



# OECD/IOPS Conference on Private Pensions in Asia

Educating Trustees And Pension Fund Managers



An Bord Pinsean -  
**The Pensions Board**  
Authority for Pensions

**Mary Hutch**  
**Head of Information and Training**  
**The Pensions Board**  
**Ireland**

**Bangkok**  
**Thailand**  
**27-28 April 2005**



# AGENDA

---

- ◆ Some facts on Irish pensions
- ◆ Trusts
- ◆ Why are pension schemes established under trust?
- ◆ Types of trustee
- ◆ Regulatory Instruments and Framework
- ◆ Trustee duties under Trust Law
- ◆ Trustees duties under the Pensions Acts 1990 - 2005
- ◆ The Pensions Board
- ◆ Trustees liabilities and protection
- ◆ Trustee Training – Role of Regulator
- ◆ Support Services for Pension Practitioners
- ◆ EU Pensions Directive Implications
- ◆ Conclusions



## CURRENT IRISH PENSION STRUCTURE

---

- ◆ Social Welfare (First Pillar) pension providing either:
  - ◆ Old age contributory pensions for those satisfying certain contribution conditions, or
  - ◆ Old age non-contributory pension subject to a means test for those not qualifying for contributory pension
- ◆ Social Welfare pension arrangement funded on a pay-as-you-go basis supported by National Pensions Reserve Fund
- ◆ Public Service pension scheme which faces greatly increased costs (also supported by National Pensions Reserve Fund)
- ◆ Private pensions arising from funded occupational pension schemes, personal pensions and Personal Retirement Savings Accounts which are tax encouraged



## SOME STATISTICS

---

- ◆ Total private pension coverage
  - ◆ 52.4% of those at work
  - ◆ 59.1% of those aged over 30 at work
- ◆ Occupational pension schemes (set up under trust)
  - ◆ Number = 112,665 schemes/724,333 members
  - ◆ Type = 66.7% Defined Benefit membership / 33.3% Defined Contribution membership
  - ◆ Assets = €52 billion (approximate figure currently quoted by IAPF)
- ◆ Personal Pensions (contract based)
  - ◆ Number of holders = 200,000/250,000 approximately
  - ◆ Type = money purchase with insurance companies



## SOME STATISTICS

---

- ◆ PRSAs (contract based)
  - ◆ Number of providers = 10
  - ◆ Number of products = 56
  - ◆ Number of contracts sold = 37,086
  - ◆ Assets of contracts sold = €106.6 million



# WHAT IS A TRUST?

---

- ◆ Legal obligation binding a person (the ‘trustee’)
  - ◆ to use certain property
  - ◆ for the benefit of other people (the ‘beneficiaries’)
  
- ◆ Trustee is legal owner of the trust property
  
- ◆ Use trust property for beneficiaries in accordance with terms of trust
  
- ◆ Trust concept is ancient
  
- ◆ Successfully adapted in modern times as legal vehicle for establishment of pension schemes



# WHY ARE PENSION SCHEMES ESTABLISHED UNDER TRUST?

---

- ◆ Very favourable tax concessions
- ◆ Funds are controlled by trustees not employer company
- ◆ Trustees must act in interests of beneficiaries not employer
- ◆ Fund is separate from employer's assets
- ◆ Beneficiaries can enforce rights under trust

# TYPES OF TRUSTEE

---

- ◆ Individual trusteeship
  - ◆ selected and appointed by employer from company management, outside professionals, member trustees
  
- ◆ Corporate Trusteeship
  - ◆ employer as corporate body acts as trustee
  - ◆ specialist firm providing trusteeship services
  - ◆ Separate trustee company set up in lieu of individual trustees
  
- ◆ Combination of individual and corporate trustees



# REGULATORY INSTRUMENTS AND FRAMEWORK

---

- ◆ For a full understanding of their duties trustees must look to a number of sources
  - ◆ Trust Law and Equitable Principles
  - ◆ The Trustee Acts (1893 and 1958)
  - ◆ The Pensions Acts 1990/2005
  - ◆ European Union Law
  - ◆ The Trust Documents
  - ◆ Part-Time Work Legislation
  - ◆ Fixed-Term Work Legislation
  - ◆ Family Law
  - ◆ Revenue Requirements



