“The Future of the Pension Industry in the Caribbean”

FIDUCIARY RESPONSIBILITY

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Presentation Format

- Retirement as a Life Event
- Theories of Fiduciary obligations
- Fiduciary Relationships
- Guiding Principles of Fiduciary Relationships
- The Recent Experiences
- The Regulator & Fiduciary responsibilities

What is Fiduciary Responsibility?

- In its simplest form, the term **fiduciary** refers to a relationship in which one person has a responsibility of care for the assets or rights of another person.
- A **fiduciary** is an individual who has this responsibility.
- The term **"fiduciary"** is derived from the Latin term for "faith" or "trust."

Key Issues in Pension Fund Management

- Rising Inflation brings Longevity risk
  - i.e. the risk of outliving saved assets
- Rising health and assisted-care expenses
- Fixed retirement incomes
- Increased life expectancy
  - 65.5 years to 69.5 years over the past 40 years

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Longevity Risk – Critical Considerations

- **Upward revision of retirement ages**
- **Higher contribution ratios** to public and private pension plan schemes
- **Higher real returns** from pension plan assets
- **Supplementary retirement savings/investment vehicles**
- Improved **Key Investment Disclosures**
- The rebuilding of trust and confidence with **governance and regulations**

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Significance of Fiduciary Responsibility in Pension Fund Management

- Impact on post-retirement quality of life
- Wider impact on the socio-economic environment particularly when pension plan assets are concentrated in systemically significant financial intermediaries

Pension Plan Assets in T&T

- Private pension plans in T&T represent a significant portion of the total assets of the financial sector
  - **approximately $26.6Bn or 19% of GDP as at 2009**
  - **37% of the capitalization of the local stock market**

"Too-Big-to-Fail…" - A breach of fiduciary duty can result in disastrous consequences for beneficiaries and the economy as a whole.

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The Concept of Fiduciary Duty

Two schools of thought:

Reliance Theory:

- supposes that fiduciary duties are rooted in ***moral obligations*** to behave in a trustworthy manner when placed in a position of trust and confidence upon which others rely. Accordingly, fiduciary relationships that are based on ***trust and confidence*** can be construed as proceeding from moral premises.

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The Concept of Fiduciary Duty

Two schools of thought:

Agency Cost Theory:

- contends that fiduciary relationships produce efficiencies by allowing those with experience that is the fiduciaries to act on behalf of the beneficiary so that the beneficiary may devote its resources to the pursuit to which it is best suited.

Fiduciary Relationships

- Trustee/beneficiary
- Agent/principal
- Corporate director/officer corporation and partnerships

In any of these forms a beneficiary entrusts a fiduciary with control and the management of assets.

Fiduciary Relationships and Business Decisions

- Some decisions are not fiduciary actions but rather are business decisions made by the employer.

Example, to:

- **establish a plan**
- **determine the benefit package**
- **include certain features in a plan**
- **amend a plan**
- **terminate a plan**

Fundamental Concepts

- **Duty of Care**
- **Duty of Loyalty**
- **Good Faith**

Fundamental Concepts – 1

- **Duty of Care:**
  - Encompasses gross negligence
  - Imposes an obligation on the fiduciary to avoid unnecessary risk
  - Required persons to remain informed of major corporate activities
  - Oversight of the corporation & management
  - Seeks to discipline managers for failing to perform their duties conscientiously

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Fundamental Concepts – 2

- **Duty of Loyalty refers to:**
  - Situations in which conflict of interest are present
  - Some commentators consider loyalty to be the essence of fiduciary relationship

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Fundamental Concepts – 3

- **Good Faith:**
  - the duty not to knowingly cause the corporation to violate the law

The duty of good faith in corporate law consists of four elements:

- **subjective honesty, or sincerity;**
- **non-violation of generally accepted standards of decency applicable to the conduct of business;**
- **non-violation of generally accepted basic corporate norms;**
- **fidelity to office.**

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Recent Experiences

- A fiduciary should be aware of others who serve as fiduciaries to the same plan
- All fiduciaries have potential liability for the actions of their co-fiduciaries

Example of multiple failures of fiduciary responsibilities:

Lehman Brothers, 2008

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What is required of Fiduciaries?

- Fiduciaries need to acquire information
- Act on that information
- Employ a reasonable decision-making process
- Satisfy minimum quality standards.

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What is required of Regulators?

- A regulator's failure to effectively oversee systemically significant institutions, whatever the reason, could be **construed as a breach of their fiduciary responsibility and arguably the ultimate breach at that.**

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What is required of Regulators?

- Information
- Monitoring mechanisms
- Early warning systems
- Automatic triggers

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ULTIMATELY!

Fiduciary arrangements inherently require

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for them to work in the interests of the beneficiary.

At the end of the day, it is a fiduciary's character that would safeguard value for its beneficiaries – nothing more, nothing less.

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THANK YOU