

June 2010

SRIs and Trustees' Investment Powers

"It is time for retirement funds to consider and take measures to be and be seen to be responsible corporate citizens that protect, enhance and invest in the wellbeing of the economy, society and the environment."

In the articles that follow, we consider targeted and Socially Responsible Investments (SRIs) in the context of the plan mooted by Minister Ebrahim Patel to use 5% of public and private pension fund savings to pay for development projects. In this article, we consider whether trustees have the authority and power in terms of their fund's rules, to make these investments.

The Pension Funds Act is not specific on how the trustees are required to invest the fund's assets. Sections 7C and D require that: *"The object of the Board shall be to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund."* *The rest of the Act as well as the draft amendment to regulation 28 does not provide more clarity".* In our experience, fund rules are very often also silent on how the investments should be made (other than to restrict investments to insurance policies in respect of underwritten funds). In such instances, it is generally accepted that the trustees are required to maximise the returns. PF 130 reinforces this notion and states that the primary obligation of a fund is to provide optimal returns for its beneficiaries.

If, therefore, an investment type is not likely to produce a return commensurate with the risk taken, the trustees must exercise caution. Without clear authority in the rules, the trustees' typical fiduciary duties would require that every investment should generate a return commensurate with the risk. Where necessary, appropriate amendments need to be made.

Proposed Plan of Action

We recommend that funds consider the following plan of action if they resolve to implement SRIs, such as targeted investments, in respect of which there is concern that the return may not be

commensurate with the risk taken. It is not based on clear legal principle, but rather on pragmatic considerations.

1. *Revise the funds' investment policy statement (IPS) and / or the rules, where necessary, from a future date.*
2. *Inform the members of the resolution to make the amendments to invest in SRIs such as targeted investments. It may be good to start small and increase these investments to the desired level over a period of time.*
3. *Consider a consultative communication process.*
4. *Ensure that the position is monitored, assessed and reported on annually by the trustees.*

Investment Opportunities

While responsible investment principles apply to all investments, only a percentage of a fund's investments should be allocated to targeted type investments. Many asset managers have created portfolios offering investments in SRIs and specifically also targeted type investments. Many of the portfolios investing in the latter have done very well and have very attractive track records. The concern is that the carefully selected projects currently invested in may not be representative of the returns that could be achieved if much more capital goes in search of infrastructure developments.

In Conclusion

It is time for retirement funds to consider and take measures to be, and be seen to be, responsible corporate citizens that protect, enhance and invest in the wellbeing of the economy, society and the environment. When they do so, however, trustees should make sure that they have clear authority and follow due process.

Contact: Marcus Rautenbach
Tel: +27 11 263 4343
E-mail: assets@simekaconsult.co.za