# TRUSTEE DUTIES AND RESPONSIBILITIES UNDER TRUST LAW

---

- ◆ Act with utmost good faith
  - ◆ duty to beneficiaries not to themselves
- ◆ Execute the trust
  - ◆ according to law
  - ◆ In the interests of all the beneficiaries
- ◆ Act in the best interests of beneficiaries
  - ◆ financial interests
- ◆ Act fairly between beneficiaries
  - ◆ treat all equally
- ◆ Act prudently
  - ◆ as if morally bound to provide
- ◆ Seek advice
  - ◆ But decisions must be made by trustees
- ◆ Maintain confidentiality
  - ◆ information must only be used for the purposes of the scheme

*Guidance given in Pensions Board Trustee Handbook and Codes of Practice*



# TRUSTEES DUTIES AND RESPONSIBILITIES UNDER THE PENSIONS ACT

- ◆ Pensions Act brings together and sets down clearly
- ◆ Complements and reaffirms existing Trust Law
- ◆ In broad terms, main duties are:
  - ◆ to ensure contributions are received
  - ◆ to ensure contributions are remitted
  - ◆ to invest the funds
  - ◆ to pay the benefits
  - ◆ to ensure that Funding Standard is met
  - ◆ to keep records and accounts
  - ◆ to preserve or transfer benefits
  - ◆ to disclose information
  - ◆ to ensure equal pension treatment
  - ◆ to apply the resources of the scheme on wind up
  - ◆ to register the scheme with the Pensions Board
  - ◆ Now 12 parts in Pensions Act and numerous sets of Regulations

*Guidance given in Pensions Board Trustee Handbook and Codes of Practice*



# TRUSTEES LIABILITIES AND PROTECTION

---

- ◆ Trustees can be personally liable for any loss to scheme caused by breach of trust
- ◆ Liability is individual and collective
- ◆ Can also be liable to prosecution under Pensions Act
  - ◆ Fines and imprisonment up to €12,700 or 2 years imprisonment or both
- ◆ Protection usually written into scheme documents
  - ◆ Exclusion clause
  - ◆ Indemnity clause
- ◆ Indemnity insurance sometimes available but limits have not been tested by the Courts



## ROLE OF THE PENSIONS BOARD

---

- ◆ Regulation/Supervision of occupational pension schemes and PRSAs
- ◆ Advice to Minister for Social and Family Affairs on pension matters generally
- ◆ Development of private pension provision through information and awareness



## TRUSTEE TRAINING – Role of Regulator

---

- ◆ No legal requirement at this time for any training or formal preparation
- ◆ Pensions Board has statutory function under the Pensions Act
  - ◆ to encourage the provision of appropriate training facilities for trustees of schemes
- ◆ List of approved trustee training courses compiled by Board
  - ◆ 12 courses to date
  - ◆ course providers only included when Board satisfied on content of course
  - ◆ Board carries out detailed evaluation of courses – involves Board staff attending as observers
  - ◆ continued inclusion on approved register depends on outcome of evaluation
- ◆ List of approved courses posted on website and made available to all enquirers



## TRUSTEE TRAINING – Role of Regulator

---

- ◆ Pensions Act provides that costs involved may be met from scheme resources, if not paid by the employer
- ◆ Board monitors availability of ‘paid time off’ for trustees to attend training
- ◆ Regular surveys of trustees carried out to establish:
  - ◆ whether/to what extent trustees have received appropriate training
  - ◆ trends in trustee training
- ◆ Regular participation by Board personnel in Union sponsored courses
- ◆ Board represented on IAPF Trustee Forum
  - ◆ Recently developed ‘Introductory’ Course for trustees
  - ◆ Huge demand



