QCAT

Queensland Civil and Administrative Tribunal

The prudent person rule

The administrator has a duty to invest only in authorised investments. These duties are described in the *Trusts Act 1973* and referred to as the prudent person rule. These duties are detailed in the excerpt below. **Note:** All references to trustee in this excerpt should be taken as applying to administrators

Important note: *If you have concerns that a proposed investment might breach the prudent person rule, you can make an application to QCAT to have the investment approved.*

Excerpt from the *Trusts Act 1973*, Part 3

22. Duties of trustee in relation to power of investment

(1) A trustee must, in exercising a power of investment –

(a) If the trustee's profession, business or employment is, or includes, acting as a trustee or investing money for other persons – exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or

(b) If the trustee's profession, business or employment is not, or does not include, acting as a trustee or investing money for other persons – exercise the care, diligence and skill a prudent person of business would exercise in managing the affairs of other persons.

(2) A trustee must, in exercising a power of investment, comply with a provision of the instrument creating the trust that is binding on the trustee and requires the obtaining of a consent or approval or compliance with a direction for trust investments.

(3) A trustee must, at least once in each year, review the performance, individually and as a whole, of trust investments.

23. Law and equity preserved

(1) A rule or principle of law or equity imposing a duty on a trustee exercising a power of investment continues to apply except so far as it is inconsistent with this or another Act or the instrument creating the trust.

(2) Without limiting the rules or principles mentioned in subsection (1), they include a rule or principle imposing –

(a) a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust; and
(b) a duty to invest trust funds in investments that are not speculative or hazardous; and
(c) a duty to act impartially towards beneficiaries and between different classes of beneficiaries; and
(d) a duty to obtain advice.

(3) A rule or principle of law or equity relating to a provision in an instrument creating a trust that purports to exempt, limit the liability of, or indemnify a trustee in relation to a breach of trust, continues to apply.

(4) If a trustee is under a duty to obtain advice, the reasonable cost of obtaining the advice is payable out of trust funds.

23. Matters to which trustee must have regard in exercising power of investment

(1) Without limiting the matters a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, have regard to the following matters-

(a) the purposes of the trust and the needs and circumstances of the beneficiaries;
(b) the desirability of diversifying trust instruments;
(c) the nature of and risk associated with existing trust investments and other trust property;
(d) the need to maintain the real value of the capital or income of the trust;
(e) the risk of capital or income loss or depreciation;
(f) the potential for capital appreciation;
(g) the likely income return and the timing of income return;
(h) the length of the term of the proposed investment;
(i) the probable duration of the trust;
(j) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;
(k) the total value of the trust estate;
(l) the effect of the proposed investment for the tax liability of the trust;
(m) the likelihood of inflation affecting the value of the proposed investment or other trust property;
(n) the cost (including commissions, fees, charges and duties payable) of making the proposed investment;
(o) the results of a review of existing trust investments.

(2) A trustee –

(a) may obtain, and if obtained must consider, independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and

(b) may pay out of trust funds the reasonable costs of obtaining the advice.