability of the trust fund to meet the expectations and entitlements of beneficiaries in the short or longer term, consider a meeting with the settlor and adult beneficiaries to set out the issues and the trustees' proposed strategy. In this way, expectations may be managed and family consensus maintained.

Jurisdiction-specific issues:

- **Review trust assets in different jurisdictions** – jurisdiction-specific responses to COVID-19 may impact on trust assets – for example, rental income may be affected in countries suffering lockdown; the ability of underlying businesses to trade may be impacted by social distancing and lockdown measures.
- **Review the potential impact of COVID-19 travel restrictions:**
 - if COVID-19 travel restrictions affect the tax residence of individual trustees or directors of trust companies or PTCs, this may also affect the residence of the trust
 - similarly, the tax status of underlying companies may be affected by travel restrictions on directors and, as a result, the location of board meetings and where decisions are made and
 - travel restrictions may also affect the tax residence status of the settlor and/or beneficiaries.
- **Regulatory issues** – review international and jurisdiction-specific guidance regarding concessions in relation to economic substance legislation, DAC6, reporting requirements under CRS and FATCA etc.
- **Tax** – review COVID-19 related guidance and concessions regarding tax reporting and payment obligations in relevant jurisdictions.
- **Re-structuring** – consider whether re-structuring may be appropriate for tax or other jurisdiction-specific reasons while asset values are low (for example, de-enveloping, if this has not already been done).

Trustee risk considerations

- **Exoneration clauses** – a significant drop in income and/or capital values resulting from the current crisis may lead beneficiaries to blame the trustees' management and investment strategy. Trustees should review the protection available to them under the terms of the trust in such an eventuality.
- **Anti-Bartlett clauses** – trustees should review their obligations to enquire and supervise in respect of investments by the trust in underlying companies. They should ensure they are able to obtain adequate information to comply with those obligations during the current crisis.
- **Records** – it is vital to keep detailed records of all trustee deliberations and decisions regarding investment policy, trust management and strategy, as well as discussions with the settlor and/or beneficiaries relating to such matters and their specific interests.

For advice on any of the points discussed above, please contact Catharine Bell or Charlotte Evans-Tipping.



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