



# Options for Legal Form, Governance and Supervision

Russell Galer, David Lindeman  
and Stephen Lumpkin

OECD Secretariat (DAFFE)

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# LEGAL FORMS

- IN OCCUPATIONAL SPHERE, USUALLY A DISTINCTION BETWEEN
  - PLAN OR SCHEME -- the employer's undertaking: part of the labour contract;
  - THE EXECUTING ENTITY OR ARRANGEMENT
- EXECUTION TAKES MANY LEGAL FORMS
  - TRUST (Roman law concept that attached to and preserved with English "common law" and used in English speaking world -- and some countries that have adopted in like Quebec, Japan)
  - FOUNDATION -- generally regarded as a Civil Code equivalent to Trust
  - CONTRACTS WITH INSURANCE COMPANIES
  - UNIFORM COLLECTIVE INVESTMENT AND TRANSFERABLE SCHEMES (UCITS)
  - MUTUAL SOCIETIES (including US mutual funds)

# LEGAL FORMS

- NOT CLEAR THAT DISTINCTIONS MATTER THAT MUCH IN OPERATION
  - TRUSTS ARE REALLY CONTRACTS WITH CERTAIN FORMAL TRAPPINGS -- INCLUDING NOTION OF FIDUCIARY RESPONSIBILITY, BUT SUCH REQUIREMENTS CAN BE PLACED INTO OTHER FORMS
    - DEGREE OF AUTONOMY DEPENDS ON CONTEXT
  - FOUNDATIONS ARE, AS SUCH, MORE DISTINCT BUT ACTIVITIES GOVERNED BY CONTRACTUAL UNDERSTANDINGS
- IN EUROPE, UCITS IS BECOMING THE DOMINANT FORM OUTSIDE PENSIONS (EVENTUALLY PENSIONS?)
- MUTUAL SOCIETY MODELS MAY BE LESS TRANSPARENT AND CHALLENGING TO MONITOR

# GOVERNANCE OF PENSION ENTITIES

- COUNTRIES DIFFER IN DEGREE OF OPERATIONAL AUTONOMY OF THE ENTITIES OR DELEGATED AGENTS FROM SPONSORS
  - US and Canada vs. UK and Ireland vs. many countries in Europe
  - Codetermination rules; collective bargaining
  - Industry vs. single employer
- COUNTRIES WITH MANDATED REGIMES OR MONOPOLY PENSION INSTITUTIONS LOOK MOSTLY LIKE COLLECTIVE INVESTMENT SCHEMES OR INSURANCE COMPANIES IN TERMS OF GOVERNANCE ISSUES

# KEY ELEMENTS IN GOOD PENSION ENTITY AND SCHEME GOVERNANCE

- SUITABILITY
- PROCESS -- CLEAR AND KNOWN RULES FOR DECISION MAKING
- CLEAR DELEGATIONS OF RESPONSIBILITY (AND ULTIMATE ACCOUNTABILITY/LIABILITY TO PARTICIPANTS)
- CLEAR INVESTMENT POLICY GOALS
- CLEAR VALUE FOR OVERHEAD COSTS

# ORGANISATIONAL STRUCTURES FOR SUPERVISION

- COUNTRY SIZE
- STRUCTURE AND SOPHISTICATION OF FINANCIAL MARKETS
- TYPES OF PROVIDERS AND SERVICES
- HUMAN CAPITAL CONSTRAINTS