

**Governance Issues
facing Pension Fund trustees**

Fatma Al Kharusi,

Finance Director, Petroleum Development Oman



30th May 2007

Governance Issues facing Pension Fund trustees

- Governance
- Trustee Responsibilities
- Governance Issues
- Conclusion



Governance

Dictionary -

1. rule, direction or control
2. exercise restraint over
3. influence or determine

All of the above should be exercised by Pension Fund trustees who are responsible for ensuring that the pension scheme is run properly and that members' benefits are secure.

A trustee must act in good faith and exercise the degree of diligence, care and skill that a prudent person of business would exercise in managing the affairs of others.



Governance

- Trustees have broad responsibilities under “Trust Law” and specific Trust Deeds to exercise a duty of care and fiduciary responsibility.
- In most countries, under Trust Law (often supported by pension fund regulation) Trustees will be personally liable when they deviate from the terms of the Trust by either doing what is prohibited by the Trust: or doing more than is permitted; or omitting to do what is required.
- Penalties may involve fines/imprisonment



Trustee Responsibilities

- To understand and adhere to the terms of the Trust Deed
- To act in the best interests of the beneficiaries
- To act in good faith
- To act impartially as between (groups of) beneficiaries
- To develop and maintain adequate levels of competency/skills for themselves as trustees
- To hold regular Trustee Meetings
- To maintain proper accounts, approve statutory accounts



Trustee Responsibilities

- To ensure contributions plus investment returns, are sufficient to finance the benefits/liabilities
- To ensure that the Fund has a Statement of Investment Principles (required under many countries' jurisdictions, and regarded as best practice irrespective)
- To ensure that benefits paid out are as laid down in the Fund's Trust Deed (no more no less)



Key Oversights of Trustees

- The prudent investment of the funds
- The error-free administration of the benefits
- Compliance with Trust Deed & Rules and pensions/other relevant legislation
- Demonstration of sound governance
- Proper accounting for the Fund's affairs
- Recognising and dealing with all stakeholders inc the Sponsor
- Member communications



Governance Issues

- Failure to define Fund governance structure
- Conflict of Interest
- Failure to define the separate roles and responsibilities of the sponsor and the trustees
- Trustees making direct investment decisions
- Failure to seek professional advice
- Failure of trustees to gain the necessary competency training and development
- Failure to act in the best interest of beneficiaries



Failure to define Fund governance structure

- **Absence of Trust Deeds and regulations.** Any form of discretionary power is potentially dangerous if there is no clear policy on its application or definition or its exercise.
- **Failure to have a Statement of Investment Principles** which sets out the financial and investment objectives of the Fund, the risk appetite, the investment strategy and how best it meets the liability profile, how these decisions were arrived at, and what risks were considered – a key Governance document for (protection of) Trustees (especially incoming ones)
- **Failure to carry out a strategic asset allocation exercise** which has a great impact on the fund. ALM studies should be completed every 3 years to ensure that asset allocation is consistent with the liability profile of the fund.



Failure of trustees to gain the necessary competency training and development

- Nominated members often lack the expertise necessary to manage large and complex schemes
- Trustees must have the right mix of skills collectively - proven expertise in management, financial, legal or employee benefits background and compliance skills.
- It is a duty upon trustees to have knowledge and understanding of funding and investment principles.
- Level of expertise needs to be raised by continuous training



Conflict of interest

- Sitting at the Trustee table wearing a sponsor's hat – not acting for benefit of beneficiaries. Trustees need to be assertive to safeguard interests of members.
- “Acting out of self-interest” – directing Fund investments for personal gain, or promoting benefit changes for personal benefit
- Making inappropriate investments e.g. investment in “directed” assets



Failure to seek professional advice

- A tendency for a do-it-yourself approach, without the requisite skills or knowledge e.g. making direct investment decisions instead of engaging professionals
- There is a legal requirement for certain tasks to be carried out by professional advisors
- All schemes must have an Auditor
- Schemes with a defined benefit element must have an Actuary to advise on all aspects of the funding of the scheme
- Other professional advice – legal, investment strategy, fund management and other services.



Failure to act in the best interest of beneficiaries

- **Failure to ensure contributions plus investment returns are sufficient to finance benefits/liabilities.**
Take regular actuarial advice and before changes
- **Failure to record or take “corporate actions”** – not minuting decisions, or not formally advising sponsor on key matters e.g. Actuary’s recommendations
- **Acting outside the Trust Deed** e.g. paying out incorrect benefits, admitting into the Fund new members with different criteria from that of the Rules, or differentiating between beneficiaries.



Conclusion

- The qualifications, roles and responsibilities of trustees are, in many countries, governed by the Trust law.
- Specific pension legislations set down requirements of how pension schemes must be run.
- Lack of such a legal framework in our countries puts the onus on the Board of Trustees to ensure that the Governance structure is in place by following best practice.
- Good governance by trustees equates to having appropriate control systems to ensure effective management.



11th Regional Pension & Social Insurance Conference

Thank You

