FINANCIAL SERVICES COMMISSION

Royal Fidelity's Pension Breakfast

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"The Role of the Plan Administrator, Statutory Requirements and Recent Legislative Amendments in the Occupational Pensions Sector"

Delivered by

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Ladies and Gentlemen, Good morning!

I would like to thank Royal Fidelity for the invitation to speak at its Pension Breakfast this morning. The theme of "Pensions & Investment: Optimizing Investment Returns on Your Pensions" is very significant for the current economic climate and marries well with the information I will be sharing with you today. The Financial Services Commission (FSC) is very pleased to have the opportunity to speak at such events, which are facilitated by the pension services industry for pension plan administrators, as it speaks to the understanding within the industry of the need for continuous engagement.

In my address this morning, I will be adding to this theme in greater detail by discussing the role of the plan administrator, statutory requirements, and recent legislative amendments to the occupational pensions legislation. As a supervisor with extensive experience in pension administration, I fully understand, and indeed have seen on many occasions, the importance of having this discussion in a forum of this kind.

For today's audience which possesses a specialist interest in pension administration and investments, there will be full appreciation for the understanding of what is required by the plan administrators to remain compliant with the legislation.

The Occupational Pensions Benefit Act CAP 350B (OPBA) and the Occupational Pensions Benefits Regulations, 2011 (Regulations) were proclaimed in February 2011 and remain in use as the regulatory guide for the pension sector, enforceable by the FSC.

The FSC certainly recognises its role in the supervision of the pensions sector. Not only does it perform the role of providing protection to the plan members, but it also continues to facilitate the creation of an environment where operational best practices become the norm for pension plans. By performing these roles, the intent is to create confidence in the sector both from the perspective of the plan members and that of the plan administrators. The hope is that this confidence translates into efficiency and growth for the sector in Barbados.

Therefore, it is very important that the plan administrators of occupational pension plans take their roles seriously.

The Role of the Administrator

Every pension plan established in Barbados must have an administrator. The OPBA defines the pension plan administrator as the person or body that administers the pension plan. The administrator can be any one of the following:

- an employer
- a pension body
- a member body
- an approved entity
- a board of trustees
- an insurance company or
- in the case of a multi-unit or multi-employer pension plan
  - they must have at least 1/2 of the members of the board being representatives of the members of the pension plan; and
  - two-thirds of these persons should be citizens of Barbados or of any member state in the Caribbean Community

Plan administrators have a duty of care in relation to all members (active, deferred, retired, claimant) and it is their fiduciary duty when administrating and investing the funds of the pension plan, to exercise diligence and skill. They should not allow their own interests to conflict with their duties and responsibilities.

The duty to disclose information to all members should also be important for plan administrators. Therefore, FSC expects that all plan administrators are providing explanations of the provisions contained within the pension plan to their respective plan members. They should also be informing them of any plan amendments and matters relating to changes in the structure of the administrator e.g. appointment and retirement of members on the respective committees.

FSC also expects that plan administrators are ensuring all plan members receive, within 4 months of the beginning of each fiscal year, their individual benefit statement, which contains the member's entitlement at the end of the previous fiscal year. Additionally, if the employment of a member is terminated or membership is ceased other than due to retirement or death, the plan administrator should ensure that the member is provided with a statement in relation to his/her entitlement, within 30 days after termination of employment, or of the plan administrator receiving notice of the cessation of membership.

Now, it may appear that a lot of responsibility has been placed on plan administrators and we know that some of you would require assistance. Therefore, the OPBA allows plan administrators to delegate some or all of their duties for administering pension plans. It is very important to note that the delegation of the administration of a pension plan to a third party service provider, does not negate the plan administrator from their fiduciary duties and responsibilities.

The plan administrator may appoint an agent to act on its behalf in relation to any of its duties. Some examples we have noted are pension services managers, actuaries, custodians, auditors and lawyers. The OPBA requires that administrators be satisfied with the suitability of any agent to perform the functions for which they have been employed. Therefore, by receipt of the relevant agreements concluded with these agents, the FSC is made aware of the respective agents acting on your behalf.

Consequently, plan administrators should be diligent in their duties to ensure that they have employed quality agents to fulfil their duty of care to the plan members and remain in full compliance with the OPBA.

Statutory Requirements

Since the introduction of the OPBA and its regulations, the FSC currently has two hundred and sixty (260) pension plans under supervision. These pension plans were either:

a. previously registered under the Income Tax Act; or
b. subsequently submitted an application for registration of a new pension plan

Plan administrators are required to make statutory filings in relation to their pension plans to remain compliant with the OPBA. Today, I intend to speak about the top three types of statutory filings plan administrators submit to the FSC.

