



MATHESON ORMSBY PRENTICE



IAPF Trustee Forum - Trustee Matters

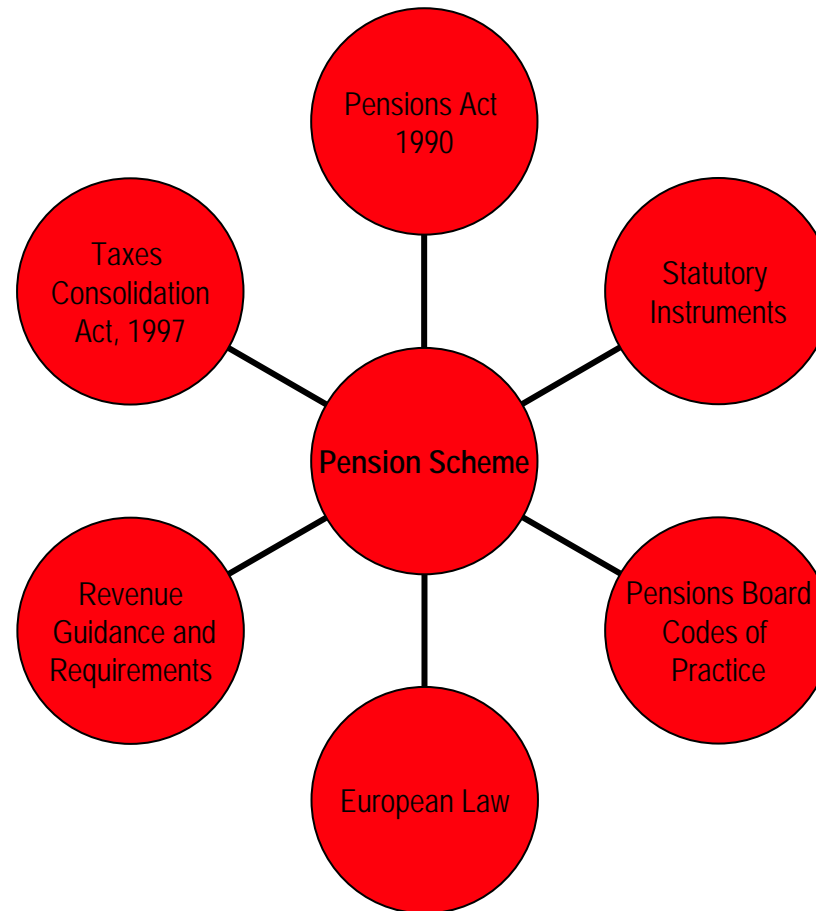
Brian Buggy, 22 October 2008



AGENDA

1. Statutory and Regulatory Framework of Occupational Pension Schemes
2. The Trust Deed and Rules
3. The Role of a Pension Scheme Trustee
4. Trustee Liability and Protection
5. Current Legal Issues
6. Support for Trustees

1. Occupational Pension Schemes - Statutory and Regulatory Framework



Occupational pension schemes - Structure

- Established under trust
 - Revenue requirement – tax approval
 - Security of assets – separate from employer's assets
 - Administered by trustees
 - Governed by trust deed and rules
- Sponsoring employer
 - Participating employers
- Benefits offered
 - Retirement – DB and/or DC
 - Death

Pensions Act 1990 (as amended)

- Sets out the statutory obligations on employers and trustees in relation to occupational pension schemes, including:
 - role of the Pensions Board (Part II)
 - preservation of benefits (Part III)
 - funding requirements (including payment of contributions) (Part IV)
 - statutory powers and duties of trustees (Part VI)
 - registered administrators (Part VIA)
 - equal pension treatment (Part VII)
 - the Pensions Ombudsman (Part XI)
 - cross-border pension schemes (Part XII)

Taxes Consolidation Act, 1997 – Chapter 1 of Part 30

- Conditions for approval of pension schemes
- General tax treatment
- Member's total benefits maximum
- Limits on member contributions
- Maximum total pension fund allowable for tax relief
- Maximum amount commutable as a lump sum
- Large Cases Division Financial Services (Pensions)
lcdretirebens@revenue.ie
- Revenue Pensions Manual

2. The Trust Deed and Rules

- The Trust Deed:
 - Governs all activity of the employer and the trustees in relation to the scheme, where that activity is not otherwise regulated under statute or Revenue guidance.
 - Sets out the powers, duties and discretions under the trust eg power to delegate, power to amend, appoint advisers etc.

