# Investment management for the modern trustee

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The trust sector in the Channel Islands has developed and evolved significantly over the last fifty years and here Shaun Lacey of Investec Wealth & Investment explores the knock-on effects to trustees and beneficiaries.

From humble beginnings in the late 1960s, the Channel Island trust sector has become a very mature market and now comprises of more than 120 trust companies in Guernsey and 186 in Jersey.

The fastest growth took place in the 1980s as tax laws in several European countries and elsewhere, allowed and encouraged wealthy individuals to reduce overall taxation by creating trust and corporate structures within the Channel Islands. Today, changes in the tax laws of European countries and the introduction of countermeasures by the European Union have eliminated most of the available tax benefits. However, there are still useful planning opportunities available for UK resident but non-domiciled individuals, and the majority of structures today are established primarily for the purpose of asset protection or estate planning for successive generations.

Many of the individuals who established trust structures as settlors in the 1960s and 1970s have now passed on, and the next generation of beneficiaries are looking very carefully at how the trust assets have been managed. Under existing legislation there is a duty on trustees to preserve and enhance, so far as reasonable, the value of the trust property (Trusts (Guernsey) Law 1989, S.19 b). Historically, a trustee could not delegate his powers to administer a trust to someone else, and therefore could not delegate his powers to invest trusts funds to third parties. Over time the prohibition against trustee delegation was relaxed, but although the common law evolved to allow trustees to employ managers to assist them in the management of trust assets, this was still too narrow, as the trustee could not delegate any of his duties or empower agents to exercise any of his discretions. The common law position was clearly too restrictive, and failed to recognize that it would be reckless for the vast majority of trustees to invest trust funds without obtaining specialist advice. Legislation was therefore enacted that recognized the reality of modern trust practice and allowed trustees to delegate their discretion as to when, how and where to invest, to experts managers.

Modern statutory provisions allow a trustee to employ an expert as agent and to charge the agent's fees to the trust fund. A trustee can delegate not only administrative powers but also certain discretionary duties regarding the trust fund, provided the delegation is carried out properly by appointed skilled agents and the trustee adequately monitors and supervises those agents.

An arguably higher standard of care is often imposed on trustees by modern trust legislation. Offshore trustees often have a free rein to invest in any type of investment and so certain safeguards are imposed upon the exercise of those powers. These safeguards take the form of implied duties imposed upon trustees such as the need to diversify; the suitability of investments in the context of the trust; and more importantly, to monitor and review the investment portfolio from time to time.

Whilst at all times trustees are required to act in the best interests of the trust beneficiaries, there have been some cases where the trustees have failed to invest funds properly or have delegated the investment function, and have not adequately supervised the investment manager. An investment manager might agree with the trustees that a successful strategy is to beat the agreed portfolio benchmark by a particular margin. This is called relative return benchmarking. However, the beneficiaries might be looking at the overall performance and could therefore be disappointed with any degree of negative return, even if the benchmark declined by a greater amount. This has left trustees open to criticism or even lawsuits from the beneficiaries.

Investec understands the pressures and constraints that trustees face and can manage an investment portfolio appropriately. Investec employs specialist wealth managers who target absolute or 'cash plus' returns which we believe assists trustees in achieving the desired investment returns in accordance with the agreed risk profile and reference currency.

This is typically achieved using a combination of traditional asset classes such as bonds, equities and cash, blended with more non-traditional asset classes such as structured products, alternative investments (such as hedge funds and private equity), property, and commodities.

Many trusts were established in the past to hold shares in privately owned company businesses. Often the entrepreneurs behind these businesses reach the stage in life where they wish to engineer an exit strategy for their business, whether by way of an IPO, a trade sale or perhaps a merger with a larger company. Once the company has been sold or merged, the trust structures are often then recipients of a large amount of cash. We see this trend continuing over the coming years, and Investec is working more closely with local trustees and their clients to achieve the right investment solutions using its highly specialised and independent wealth management service.

If you are interested in attending the Investec Lunch and Learn series please contact shaun.lacey@investec-ci.com