Investing trust assets under clause 16 of the Draft Regulation of Trusts Bill: From preservation to prudence

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Summary:

The management of trust assets is one of the most important responsibilities entrusted to trustees. While trustees have traditionally been expected to preserve and protect trust property, clause 16 of the Draft Regulation of Trusts Bill, 2026 ("Bill") recognises that effective trust administration requires more than simply safeguarding assets. In a modern financial environment, trustees must make informed investment decisions that balance the preservation of capital with the long-term growth and sustainability of trust wealth.

Article:

Clause 16 introduces a prudent investor standard, requiring trustees to actively and responsibly manage trust assets in the best interests of beneficiaries. Trustees are no longer viewed as passive custodians of property, but as fiduciaries who must exercise care, diligence, skill and sound judgment when making investment decisions. Prudence does not require trustees to avoid all risk but rather that trustees must carefully assess potential risks and rewards and make decisions that are reasonable in the circumstances of the particular trust.

Clause 16 requires trustees to adopt a holistic approach when investing trust assets. Rather than focusing on a single objective, trustees must consider the purpose and terms of the trust, the current and future needs of beneficiaries, the preservation of trust capital, and the potential for income generation and long-term growth. Trustees must also take into account the impact of inflation affecting the value of the proposed investment or other trust property, carefully evaluate the level of risk associated with proposed investments, and have regard to the desirability of diversifying trust investments. By weighing these factors collectively, trustees can develop a balanced investment strategy that protects trust assets while promoting their sustainable growth and long-term value for beneficiaries.

Key features of Clause 16 include diversification together with a broader range of considerations. The clause recognises that investment decisions must be assessed within the context of the trust portfolio as a whole, promoting informed and reasoned decision making rather than a focus on individual assets in isolation. By requiring a trustee to consider the costs of making the proposed investment, including commissions, fees and charges payable, the clause requires the trustees to invest prudently, taking relevant factors into account. Seeking advice from qualified financial professionals may further assist trustees in making informed investment decisions. However, trustees remain ultimately responsible for all investment decisions and cannot avoid liability by relying solely on advisers.

Trustees who fail to exercise the required degree of care and prudence may face personal liability if beneficiaries suffer loss as a result of imprudent investment decisions. Clause 16 places significant emphasis on the decision-making process, requiring trustees to demonstrate that investment decisions were properly considered, informed and consistent with their fiduciary duties.

Clause 16 represents an important development in South African trust regulation. By adopting a prudent investor approach, the Bill shifts the focus from the mere preservation of trust assets to their responsible and strategic management. Trustees are expected to carefully assess risks, diversify investments where appropriate, seek professional advice when necessary, and always act in the best interests of beneficiaries. Ultimately, Clause 16 promotes the long-term protection, growth, and sustainability of trust property.

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