

IX. PENSION FUND SUPERVISORY METHODS IN IRELAND

by
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Introduction

Occupational pension schemes in Ireland are invariably established under trust. The trustees' legal obligations in respect of the sound management of the scheme are established in the jurisprudence of the national superior courts and codified in legislation such as the Trustee Act, 1893, as reinforced by the Pensions Acts, 1990-2002. The legal duty, which the trustee owes to the members and / or beneficiaries of an occupational pension scheme may be summarised as a duty to act in the best interests of the member / beneficiaries. Where a trustee breaches the fiduciary duty owed to members / beneficiaries, recourse may be had by aggrieved parties to the national courts to enforce all the duties and obligations owed by the trustee. At the end of 2002, overall assets of Irish private pension funds were €44.8 billion and the last national survey on pension's coverage (2002) shows total private pensions coverage in Ireland of 50.7% of those in employment age 20 – 69.

Central to the sound management of Irish occupational pension schemes is the legal requirement that the assets of schemes are held in trust for the members and beneficiaries. Irish law requires that trust assets are kept separate from the employer's business. The law requires that the scheme assets cannot be used for any purpose other than those set out in the trust documents. The trust documents generally consist of the formal Trust Deed and Rules governing the scheme.

Irish pension funds are supervised having regard to qualitative investment criteria in accordance with the "prudent person" principle where the trustees, subject to prescriptive legal requirements, have primary responsibility for the investment and sound administration of the scheme assets which may culminate in personal liability of the trustees where they breach their duty of care.

Since the implementation of the Pensions Act, 1990 all “private” occupational pension schemes approved by the Revenue Commissioners must be funded. In this context “private” includes occupational pension schemes for the private sector and some occupational pension schemes for commercial State bodies. Other occupational pension schemes for the public sector including the Civil Service and non-commercial State bodies are operated on a pay-as-you-go basis. Retirement Annuity Contracts (RACs), which provide personal pensions, must be established with a life assurance company and are supported by an underlying insurance policy. The new Personal Retirement Savings Accounts (PRSAs) for, which the framework is included in the Pensions (Amendment) Act, 2002 must also be supported by underlying funds. The first pillar pension arrangement operates on a pay-as-you-go basis and a National Pensions Reserve Fund, was established for the purpose of partially pre-funding the cost of First Pillar old age pensions and public sector pensions.

Among recent reforms, there was a National Pensions Policy Initiative from 1996 – 1998 involving research and consultation on pensions. This culminated in a Pensions Board Report to Government in May 1998. This recommended:

- raising Social Welfare pensions to 34% average industrial earnings in order to avoid poverty and provide replacement income for 30% lower paid people in society;
- continuation of voluntary private pension provision and various changes to the system including the introduction of Personal Retirement Savings Accounts (PRSAs) in order to increase private pension coverage from approximately 50% of the workforce to 70% of the workforce over 5 – 10 years;
- partial funding of Social Welfare pensions (*i.e.* National Pensions Reserve Fund).

Supervisory Framework

The supervisory framework, which specifies the legislative requirements to guarantee the key objectives of security, portability and accountability for occupational pension schemes, was established in Ireland under the Pensions Act, 1990. This legislation has been regularly updated over the years, most recently with the passing of the Pensions (Amendment) Act, 2002. The Acts provide a regulatory framework for defined benefit and defined contribution schemes and the new Personal Retirement Savings Accounts (PRSAs). For the purposes of regulatory supervision, a statutory body, the Pensions Board was

established which comprises representatives of the social partners, the pensions industry, trustees, pensioners, consumers and Government.

The primary function of the Pensions Board is to monitor and to promote the security and protection of members of occupational pension schemes and contributors to Personal Retirement Savings Accounts, as required under the Pensions (Amendment) Act, 2002 and where necessary to enforce compliance through the Courts. As part of this function, it issues guidelines on the duties of trustees and codes of practice of specific aspects of their responsibilities. The Board also encourages and monitors the provision of appropriate training for trustees. In addition, the Board has a statutory function to advise the Minister for Social and Family Affairs on all matters in relation to pensions, both operational and policy.

The Irish Financial Services Regulatory Authority (IFSRA) established on 1 May 2003, is responsible for the regulation of all financial services firms including, *inter alia*, life and general insurance and related consumer issues.

