



CARIBBEAN ACTUARIAL ASSOCIATION



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2013 Conference

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Pension Scheme Surpluses

Legal & Actuarial Considerations & Developments

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Ownership of Surplus

- Common Law
 - Wind-Up
 - Continuing Scheme
 - ✧ *“the alleged surplus is a purely notional one...having no existence in reality.”* **Re Imperial Foods Ltd Pension Scheme.**
 - Employer vs. Employee View Points

Ownership of Surplus

Amalgamated Metal Workers' Union v Shell Refining (Australia) Pty Limited

'except where a deed otherwise expressly stipulates, there is not a recognised unambiguous or unilateral right on the part of a contributing employer to any of the variously constituted kinds of 'surplus' which notionally may arise in defined benefit funds... We are not persuaded that there is any logical, moral or industrial reason compelling a conclusion that the released assets should be deemed to be singularly at the disposal of the employer as falling within a resultant or a reversionary proprietary interest. On the other hand it does not follow that employees have any rightful claim to an equitable share of a perceived surplus of the kind provided for in (the fund). Any such claim must be assessed for its force by paying close regard to the terms of the fund, to the nature of the surplus including the conditions under which it arose, and to the circumstances generally'.



Statutory Provisions - Jamaica

- Addresses surplus on wind-up
- Actuarial valuation
- Regulator must approve scheme of distribution
- Priority – pensioners, members, sponsor



Statutory Provisions - Barbados

- Expressly overrides trust deed.
- Addresses surplus in a wind-up & in continuing plan
- Regulatory approval required for any distribution
- 2/3rd consent of members & deferred or retired members
- Implies or “deems” distribution provisions into the Deed if the deed is silent.



Statutory Provisions - England

- Overrides trust deed
- Must get approval of trustees
- Must be in the best interest of members
- Actuarial certificate required.
- Notice to members
- Subject to tax



Statutory Provisions - Canada

- All jurisdictions, except for Quebec, allow the employer to withdraw surplus in a continuing plan.
- Consent of regulator required
- Must be allowed under deed or consent obtained from active & former members.
- Where no member consent required employer must demonstrate legal entitlement under the deed.



Common Law vs. Legislative Tension

- Statutes codifying the view that members are not volunteers and need to be protected.
- Dilution of provisions in governing documents.
- Intention of settlor being overlooked.



Traditional Trusts vs. Pension Trusts

Employees of Citizens Bank Limited v Finsac Limited (2007)

- Members of pension schemes are not volunteers
- Traditional trust
 - ✧ No legal relationship
 - ✧ No consideration given
- Pension Trusts
 - ✧ Legal relationship (employer/employee)
 - ✧ Consideration is given



Conceptually

- Pension plans create fixed claims
- Pension plans create residual claims or surplus/deficit
- Residual claims arise from funding policy and investment policy

Debate

- Debate is how residual claims are measured
- Debate is how residual claims are allocated
- Debate is how residual claims should be allocated
 - ✧ Symmetry view of sponsor
 - ✧ Deferred wages view of employees



Measurement

- Surplus = assets less liabilities
- Uncertainty of value of assets in thin capital markets
- Uncertainty of liabilities which depend on type of benefit and actuarial assumptions
- Three types of benefit (stay > wind up > quit)
- Key actuarial assumptions are the discount rate, pay growth and pension increases



Actual Allocation

- Going Concern (deficit)
 - ✧ contributions by the sponsor
 - ✧ trigger for restructuring



Actual Allocation

- Going Concern (surplus)
 - ✧ partial contribution holidays by sponsor
 - ✧ increases for current pensioners
 - ✧ trigger for restructuring



Actual Allocation

- Wind up (surplus)
 - ✧ Advisors
 - ✧ Vesting of non vested active members
 - ✧ Increases for current pensioners
 - ✧ Increases in deferment and payment for active members
 - ✧ Increases for deferred pensioners



Restructuring

- Asymmetry of risk
- Trend among large DB plans
- Surplus measured on a buyout basis but plan continues
- Negotiated sharing of surplus
- Restructuring put to members' vote



Restructuring

- Risk transfer of past service benefits
- Risk premium paid in specie
- Prefunding of future DC contributions
- Refund of surplus to fund medical benefits
- Refund of surplus to fund operations



THE END

