Options for Legal Form, Governance and Supervision

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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