The Trust Deed and Rules

- The Trust (continued):
 - resolution of disputes by trustees
 - payment of scheme expenses
 - power of employer to terminate the scheme
 - what must be done in the event that the scheme is wound up

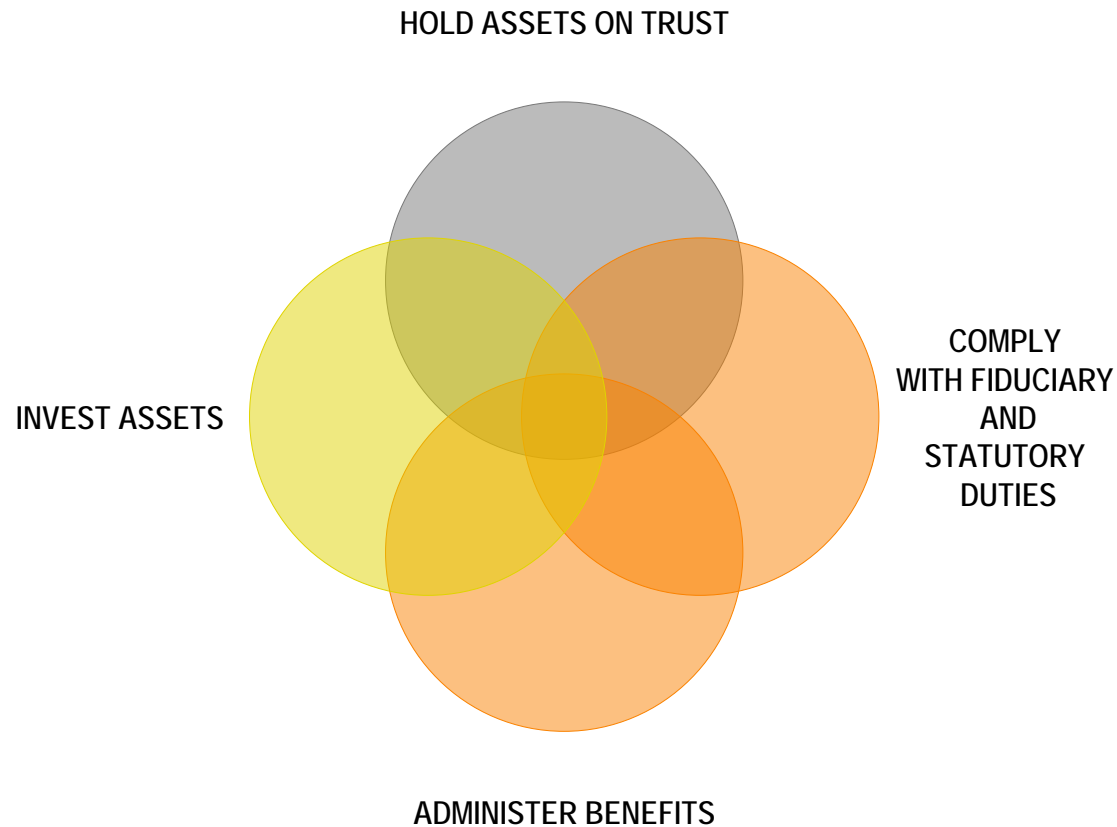
Plus:

- sets out the liability position of the trustees and any available protections

The Trust Deed and Rules

- The Rules:
 - eligibility
 - set out the rates of contributions payable by employer and members
 - set out the benefit structure of the scheme, including:
 - benefits at normal retirement date
 - benefits at early or late retirement
 - benefits if member leaves active service prior to NRD
 - death benefits

3. Role of a pension scheme trustee



Role of a pension scheme trustee

- Fiduciary duties
 - To always act in good faith
 - To always act in the best (financial) interests of the beneficiaries
 - To be familiar with trust documents and to act in accordance with trust
 - Act prudently
 - Act with diligence and care

Role of a pension scheme trustee

- Statutory duties
 - receive contributions
 - invest contributions – “proper investment”
 - Statement of Investment Policy Principles (SIPP)
 - pay benefits
 - keep membership records and accounts
 - secure benefits on wind up

Role of a pension scheme trustee

- Statutory duties (continued):
 - ensure adequate funding
 - make appropriate disclosure as prescribed
 - whistle-blowing
 - ensure equal pensions treatment
 - preserve benefits of leavers
 - comply with pension adjustment orders (divorce/marital separation)

Role of a pension scheme trustee

- Investment of the trust assets
 - contributions received from employer and employees must be invested within 10 days of the latest remittance date
 - statutory duty to ensure “proper investment”

What does this mean?