There are over 65 000 Retirement Annuity Contracts (*i.e.* personal / self-employed pensions). The providers of these arrangements are prudentially regulated by IFSRA. These arrangements do not come under the jurisdiction or supervision of the Pensions Board. The remainder of this section therefore will deal with occupational pension schemes and will also include some commentary on the new pensions product, Personal Retirement Savings Accounts, (PRSAs) where the product is also regulated by the Board.

The Pensions Board

The Pensions Board was established under the terms of the Pensions Act, 1990. Its main functions as set out in that Act and amending legislation, most recently the Pensions (Amendment) Act, 2002 are:

- to monitor and supervise the operation of the Pensions Act and pensions developments generally, including the activities of PRSA (Personal Retirement Savings Account) providers, the provision of PRSA products and the operation of PRSAs;
- to issue guidelines or guidance notes on the duties and responsibilities of trustees of schemes and codes of practice on specific aspects of their responsibilities;
- to issue guidelines or guidance notes on the duties and responsibilities of PRSA providers in relation to PRSA products;

- to encourage the provision of appropriate training for trustees of schemes, and to advise the Minister on standards for trustees;
- to advise the Minister on all matters in relation to the Pensions Act and on pension matters generally.

Occupational pension schemes must register with the Board and most schemes must pay an annual fee to meet the Board's administrative costs. The Board can act on behalf of pension scheme members who are concerned about their scheme; it can investigate the operation of pension schemes; it has the power to prosecute for breaches of the Pensions Act and to take court action against trustees for the protection of members and their rights.

In relation to PRSAs, the Board and the Revenue Commissioners are jointly responsible for the approval of PRSA products in order to provide for the protection of PRSA contributors and the need for effective supervision of the production, marketing and sale of such products. The Board can collect fees on an annual basis from PRSA providers to defray the costs of the supervision of this function; it can act on behalf of PRSA contributors who have concerns about their PRSAs; it can investigate the state of the PRSA product, the PRSA Provider in respect of its PRSA activities and employers in relation to statutory requirements of the Pensions Act; it has the power to initiate prosecutions for breaches of the Pensions Act. The prudential supervision of PRSA providers remains within the jurisdiction of IFSRA.

The Pensions Board includes representatives of Trade Unions, employers, Government, pension scheme trustees, the pensions industry, consumer interests, pensioner interests and various professional groups involved with occupational pension schemes and PRSAs.

The staff of the board consists of a Chief Executive, management team and support staff. Staff is divided into five units, namely Investigations and Compliance, Information and Training, Corporate Services, PRSAs and Technical Services and Research. The approved staff complement at the end of 2002 stood at 38.5 posts with 32 posts filled and the remaining 6.5 posts to be filled as required in the context of activity level. The Board's approved staff complement was increased to meet those functions which flow inter alia from its additional role as supervisor of PRSAs as provided for in the Pensions (Amendment) Act, 2002.

The Board as a statutory body is an agency of the Department of Social and Family Affairs. The Minister for Social and Family Affairs is represented on the Pensions Board as is the Minister for Finance.

The Board's normal running costs are met by pension schemes, and most schemes have to pay a fee to the Board every year. The fee may vary according to the size and nature of the scheme. As regards the financing of the supervision of PRSAs, the Pensions (Amendment) Act, 2002, provides for a separate fee income streamed to cover the cost of regulating the PRSAs.

The Board has a committee system and much of its detailed work (such as reports to the Minister for Social and Family Affairs), are considered in the first instance by a committee. The committees may include people who are not members of the Board, usually appointed because they have expertise in a particular matter being examined.

The Board has a mission statement for the purpose of defining its activities. It also develops a strategy for its term of office, which is five years. The Boards' Strategy 2002-2005 is published on its website www.pensionsboard.ie. The Board's Annual Report and accounts for 2002 are also accessible on the website.

Entry requirements

Occupational pension schemes must be set up as trusts to qualify for tax relief. Schemes must first be approved by the Revenue Commissioners or comply with restrictions imposed by legislation. Therefore each occupational pension scheme must normally be first approved by the Revenue Commissioners, who will supply a Revenue reference number for the scheme, before it can start. In order to gain Revenue approval, the scheme must comply with restrictions on:

- The level and type of benefits the scheme can provide. Sometimes these benefit restrictions are referred to as "Revenue maximum benefits".
- Who can be admitted to the scheme.
- When and how benefits can be taken.