## TRUSTEE TRAINING – Role of Regulator

---

- ◆ Board also has statutory function to
  - ◆ provide guidance for trustees on their duties and responsibilities in relation to scheme administration
  - ◆ issue codes of practice on specific aspects of trustees' duties
  - ◆ Advise Minister on standards for trustees and on their implementation
- ◆ The Pensions Board Trustee Handbook – first published 1998
  - ◆ 2<sup>nd</sup> edition published November 2004
- ◆ Declaration in Annual Report that trustees have access to Handbook and Codes of Practice
- ◆ Information booklet – “So You’re a Pension Scheme Trustee”?
- ◆ Enquiry Services



# TRUSTEE TRAINING COURSE – TYPICAL CONTENT

---

- ◆ Brief background to pension provision
- ◆ Role and duties of trustees
- ◆ Basis of scheme financing
- ◆ Investment
- ◆ General Administration
- ◆ Disclosure of Information
- ◆ The Pension Acts
- ◆ Other legislation affecting trustees



# Support Services for Pension Practitioners

---

- ◆ Pensions Acts and Regulations override Trust Deed and Rules of schemes
- ◆ Essential trustees, administrators and their professional advisers refer to up to date legislation
- ◆ Pensions Board provides clear and authoritative guidance to trustees and practitioners on
  - ◆ Compliance with Pensions Acts
  - ◆ Good practice generally relating to scheme administration
- ◆ Guidance Services include
  - ◆ Legislation Service
  - ◆ Guidance Notes Service
  - ◆ Enquiry Services
- ◆ Ongoing Compliance / Information Presentations
  - ◆ Approx 40 – 50 per annum

# E.U. Pensions Directive (IORPS)

## Impact on Trusteeship

- ◆ Directive to be implemented by E.U. Member States by 23 September 2005
  - ◆ Social Welfare and Pensions Act 2005
  
- ◆ Directive has 2 purposes:
  - ◆ to ensure minimum common standards of pension scheme governance throughout E.U.
  - ◆ to facilitate Pan-European pension schemes
  
- ◆ According to Directive, those responsible for management of schemes must
  - ◆ be of 'good repute' and
  - ◆ 'suitably qualified'
  
- ◆ Irish Legislation:
  - ◆ sets out classes of people / companies who will not be allowed to act as trustees
  - ◆ gives Minister power to make Regulations about "trustee qualification"

# E.U. Pensions Directive (IORPS)

## Impact on Trustee Training

- ❖ Regulations to be made by 23 September 2005
  - ❖ details not yet clear
  
- ❖ Possibilities are:
  - ❖ trustees of all schemes will be required to have some training
  - ❖ amount of training required will depend on extent to which trustees have delegated their duties to someone else
  - ❖ all trustees must undergo training – some leeway for newly appointed trustees
  - ❖ where employer company acts as trustee – directors obliged to meet training requirements
  
- ❖ Big task ahead
  - ❖ will take time to complete
  - ❖ supervisor will have to take account of this



## E.U. Pensions Directive (IORPS)

### Impact on Pension Practitioners

---

- ◆ Significantly extends compliance requirements for schemes
  
- ◆ Main changes being in areas of:
  - ◆ Trusteeship
  - ◆ Investment
  - ◆ Cross Border Schemes
  
- ❖ Trustees must employ advisers with “qualifications and experience”
  - ◆ Regulations to specify
  - ◆ Training / certification requirements?

# IN CONCLUSION

- ◆ Trustees play a major role in governance of pension schemes
- ◆ Almost all trustees require services of professional advisers/managers
  - ◆ Overall responsibility rests with trustees
- ◆ Trustee training is essential
  - ◆ a very important and effective way to ensure successful trusteeship
  - ◆ helps to minimise trustees exposure to legal liability
  - ◆ makes trustees aware of what they don't know, what they should ask and of whom
  - ◆ Cannot be a 'one off' experience
- ◆ Voluntary trustee training regime coming to an end
- ◆ Regulatory regime becoming ever more demanding
- ◆ Service level agreements should be in place with service providers and providers made accountable
- ◆ If trustees and their appointed advisers fail to do their job properly
  - ◆ it is members, pensioners and their dependants who suffer