

Pension Lawyers Association Conference 2005

# **GOVERNANCE – THE WAY FORWARD**

**Paper delivered by**

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**at**

**PLA Conference, March 2005**



## Purpose of Governance

- To ensure that the object of the fund is fulfilled.

**“The object is to provide retirement and other benefits, achieved by the effective management of the fund in a way that is transparent and accountable, and is at an appropriate cost.”**



## **Good Governance Entails**

- **An appropriate division of operational and oversight responsibility.**
- **Ensuring that those with operational and oversight responsibility are suitable for their respective functions.**
- **Risk management strategy.**



## **Good Governance Entails**

- **Process for managing any breach of the governance arrangements.**



## **Divisions of Governance**

- **Management by the board of the business of the fund.**
- **Management by the board of itself.**
- **Management by the board of the relationships which the fund has with different stakeholders.**



# Management of the Business of the Fund

- **S.7(C)(1) “The object of a board shall be to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund”.**



## **Management of the Business of a Fund (cont)**

- **Management of risk.**
- **Fidelity cover and rights of recourse.**
- **Contracts with service providers.**
- **Beauty Parade.**
- **Administrator.**
- **Investment policy statement with benchmarks.**



# **Management of the Business of a Fund (cont)**

- **Insurance policy / segregated portfolio.**
- **Custodian.**
- **Shareholders Rights.**



# Management by the Board of Itself

- Trustees act jointly and are jointly liable - trust.
- Exercise discretion independently.
- Spirit of service.
- Requisite skills / training.
- Sub-committees.



# Management by the Board of Itself (cont)

- Review of performance.
- Code of conduct.
- Remuneration.



# Management of Relationships

- **Stakeholders – members and beneficiaries.**
- **Employer.**
- **Sponsor.**
- **Service providers.**



# Management of Relationships (cont)

- **Legal nature of the relationship between the fund and its stakeholders.**
- **Board owes fund a fiduciary obligation.**
- **Board owes a fiduciary obligation to members and beneficiaries.**



# Management of Relationships (cont)

- **Good faith between the employer / sponsor and the board.**
- **Service provider – owes fiduciary obligation or fulfils administrative function.**



# Management of Relationships (cont)

- **Governance requires accountability – accountability is determined by the nature of the relationship.**
- **Members - communication.**
- **AGM.**



# **Management of Relationships (cont)**

- **The board and the employer – content of obligation of good faith.**
- **Right of withdrawal.**
- **Amendment of contribution rate.**
- **Intrusion on employment relationship.**



# **Management of Relationships (cont)**

- **The board and the sponsor – reciprocal good faith.**
- **Confusion between sponsor and service provider and delineation of roles.**
- **Umbrella funds – member committee.**



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**THANK YOU**