Scheme Registration

Each occupational pension scheme must also be registered with the Pensions Board. An annual registration fee is payable by an occupational pension scheme to the Pensions Board. The annual fee varies according to the number of members in the scheme. The Pensions Act specifies that trustees of an occupational pension scheme must ensure that their scheme is registered with the Pensions Board. Registration involves completing a specially designed registration form and sending it to the Pensions Board. A reference number (PB

number) is then allocated to the scheme by the Board and a letter issued by the Board confirming registration of the scheme and the PB number allocated. Changes to the information provided for the purposes of registration have to be notified to the Board. A special form is also available for that purpose.

It is essential that accurate and up-to-date information is held in respect of schemes on the Board's register. This information is required by the staff of the Board for

- monitoring compliance with the Pensions Act requirements
- carrying out investigations into the state and conduct of schemes
- arranging for payment of fees to the Pensions Board
- providing a tracing facility for early leavers with an entitlement to preserved benefits.

In the years 1999 – 2002 the following number of new schemes were registered with the Board;

- 15 066 in 1999
- 17 465 in 2000
- 13 550 in 2001
- 12 145 in 2002.

At the end of 2002, the Pensions Board register of schemes showed that there were 107 764 schemes with an active membership of 709 332 (Table X.1). This figure compares with an overall total of 97 931 with an active membership of 670 498 at end 2001. The overall membership increase for the period was 38 834 (or 5.5%). The Board's register shows that the number of current Defined Benefit at the end 2002 has decreased compared to the previous year's figures. While 52 new Defined Benefit schemes were registered during 2002, in total there was a net decrease of 55 in the number of registered Defined Benefit schemes at end 2002; however, there was an overall increase of 16 214 in the number of members. Only 14.26% of the membership increase is attributed to new registrations, the balance was due to increases in membership of existing schemes. The following table shows the current number of schemes on the Board's register of schemes:

Table X.1 Current Schemes – Defined Benefit and Defined Contribution

Scheme Size	Number of schemes		Number of members	
	31 Dec 02	31 Dec 01	31 Dec 02	31 Dec 01
Non Group	87 776	79 792	87 776	79 992
1-50	19 014	17 189	98 883	92 541
51-99	429	421	30 530	29 693
100-500	422	407	89 716	85 630
501-100	62	64	41 666	42 758
1001 +	61	58	360 761	340 084
Total	107 764	97 931	709 332	670 498

Scheme Approval / Registration Process

As indicated above, occupational pension schemes must be approved by the Revenue Commissioners in order to qualify for tax reliefs and must be registered with the Pensions Board. There are no licensing requirements. The approval / registration process involves the completion of one form which is submitted both to the Revenue Commissioners and to the Pensions Board. As it is the scheme trustees who are responsible under the Pensions Act, 1990 for ensuring their scheme is registered with the Pensions Board, the form must therefore be signed either by them or a person authorised to do so on their behalf. The form seeks the following scheme details:

- scheme name.
- commencement date.
- renewal date.
- number of members at commencement.
- scheme type, *e.g.* whether defined benefit, defined contribution, current, frozen, AVC only, death benefit only, etc.
- administration details, *e.g.* whether it is insured, self-administered, small self-administered or unfunded.
- life office details – which are to be completed in respect of insured schemes only.

- name and address of contact person.
- name and address of employer.
- consultant / broker details.
- contact details, *i.e.* registration contact to whom the Pensions Board's Registrar may direct registration enquiries.
- fee contact, *i.e.* the person to whom the Registrar may direct enquiries relating to the payment of Pensions Board fees.
- the Revenue reference number assigned to the scheme.
- the Pensions Board reference number assigned to the scheme.

In addition, the appropriate sections of the Scheme Trust Deed, showing all employer and trustee details, must be copied and attached to the form for Pensions Board registration. Pensions Board fees are not remitted with the application form but fees will be levied upon registration and an invoice issued with the Board's acknowledgement of registration.

Effectively, the Revenue operates a self-assessment type of procedure in relation to approving schemes under the Taxes Consolidation Act, 1997. The Revenue have discretion under their legislation to withdraw approval if, in their opinion, the facts concerning any scheme or its administration cease to warrant the continuance of its approval. All Trust Deeds and Rules governing occupational pension schemes contain a clause to the effect that the employer and the trustees may at any time by deed amend, extend, modify, alter or add to the provisions of the Trust Deed and Rules provided that no such alteration, amendment, extension, modification or addition would be made which would prejudice Revenue approval of the scheme. It is therefore most unlikely that any action would be taken that would so prejudice the scheme's approval and it is very rare that approval would be withdrawn in relation to a scheme.

