



Ethical Issues In Investing: Observations and Experiences in Botswana

Presentation by Mothusi Lekaukau

26th February 2019



AON

Ethics?



Ethics? Duty & Outcome Based

- Duty Based (Deontological) ethics are rooted in natural law

¹“the mother of right—that is, of natural law—is human nature..... If an action agrees with the rational and social aspects of human nature, it is permissible; if it doesn't, it is impermissible.” Hugo Grotius

- Conduct expected in specific industry
 - Internal codes of ethics
 - Professional standards of conduct
 - Regulations & law

Ethics? Virtues

- *Botho* (Ubuntu) is summed up as

²“Our deepest moral obligation is to become more fully human. And this means entering more and more deeply into community with others. So although the goal is personal fulfilment, selfishness is excluded” (Thaddeus Metz)

- A foreigner having visited Botswana says her friend explained *Botho* as

³“having a deep sense of another person’s humanity. How to demonstrate being a human being to another human being”

² <http://www.scielo.org.za/pdf/ahrlij/v11n2/11.pdf>

³ <https://berkeleycenter.georgetown.edu/posts/on-botho-a-binding-social-force-amongst-the-batswana-people>

Ethical Concepts in Investments

- Concepts like *botho* are tools that can aid in addressing ethical issues
- People can introspect and apply these concepts to adhere to necessary codes of ethics and regulations
- They can also be applied in situations where codes of ethics are lacking, ambiguous or unclear
- Incorrect interpretation or application of *Botho* can itself potentially raise ethical issues if it conflicts with fiduciary duties



Laws, Regulations & Codes of Conduct

Laws, Regulations & Codes of Conduct

- Adherence to laws, regulations and internal codes of ethics (rules) by stakeholders in itself raises ethical issues
- A lot has been done in the last decade in Botswana to enact regulations and the Regulator and other stakeholders should be commended
- Sometimes investment professionals do not make it a priority to learn certain regulations well
- The result can be that investment professionals do not keep up to date with *all* applicable laws and regulations

Compliance Challenges

- Compliance officers not being independent enough and/or not fully understanding their ethical duties
- Supervisors, clients or advisors, sometimes unknowingly, enabling or being party to breaches in rules
- Making the difficult decision to resign when firm, organisation and/or senior employees persist in questionable ethical behaviour

AON

Fiduciary Duties



Fiduciary Duties

Common themes are found in standards such as CFA Institute Code Ethics and Standards of Conduct & the “Prudent Investor rule”, also some overlap with NBFIRA regulations

- Investment decisions and actions should be for the **sole benefit of the client**, also important to identify who actual client is e.g. for pension funds it's the members
- Trustees, asset managers, & investment advisers should manage assets in a **prudent** manner, exercising **care and skill**
- Investments and investment decisions should not be taken in isolation but in the context of **an overall investment strategy** or whole portfolio
- **Suitability** of investments should be taken into account when managing investments
- Duty to **diversify**, unless owing to circumstances it is not prudent not to do so

Fiduciary Duties –Watch Out For

- Trustees making questionable decisions because of influence from non-trustee senior employees
- Asset managers/investment advisers placing interests of client's representatives & other fiduciaries above the actual client (members)
- Asset managers accepting & managing mandates when they know or strongly believe the mandates are not suitable for the client/members?



Fiduciary Duties: ESG & SRI



Possible Ethical Issues with Moral Based SRI

- Environmental, Social, Governance (ESG) screening and investing in ESG Funds may call into question whether pension fund decision makers are fulfilling their fiduciary obligations
- The US the Department of Labour, which is responsible for enforcing legislation regulating pensions funds states that,
“⁵It does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors. Rather, ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits”
- In the UK the NEST Corporation which runs the progressive NEST pension scheme says of its ESG fund, which members can opt to choose,
“⁶Although we try to manage the risks and returns members get in the ethical fund, members who invest in this fund are usually exposed to slightly higher risk than with NEST Retirement Date Funds.”

