



MAIN FEATURE

The Trustee's Conflict of Interest

TRUSTEES' DUTY

Trustees have a fiduciary duty to see to the proper governance of their respective pension plans. This includes addressing conflicts of interest relating to the operations of the Board of Trustees as well as agents of the trustees. Guidance for trustees in handling conflicts of interest is provided in Regulation 8 of the Governance Regulations. Regulation 2 defines a conflict of interest as any situation or circumstance which could be expected to impair an individual's ability to make unbiased and objective recommendations or decisions.

Conflicts of interest may arise for trustees in their relationships with the advisors and agents of the fund or scheme, such as the administrator or investment manager.

For example, a trustee may face a conflict of interest if he has accepted hospitality of notable value from a service provider of the plan or if he has a personal financial interest in an investment being considered by the plan.

Where a trustee has a conflict of interest, it is possible for the trustee's other responsibilities to influence his decisions as a trustee. As a result, the conflicted trustee may breach his legal obligation to act in the best interest of the fund's beneficiaries. Governance Regulations 8(3) and 8(4) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations ("Governance Regulations") stipulate that trustees are prohibited from using information obtained in their capacity as trustees to further their own or another person's private interest if this would result in a breach of their fiduciary duty to members.

EXPOSURE TO RISK

Regulation 8(10) of the Governance Regulations stipulates that an offence occurs where a trustee or agent knew or ought to have known that a conflict of interest occurred but took no remedial action. Failing to properly manage conflicts of interest can result in members challenging decisions made by the trustees. Further, a conflict of interest may contribute to increased exposure of the plan and its stakeholders to legal, regulatory and reputational risks. Legal risk may arise where court action is required in keeping with Regulation 8(9) of the Governance Regulations, which indicates that a competent court may, upon the application of the other trustees or the Commission, set aside the contract where a trustee fails to disclose his interest in a contract made in relation to the fund. The result of such a court proceeding could result in damage to the reputation of the operators of the pension plan. This regulation also outlines the remedial action available to trustees, should a conflict arise.

DISCLOSURE REQUIREMENTS

In the event of a conflict of interest, the conflict should be brought to the attention of the Board of Trustees as soon as possible, at which point the trustees are expected to make decisions in the best interest of the participants and beneficiaries of the fund. Some conflicts of interest may be mitigated through disclosure and trustee consent, while others require the implementation of formal information barriers. Regulation 8(6) stipulates that where a matter arises in which a particular trustee has an actual or perceived conflict of interest, that trustee or agent must not participate in decision-making or seek to influence decisions related to the conflict. During the convening of a trustees' meeting, the trustee or agent in question is required to disclose the full nature of his interest that could reasonably be expected to conflict with that of the fund or scheme or its trustees and withdraw from the meeting without voting or deliberating upon the matter. Under Governance Regulation 8(7), this trustee or agent must not continue to act regarding the matter in which he has an actual or potential conflict of interest unless he makes full disclosure and the Board consents in writing.

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POLICY AND PROCEDURE

Governance Regulation 8(2) requires each pension plan to have a Conflict of Interest Policy. The Policy should disclose a trustee's actual or perceived conflict of interest with those of the plan and its beneficiaries, as well as entail an appropriate procedure to disclose, address, document and resolve conflicts of interest noticed or raised by plan stakeholders, and subsequently reduce the likelihood of reoccurrence. As stipulated by Governance Regulation 8(2), policies concerning conflicts of interest must also provide for the documentation of the following in a register:

- (a) The date of the trustees' receipt of notification
- (b) The name of every trustee involved
- (c) The nature and details of the conflict
- (d) The method of resolution
- (e) The date of resolution

The final component of the procedure is to include provisions which will reduce the likelihood of recurrence.

Frequently Asked Questions

Q: Can I transfer benefits to or from another pension plan?

Yes! An individual may transfer their pension benefits once the constitutive documents of both their former and current pension plans allow for the transfer of benefits. Once this condition is satisfied, pension benefits may be transferred in any of the following circumstances:

1. Upon termination of employment, an individual who becomes employed by a company which sponsors an approved superannuation fund, chooses to transfer his/her benefits to that new approved superannuation fund.
2. Upon termination of employment, an individual chooses to transfer his/her benefits to an approved retirement scheme.
3. A participant in an approved retirement scheme chooses to transfer their benefits to another approved retirement scheme.
4. A participant in an approved retirement scheme chooses to transfer their benefits to the approved superannuation fund associated with their new employer.