On going supervision

Irish pensions regulation is underpinned by the Pensions Act 1990. As indicated earlier, it is supervised by the Pensions Board which was established under the terms of the Pensions Act. The principal ways in which the Board carries out its regulatory role are by:-

- Scheme Registration – this involves ensuring that all schemes required to register with the Board are so registered.

- Funding Standard – this involves ensuring that all schemes which are required to do so submit an Actuarial Funding Certificate to the Board every three and a half years.
- Random Examination – this involves carrying out random examinations of schemes in order to check their compliance with Disclosure of Information requirements.
- Response to enquires/complaints – this involves responding to problems reported by scheme members in relation to the administration of their scheme, their own personal pension entitlements and/or difficulties in obtaining information requested from their scheme.
- Investigations – this involves carrying out scheme investigations in relation to non-compliance with the Pensions Act.
- Whistle-blowing – this involves perusing reports received under the reporting requirements in Part VIII of the Pensions Act.
- Prosecutions / Legal Proceedings – the Board has a prosecution policy and will initiate proceedings where this is appropriate under the Pensions Act.
- Indirect Regulation – this involves the provision of authoritative guidance to trustees, scheme administrators and their professional advisers.

As well as its monitoring and supervisory role as described above, the Board's promotion of the security of occupational pensions is also implemented by guidance and information activity. These include provision of a Legislation Service, Guidance Notes, a Trustee Handbook and Codes of Practice, information booklets, approval and evaluation of trustee training courses, surveys of trustees in relation to their training requirements, and the operation of enquiry services.

Another important feature of Irish pension regulation is the emphasis on disclosure of information. This is intended to enable pension scheme members, their trade unions and other advisors, to monitor the health of their own pension arrangements.

Monitoring of Funding Standard

Under the Funding Standard provisions of the Pensions Act, defined benefit schemes are required to submit to the Board Actuarial Funding Certificates (AFCs) at 3½ yearly intervals. The purpose of the actuarial funding certificate is that the scheme actuary can certify that, if the scheme had wound up at the effective date of the certificate, its assets would have been sufficient to meet its liabilities. A certificate must be submitted to the Pensions Board not later than nine months after its effective date. If the scheme could not have met its liabilities a funding proposal must be submitted which is designed to put the scheme in the position that it could meet its liabilities no later than the effective date of the next actuarial funding certificate.

The Board takes a proactive stance in ensuring that certificates are submitted in accordance with the statutory requirements. This is particularly important in view of the difficulties schemes may be experiencing in meeting the funding standard due to the falls in the investment markets over the last three years.

The Board received a total of 548 Actuarial Funding Certificates in 2002. All but 17 of these satisfied the funding standard. Of the 17, 11 schemes have submitted funding proposals and the other six are in the process of having proposals agreed.

As the table below illustrates, the position at year end was that funding certificates were in place for 1 634 defined benefit schemes. This represents 91.4% of the schemes that are required to have funding certificates in place and 98.5% of the members of such schemes.

New measures have been introduced in relation to the minimum funding standard under the Pensions (Amendment) Act, 2002. As indicated earlier, the Pensions Act, 1990 already provides for the submission of an AFC to the Board at least every 3½ years. Now, the 2002 Act also provides that during the 3½ year interval, actuarial reviews must be undertaken to establish whether a scheme continues to satisfy the minimum funding standard and that corrective measures be taken where negative assessment arises, including the preparation of a full AFC (and if relevant a funding proposal).

The Social Welfare (Miscellaneous Provisions) Act, 2003 amended the Pensions Acts to give additional flexibility to the Pensions Board in its administration of the funding standard. The Board can extend the 3½ year period for correcting a shortfall to as much as ten years, subject to certain conditions been met.