⁵ <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01>

⁶ <https://www.nestpensions.org.uk/schemeweb/nest/aboutnest/investment-approach/other-fund-choices/nest-ethical-fund.html>

Fiduciary Duties - ESG & SRI

- For the most part morals based sociably responsible investing (SRI) as it is generally understood hasn't seemed to be a major topic interest with trustees of pension funds in Botswana
- In last year or two, there has been some limited mention or reference to ESG from e.g how or if UNPRI are incorporated investment policy
- ESG factors can be incorporated in DC plans to the extent that they fall in line with members retirement objectives

Incorporation of ESG & SRI in Investing

- In investment analysis & stock selection, some components of ESG always formed part of fundamental analysis e.g through PEST and porters five analysis
- An example of a more explicit integration in the stock selection process is using ESG factors as part of margin of safety analysis in value investing
- At an overall pension fund level one can look to the DC pension schemes of the UK and Australia, e.g. NEST pension scheme
 - there is a default that members are enrolled into if they don't make a choice
 - they are given a choice to opt out of the default fund and are given 5 other choices, including a ethical fund
 - i.e. The Ethical (SRI) Fund is not part of the default

The AON logo is displayed in white, bold, sans-serif font against a solid red background. The letters 'A', 'O', and 'N' are connected, with the 'O' being slightly larger than the 'A' and 'N'.

AON

The text 'Independence & Objectivity' is written in a white, sans-serif font, centered on the red background. The ampersand is stylized. The text is positioned in the middle-left section of the slide.

Independence &
Objectivity



Independence & Objectivity

- Gifts and entertainment- important to accept very modest gifts, even if an employer or a pension fund rule allows acceptance but the gifts have potential to interfere with objectivity
- People in a hiring or monitoring capacity should not solicit gifts e.g. “this service provider does this for us why don’t you do the same”
- For travel arrangements, if available, best practice is to use own expense or employers
- Most of the focus is always on the recipient but also ethical issues arise from a person giving anything that could comprise a client’s independence objectivity



Misrepresentation



Misrepresentation

- Important not to mispresent or over embellish investment offering, this can happen when marketing new investment strategy
- Benchmarks not comparable to investment strategies, an effort should be made to show performance against a suitable benchmark
- Omission and Errors e.g. in performance or portfolio valuation reports
- Firms should consider being compliant with and presenting performance in compliance with the Global Investment Performance Standards (GIPS®)



AON



Insider Trading

Insider Trading

- Challenging in a small market because one can have personal relationships with a number of people senior company insiders
- Lack of professionalism, disregard for confidentiality and camera phone and social media apps such as whatsapp
- At the same time sometimes social media has helped e.g. when material non public info is circulating social media platforms like facebook allow it to enter into wider public domain
- People in receipt of information even if they don't act on it, end up sharing with others which also raises ethical issues
- Although penalties under Botswana law are tough and have been strengthened including a possible jail term of up to 10 years, insider trading can be difficult to detect and prove

AON

Conflicts of
Interest



Conflicts of Interest

- Conflicts of interest issues are an issue, like other parts of the world but again perhaps exacerbated by a population can include
 - Individual holdings and personal interests in companies
 - Investment banking/advisory and asset management activities carried out by the same company or related companies
 - Undisclosed additional income received by asset managers from sub managers e.g. rebates
- Best dealt with by avoidance or where unavoidable full disclosure within firms and to clients



Conclusion



Conclusion

- Adhere to and keep up to date with all relevant laws and regulations
- Board & senior management are vital to instilling an ethical culture
- We should face ethical challenges in the industry in the spirit of *botho*
- There is a bright and promising generation of young investment professionals, however they need support
- Fellow investment professionals, & fiduciaries strive at all times not to compromise your integrity and ethics in investing for anyone, anything or under any circumstances
- The first rule of investing is to remember your fiduciary duties and the second one is to never forget the first one

If Ethical Issues In Investing are not addressed