By now, I expect that everyone here is familiar with the annual registration renewal fee which is due by January 31 of each year. This fee is based on the membership in the respective pension plan as at December 31 of the previous year at a rate of $5 per member subject to a minimum of $250. Noting the administrative challenges being experienced by some plan administrators, FSC's Pensions Division provided a solution by way of an excel form. This form calculates the renewal fees due as at January 31. However, if fees are outstanding after the January 31 deadline, the form also calculates the applicable fees plus penalties for each month or part of the month that the fees remain unpaid.

Another statutory filing is the Form 4 - Annual Return and Financial Statements for the pension plan. The annual return is a prescribed form which can be found on the FSC's website at www.fsc.gov.bb. This form should be completed and submitted along with the financial statements for the pension plan within 4 months after the fiscal year end.

If the assets of the pension plan are greater than three million dollars at the end of the fiscal year, the financial statements must be audited and submitted within 6 months of the fiscal year end. In all instances, whether audited or unaudited, the financial statements must be prepared in accordance with the International Financial Reporting Standards (IFRS).

Actuarial valuation reports must be submitted triennially and within 4 months of the end of the fiscal year. This report should be prepared by an actuary who is a citizen or national of any member state of the Caribbean Community and is a current member in good standing with the Caribbean Association of Actuaries (CAA).

Of the approximately 260 pension plans under supervision, there are currently 150 plans with Defined Contribution (DC) benefits. The plans' benefit are determined solely by the accumulated contributions made by or on behalf of members, together with the yield on such accumulated contributions.

Legislative Amendments

Since the proclamation of the Occupational Pensions Benefit Regulations, a number of issues and concerns have been raised that needed to be addressed.

The FSC is constantly reviewing the pensions legislation to identify any gaps that would require amending. Therefore, the following amendments were proposed:

- introduction of a draw-down account
- new fees schedule

With reference to the draw-down account, initially the OPBA and its regulations provided a single option to members of DC pension plans upon reaching retirement. The single option was to purchase an annuity from an insurance company; however, given the increasing cost associated with annuity purchases, it was determined that another option should be made available to ensure that retired members of DC pension plan could receive increased benefits at a reduced cost.

Therefore, amendments were proposed to the regulations to permit the introduction of a draw-down account to be used as a variation to the form of pension payment available to a member upon retirement from a DC pension plan. This draw-down account would permit controlled withdrawal of pension benefits over a period of time and should be contained within the defined contribution pension plan. In 2015, the amendment was approved and enacted through the Occupational Pensions Benefits (Amendment) Regulations, 2015.

Plan administrators of DC pension plans who are interested in providing a draw-down account option to their members, should amend their existing pension plan rules in order for the option to be made available.

The minimum and maximum amount for which the owner of a draw-down account can withdraw from the account in each fiscal year of the pension plan, has been provided within the amendment, which is based on age.

Owners of draw-down accounts are allowed to purchase an annuity in the form of a joint and survivor pension, given that the spouse has not signed a waiver on the date of retirement. They also have the right of the portability options at any time, and to a lump-sum payment to their spouse, named beneficiaries or estate effectuated by the release of the balance of their account in the event of death.

When the draw-down account balance at the beginning of the fiscal year of the pension plan becomes less than 20 per cent of the maximum annual insurable earnings in the year that the owner terminated employment; a lump sum amount can be paid to the owner.

Additionally, the draw-down account shall be closed when the balance is zero and the plan administrator would be discharged of any responsibility once the payments were made in accordance with the OPBA, the regulations and the provision of the pension plan.

As with all members, the plan administrators have to provide annual statements to the owner of a draw-down account within 60 days after the end of the fiscal year.

The second section of amendment referred to a new fee schedule and of particular importance is the introduction of a penalty for the late submission of actuarial reports and financial statements. The late submission of these statutory filings would result in a penalty of $500 plus $100 for each month of continued non-compliance.

In closing, I want to reinforce the point that even though the FSC is the supervisor of the pensions sector in Barbados, the intention is to be a body that will foster an environment of best practices in which the sector can thrive. Continued cooperation by the plan administrators will assist in making this possible.

The understanding of the role of the plan administrator is essential to ensuring that there is an open and transparent flow of relevant information to plan members. The provision of statutory filings in compliance with the OPBA also speaks to the efficient and effective management of the pension plan; ultimately leading to on-going protection of plan members' interests, and to confidence in the sector – these are catalyst for growth and innovation. The FSC has shown its continued commitment to growth with the introduction of the draw-down account for DC pension plans and I am confident that this will allow for continued development in the industry.

I thank you.