TableX.2 Compliance with the Funding Standard as at 31 Dec 2002

Scheme Size	DB Schemes Subject to the Funding standard			Funding Certificates Received			Funding Certificates Outstanding			Other		
	No. of Schemes	No. of Members	No. of Schemes	No. of Members	No. of Schemes	No. of Members	No. of Schemes	No. of Members	No. of Schemes	No. of Members	No. of Schemes	No. of Members
Non Group	87	87	54	54	0	0	33	33	0	0	33	33
1-50	1 176	18 338	1,063	17 352	6	61	107	925				
51-100	190	13 747	185	13 380	0	0	5	367				
101-500	257	57 318	255	57 089	0	0	2	229				
501-1000	44	29 846	44	29 846	0	0	0	0				
1000 +	34	112 656	33	110 855	0	0	1	1 801				
Total	1 788	231 992	1 634	228 576	6	61	148	3 355				

Random examination – disclosure compliance strategy

Since 1997, the Pensions Board has been carrying out random compliance monitoring of the disclosure of information requirements under the Pensions Act. This is an audit process which involves the Board requesting, from the trustees of the scheme, copies of the documentation that must be provided or made available for scheme members. The Board then audits the documentation received against the detailed requirements of the legislation to ensure it is compliant. Results of the initial audits produced clear evidence that pension scheme administration was not up to date. In early 1999, the Board made the various pension and industry representative organisations aware that it had identified substantial pensions administration arrears and that this was not acceptable. The Board reiterated its policy of achieving compliance as far as possible through co-operation and in this spirit requested trustees and their advisers to approach the Board if they had a problem, so that a way forward could be agreed without, of course, jeopardising member protection in any way.

During 1999 a number of the largest practitioners approached, or were approached by, the Board in relation to the pension schemes which they were administering on behalf of trustees. Almost all of the practitioners involved were willing to co-operate with the Board and subsequent monitoring activity showed that a substantial amount of work was done to update pensions administration during 1999 and 2000. This has resulted in a large number of non-compliant schemes becoming compliant. It has also resulted in a substantial number of schemes which were not previously registered with the Pensions Board, being registered.

The Board will, of course, have recourse to legal proceedings where it believes it is necessary in particular circumstances. The Board successfully took proceedings against the trustees of 5 pension schemes in 1999 and prosecuted the trustees of three further schemes in November 2002 in relation to their failure to provide the Board with information requested by the Board under Disclosure of Information provisions.

A total of 202 schemes were selected for audit in 2002 and 165 were actually audited. While the number of non-compliant documents was relatively small, the Board deems it unacceptable that so few documents were fully compliant. A document is deemed satisfactory where the Board would view the non-compliance of being of a minor nature and would ask the trustees to ensure that the issue is corrected in future documents. Non-compliance implies that the documents should be corrected immediately.

The Board views disclosure of information as a crucial element of allowing the scheme members the ability to become aware of and monitor their own schemes.

Enquiries/Complaints

It is the Boards policy to promote good practice in the running of pension schemes and to encourage scheme trustees to comply with their responsibilities. Where members have problems, the Board will advise them of their rights and will direct them to a contact person in their pension scheme, in the first instance. The aim is that as many queries and complaints as possible will be directed to pension schemes and resolved, without the direct involvement of the Board. If the member reports to the Board that he/she has received no response or an inadequate response, the matter is generally then pursued by the Boards staff through direct contact with the trustees, scheme administrator or professional advisers.

Investigations

Investigations of schemes are generally initiated following enquiries or complaints from scheme members, trustees, trade unions, through compulsory or voluntary reporting or as a result of random audits carried out by the Pensions Board.

The biggest issue in relation to the Pensions Board's investigations continues to be non-payment of either or both employer and employee contributions to a scheme. From 1 January 2003 the Remittance of Contributions provisions of the Pensions (Amendment) Act, 2002 came into effect. These provisions place specific requirements on employers and trustees in relation to payment of contributions by employers to trustees and the investment of those contributions by the trustees. The Board gives guidance on the Remittance of Contribution requirements in the form of Frequently Asked Questions (FAQs) on its website.

The Board's primary objective in any investigation is to protect the interests of the scheme member or members. Section 18 of the Pensions Act provides the Board with specific powers of investigation and provides specific penalties for failing to co-operate with the Boards investigations. Where it is felt that the use of those specific powers is necessary to expedite an investigation a Section 18 investigation is authorised.

The Board has not carried out any on-site investigations as yet. If necessary, however, the Board has extensive power to inspect schemes books and records, to enter premises and to require people to give explanations.

The Board initiated 74 new investigations into issues concerning occupational pension schemes during 2002. This was one less than in the previous years. The Board closed 113 investigations during the year, an increase of 36 on 2001. At end 2002, there were 69 open investigations compared to 108 at the end of 2001.

A revised Occupational Pensions Scheme Compliance Strategy document was agreed by the Board in December, 2002.