- prudent investment strategy – avoid excessive risk
- ensure security, quality, liquidity and profitability
- diversification
- investment predominantly on regulated markets

Role of a pension scheme trustee

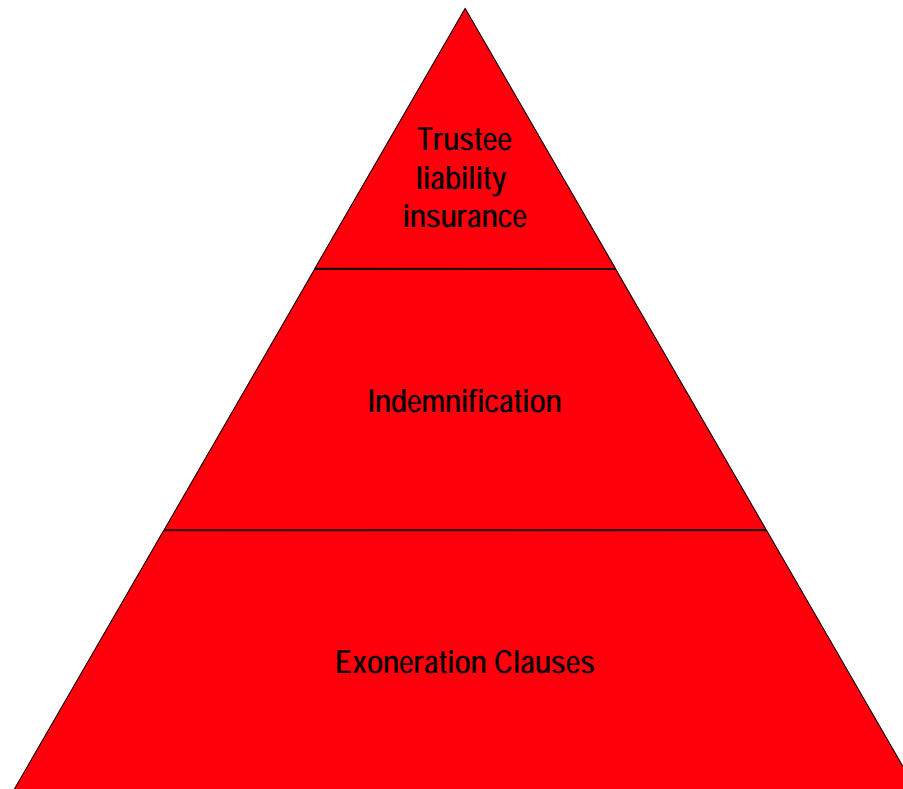
- Investment of the Fund
 - Statement of Investment Policy Principles (SIPP) (for schemes which have in excess of 100 members)
 - Investment must be made in accordance with the Rules of the Scheme and in accordance with the SIPP
 - Delegation of investment/custodianship functions
 - third party investment manager(s)/custodian(s)
 - investment management agreements

4. Trustee Liability

- Trustees are individually liable for losses incurred in connection with the trusteeship of the scheme
 - Breach of trust
 - Breach of statutory obligations
 - Failure to act with due care – or at all
- Breach of statutory obligations
 - Section 3(1)(c) Pensions Act 1990 provides defence where task delegated
 - Must document delegation
 - Must actively supervise

Trustee Liability

- Available protections against trustee liability:-



Trustee Liability

Exoneration clauses

- Common to find words in trust which limit liability (exoneration clauses)
- Seek to reduce/eliminate liability
- Seek to protect from financial effects of legal liability
- Absent limitation wording, trustees have significant risk of liability
- Limitation/Indemnity Clauses cannot prevent litigation

Trustee Liability

Indemnity

- Often, trustees will be indemnified against any liability incurred in connection with the trusteeship of the scheme
- From the employer(s) and/or the fund itself
- Statutory indemnities

- Trustee liability insurance
 - additional layer of protection
 - potentially covers costs of defending a claim brought by a beneficiary

5. Current Legal Issues



Statutory:

- New on-the-spot fines regime
- Requirement for registered administrators
- Compulsory trustee training – employer obligation

6. Support for Trustees

- Pensions Board – www.pensionsboard.ie
- Pensions Ombudsman
- New law – registered administrators/trustee training

Final thoughts....

- You are not expected to be experts BUT you are expected to possess the knowledge appropriate to the task and to comply with all your fiduciary and statutory duties.

So...

- Remain engaged/involved
- Hold meetings
- Delegate functions where appropriate
- Always seek advice!

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