Compulsory and voluntary reporting to the board

There are statutory provisions, known as “whistleblowing” which place a mandatory requirement on a range of specified persons involved in the operation of occupational pension schemes and PRSAs to report actual or suspected fraud or material misappropriation to the Board. There is also provision for the making of a voluntary report on any matter concerning the state and conduct of a scheme or the state of a PRSA. Specified persons for the purpose of a scheme include actuaries, auditors, trustees, insurance intermediaries, investment business firms and any other person who has been involved in assisting the trustees of a scheme. Specified persons for the purposes of a PRSA include administrators, investment managers, custodians of the PRSA, investment business firms, PRSA providers, PRSA actuaries, auditors of the business of a PRSA provider, and employees of employers who do not operate an occupational pension scheme or who operate schemes with eligibility restrictions.

A total of 15 new reports were received by the Board in the year 2002, compared to 12 in 2001. At end 2002, there were 16 cases remaining open, one less than at the end of 2001.

Prosecutions / legal proceedings

The Board tries to achieve compliance with the Pensions Act as far as possible through co-operation with the trustees and their advisers in the first instance rather than by recourse to legal proceedings. The Board will, have recourse to legal proceedings where it believes it is necessary in particular circumstances. To date prosecutions initiated by the Board against trustees of schemes related to non-compliance with disclosure of information requirements. The penalties on conviction are considerable – on summary conviction a fine,

not exceeding €1900 or imprisonment for a term not exceeding one year (or both) and, on conviction on indictment, a fine not exceeding €12 500 or imprisonment for a term not exceeding two years (or both). The Pensions Act also imposes continuing fines in the case of continuing offences.

Indirect regulation

Another way in which the Board implements its regulatory role is through providing guidance and information for trustees and pension scheme practitioners. As the Pensions Act and its regulations override the Trust Deed and Rules of schemes, it is important that scheme trustees, administrators, and other professional advisers ensure that the legislation and the Pensions Board guidance to which they refer are fully up to date. The Board provides a Legislation Service which is available by subscription. Subscribers to this service receive the consolidated text of the Pensions Act and the Regulations, including all amendments made to date. The text of the legislation is made available in loose leaf format which facilitates regular updating. The Board also makes available, by subscription, detailed Guidance Notes on all of the main parts of the Pensions Act.

In addition the Board publishes a Trustee Handbook which contains the legislative requirements and also codes of practice in relation to the discharge of the trusteeship role, including investment responsibilities. A key objective of the Board in promoting the security of occupational pensions is to provide authoritative guidance on how to achieve voluntary compliance with the Pensions Act and other relevant legislation and good practice generally in relation to scheme administration. The Trustee Handbook is regarded as making a major contribution towards achieving this objective.

In relation to trustees' investment responsibilities the Pensions Act specifies that trustees of pension schemes should provide for the proper investment of the resources of the scheme in accordance with the rules of the scheme. Irish pension funds are supervised on the basis of qualitative components for investment and operated in accordance with the "prudent person" principle.

The "prudent person" principle is supervised through supervision of the trustees in accordance with the Pensions Act and general trust law and ensuring that they comply with the Trust Deed and Rules governing their activities. Pension schemes do not have an obligation to submit internal information regarding their adherence to the "prudent person" principle, but any information in this regard required by the Pensions Board must be supplied on request.

There are no specific statutory requirements in relation to managing the investments and risks other than the general rules in relation to “proper investment” of the resources of the scheme.

There is no requirement to report on a regular basis to the supervisory authorities on future investment policies. Investment rules of the scheme do not have to be reported to the supervisory authorities unless so requested.

As part of its overall functions the Board is responsible for the regulation, supervision of providers in respect of their activities supporting approved PRSA products and compliance with the PRSA provisions of the Acts. To assist in the task of developing effective processes and procedures to carry out this function, the Board engaged consultants to identify and produce the necessary processes and procedures to allow the Board to properly adjudicate on applications for product approval and the ongoing monitoring role of the Board for PRSAs. Included in this is the receipt of regular reports and returns from each provider in relation to its approved products. Upon completion of the project, the Board had in place suitable processes and procedures to give proper effect to its regulatory role in PRSAs.

Compliance enforcement and sanctioning

The Pensions Board has strong powers of investigation under the Act. It also has powers to prosecute proceedings for offences in the court and the penalties for these and fines and / or imprisonment.

The Board also has the power to make formal decisions on parts of the Act which may conflict with the rules of a particular pension scheme. Where there is conflict, the Act overrides scheme rules. In making these decisions the Board can, if it wishes, hold an oral hearing. It is the Board’s policy that, as far as possible, investigations and hearings will be conducted informally.

The Board can apply to the High Court to have pension scheme trustees suspended or replaced if it considers such action is necessary in order to protect the interests of members. In addition, there are severe penalties if a person is found by the Courts not to have carried out his / her duties under the Act properly – he / she can be fined up to €12 500 or imprisoned for up to two years, or both.

As stated earlier the Board carries out audits in relation to schemes to ascertain whether or not they are in compliance with statutory requirements. Schemes are asked to submit certain documentation to the Board for audit purposes, failure to supply documents to the Board can result in prosecution.

The Board also has powers of direct intervention in the administration of a scheme, this is warranted, in order to safeguard the pension rights of members. In particular, the Board may apply to the High Court to:

- order an employer to pay arrears of contributions;
- order restoration of scheme resources to be paid or transferred to any person;
- order a disposal of an investment where its retention is likely to jeopardise the rights and interests of the members under the scheme;
- grant an injunction to prohibit any action by any person which would result in a misuse or misappropriation of any resources of the scheme;
- order the replacement or suspension of the trustees of a scheme.

Failure to submit an actuarial finding certificate to the Board can constitute an offence under the Act. Without an AFC the Board is unaware of the funding position of a scheme. If the Board were not to receive any AFC it has the option to prosecute the trustees for failure to submit or issue what is known as a Section 50 Direction whereby the Board can direct the trustees to reduce the benefits which would be payable to members in order for the scheme to meet the minimum funding standard.

Much of the Pensions Act regulation imposes duties on trustees, however this emphasis is now shifted slightly and employers are now under a direct duty under Section 58A of the Pensions Act to remit contributions within their 21-day limit. In addition, the list of persons against which the Board can initiate prosecution proceedings has expanded and now includes:

- trustees
- employers
- PRSA providers
- an actuary or auditor of a scheme or a PRSA in his capacity as such actuary or auditor
- a person who is required under regulations made under Section 5A (external schemes) to carry out trustee duties
- any other person.

In the event of fraud, the Board can also involve the relevant fraud office, which in turn, can refer the case to the Director of Public Prosecutions.

The Pensions Act does not contain provision in relation to civil sanctions nor does it allow the Board to be a giver of redress. However, the Pensions (Amendment) Act, 2002 provides for the establishment of the office of Pensions Ombudsman. The Ombudsman has recently been appointed and his office opened for business in September 2003.

The Ombudsman is legally independent and has powers to investigate and determine complaints in relation to PRSAs and occupational pension schemes. The complaints that can be referred to the Ombudsman will be those of maladministration leading to financial loss and disputes of fact or law in relation to an act done by a person managing a scheme or PRSA.

The Ombudsman has power to give such directions as he considers necessary or expedient for the satisfaction of the complaint / resolution of the dispute. However, any financial redress cannot exceed the actual loss of benefit under the occupational pension scheme or PRSA.

Conclusions

As can be seen from the forgoing, the Board operates on the basis of comparatively detailed regulation and light supervision. The rationale underlying this regulatory stance takes account of the large number of schemes to be regulated and the level of resources available to the Board. It also takes into account the voluntary nature of schemes and the need for a system of regulation which does not discourage the continuation of existing schemes or the establishment of new schemes. The fact that the primary responsibility for the good conduct of schemes rests with trustees is also a major factor in the formation of Irish pension regulation.

The Board has two statutory roles: regulatory and policy. It recognises its regulatory role as its primary one but also believes that the representative nature of the Pensions Board makes its policy role an important one. It sees the two roles as being complementary to each other.

In its regulatory role, which is the focus of this study, the Board sees the desired level of supervisory activity for occupational pension schemes as being some increase in supervisory activity over and above the level currently operated but only in selected ways / areas in which the compliance gains are likely to be significant. It believes that this role would be supported by selective prosecutions and increased public education. The Board recognises and is

concerned about the dangers of over-regulation and excessive complexity and in this context sees a need to consider the question of “simplification”. In this regard, the Board set-up an Expert Working Party on simplification in summer 2002. This led to a Report of its Interim Recommendations on Simplification which was sent to the Department of Social and Family Affairs and the Department of Finance. Some of the issues raised were responded to in the Finance Act, 2003 and discussions on implementation of the other issues are ongoing. The Board is planning to continue its work on longer term simplification issues later in 2003.

The Board is also currently examining the appropriateness and effectiveness of the funding standard as set out in Part IV of the Pensions Act. The objective of this is to ensure that we have a funding standard going forward which will most effectively protect the interests of pension scheme members. The outcome of this examination is expected to be a consultation document to be circulated later this year.

Any initiatives by the Board in relation to pensions simplification or the funding standard will be considered in the context of the EU Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORPS), in order to ensure consistency with its requirements.

In the meantime, the Board has taken measures to deal with funding of schemes in response to the exceptional fall in global equity markets. For defined benefit schemes this has occurred at a time when the liabilities of those schemes have, for a number of reasons been increasing. The result of this is that a number of schemes might not satisfy the funding standard if they had to produce an actuarial funding certificate at this point in time. This situation arises notwithstanding the fact that the scheme may have a satisfactory long term funding position.

The funding standard is effectively a wind-up standard. Employers are concerned that they may be required to pay additional contributions in order that the scheme will be able to meet its liabilities if it were to wind-up, when there is no intention or likelihood of the scheme winding-up. On the other hand scheme members will be anxious that the scheme’s funding position is such that their benefits are secure.

Having discussed the issue with various interested parties the Board recommended an amendment to the legislation that will give the potential for some flexibility in the time period over which a scheme that fails to meet the funding standard must take steps to ensure it does meet the standard. The

amendments to the legislation were effected in the Social Welfare (Miscellaneous Provisions) Act, 2003 with effect from 3 April 2003 (paragraph 3.2.6). The amendment gives the Board the power to consider granting a longer period over which the failure to meet the funding standing has to be rectified in response to an application for an extension from the trustees of the scheme. This power is subject to certain conditions such as the actuary having to certify that the failure is a result wholly or primarily of the fall in the investment markets. The Board must also be satisfied that agreeing to a longer period is in the interests of the members. Some of these requirements are set out in the legislation and some of the terms and circumstances can be specified by the Board.

In the case of PRSAs, regulation / supervision involves implementation of new practices and procedures based on the PRSA framework, as set out in the Pensions (Amendment) Act, 2002 and underlying regulations. The overall aim would be to achieve a balance of regulation / supervision as between occupational pension schemes and PRSAs so that the extent of their relative provision and take-up is not dictated by their regulatory / supervisory environment.

Overall, the Board operates its regulatory role under certain principles. The main principles are:

- All regulation should “add value” from the point of view of member protection.
- It should take into account the voluntary nature of schemes and the need for a system of regulation which does not discourage the continuation of existing pension provision or the establishment of new pension provision.
- Consistency is important between different types of pension arrangements.
- The trust system and the role of trustees is a major component for occupational pension schemes. The primary responsibility for the good conduct of occupational pension schemes is vested in the trustees.
- There is a strong emphasis on disclosure of information. This is intended to enable individuals, their trade unions and other advisers, to monitor the health of their own pension arrangements.

- The policy is to try to secure compliance with regulatory requirements without recourse to legal action, but that such action is taken if necessary. A primary determinant here is the best interests of scheme members.
- There is a need to increase the level of pension coverage in particular by means of the transparent and cost efficient method being introduced through PRSAs.

The Board accepts its involvement in information provision, pension awareness and development of pension coverage and its ongoing strategy incorporates this. In this regard the Board provides information and where appropriate support, on pension related matters to a wide range of parties including scheme members, pensioners, trustees, the media and the general public. The Board has been asked by Government to carry out a National Pensions Awareness Campaign the objective of which is to heighten pensions awareness with the view to increasing pension coverage in Ireland.

At this point Ireland believes that it has a reasonable balance of pensions regulation. Pension schemes have continued to develop and there have not been any major pension problems since the passing of the Pensions Act, 1990. The Board recognises the need to constantly evolve regulation in order to respond to internal and external developments. This requires an educated, effective and flexible regulatory body.

In the Irish experience, a good regulatory system is an essential ingredient in the development of private pensions.

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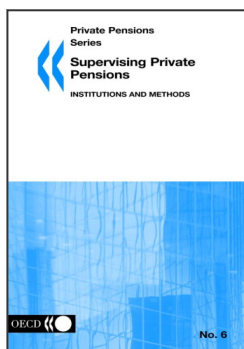
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