An tÚdarás Pinsean
The Pensions Authority

Pensions Authority response to consultation on obligations for trustees of defined contribution (DC) master trusts

Introduction

The Pensions Authority published a consultation paper on the regulation of DC master trusts in July 2018. The paper set out the Authority's view of obligations appropriate for DC master trusts after the transposition of the IORP II Directive to reflect the particular risks that apply in comparison to traditional single employer schemes.

The Authority received 22 submissions from a mix of stakeholders including, trustees, pensions industry, representative organisations and individuals. While there was agreement with many aspects of the consultation paper, there were strong concerns expressed regarding the capitalisation requirement, the requirement for a majority of independent directors of the trustee company and the prohibition on tying the scheme to a particular service provider. Having considered the consultation responses, the Authority has revised some aspects of its proposed standards for DC master trusts. This document sets out the Authority's view of obligations appropriate to DC master trusts over and above those that will apply to single employer schemes under IORP II, and it is intended to incorporate these in codes of practice in due course.

Master trust requirements

1. Trustee

In the Authority's view, DC master trusts must be capitalised to provide security for members (see section 3). It is the Authority's view that this necessitates the trustee being structured as a designated activity company. In addition, recognising that DC master trusts may be run on a commercial basis, there must be at least one independent director and the chair of the Board of Trustees company must be independent. An independent chair satisfies the need for an independent director. Directors must also have appropriate qualifications and expertise to act for members of a potentially large and complex scheme.

The requirements related to the trustee of a DC master trust are:

- The trustee must be incorporated as a designated activity company with the sole objective of carrying on the business of being a trustee of one, and only one, named master trust.

- There must be a minimum of two directors of the trustee company. There must be at least one independent director and the chair must be independent. An independent director/chair is someone who has no interest in the assets of the scheme other than as trustee and is not connected or associated with the shareholder of the trustee company or the service providers to the scheme other than in their capacity as trustee.

- All directors must satisfy the requirements for a qualified trustee or an experienced trustee, subject to there being a minimum of one of each. All directors must be proper which means of good repute and integrity and not prohibited from acting as a trustee.

- The Authority must be notified in advance of the intention to appoint a director to the trustee company. The Authority must be notified by the trustee of the resignation of a director of the trustee company within 21 days of the resignation.

2. Continuity plan

The Authority needs to be satisfied about the long-term ability of the master trust to manage the pension savings of members. DC master trusts must have a continuity plan, which includes projections for income and expenditure, to demonstrate the viability of the master trust scheme to the Authority.

The requirements related to continuity plans for DC master trusts are:

- Trustees must submit a continuity plan, comprised of projections of income and expenditure, to the Authority, covering the greater of three years or the period until all projections demonstrate that the trust is self-sustaining.

- The continuity plan must:

  - show projections on at least three distinct bases, a best estimate, an unfavourable estimate and a favourable estimate.

  - set out in detail the assumptions used in projections, which must be both reasonable and to the Authority's satisfaction, and

  - demonstrate that the trust is viable under all scenarios.

- The continuity plan provided to the Authority must be sufficiently detailed and comprehensive so that the Authority can be satisfied as to its reasonableness and robustness. The Authority will over time, pay particular attention to differences between forecasted projections and actual outcomes.

- The trustees must have agreed the continuity plan, and must be able to demonstrate that they understand it, including the resulting capital requirement.

- The continuity plan must be reviewed every year and updated if necessary. Trustees must submit the updated continuity plan to the Authority with explanations of any changes made.

- Trustees must be able to demonstrate that they have reviewed the continuity plan.

The Authority will treat the information contained in the continuity plan confidentially in so far as is legally permitted.

3. Capitalisation

Given their particular nature, master trusts must demonstrate that they have sufficient capital to cover running costs and the cost of winding-up the scheme without affecting member funds.

The requirements related to capitalisation for DC master trusts are:

- The trustee company must have access to sufficient capital to meet the costs of wind-up and running costs until the latest period that the continuity plan projections indicate the trust will be self-sustaining or, where the scheme is already self-sustaining, for a period of two years. The reserve must be held as cash on deposit.

- For wind-up costs, the master trust must have reserves equal to €70 per member. The reserve for running costs must be equal to the maximum need projected in the business plan. The minimum total reserve held must be €100,000 regardless of membership numbers. These figures will be reviewed on a regular basis to ensure the levels remain appropriate.

- The trustee must ensure on an ongoing basis that they continue to be compliant with the capital requirement and must report annually to the Authority. Where trustees are in breach of the capital requirement, they must make an immediate report to the Authority and take steps to remedy the situation.

4. Risk assessment

Under IORP II, all schemes are required to undertake an Own Risk Assessment (ORA). The risk assessment for DC master trusts must be prepared every three years and must include risks that are specific to the running of a potentially large multi-employer scheme. The ORA for a DC master trust must be reviewed by the trustees annually to confirm that it is still valid and that there are no new risks to the scheme. If additional risks have emerged, trustees must prepare a new ORA.

Master trusts are likely to be bigger than traditional single employer occupational pension schemes, and therefore any problems that arise in a master trust will affect more members. The following features of master trusts create additional risks to good member outcomes and must be specifically dealt with in the ORA:

- As master trusts are multi-employer, the administration is more complicated by virtue of the need to collect contributions and data from multiple sources.

- Master trusts are in effect third party financial institutions which may be run for profit or have close connections with for profit entities. This may create conflicts of interest that do not arise with single employer schemes. For instance, in some cases the master trust may have been set up by an existing service provider of pension schemes.

- Employers are much less involved in master trusts than they would be in single employer schemes. This removes both a level of informal oversight of the scheme and an important channel of communication between members and trustees.

5. Conflict of interest

Master trusts might be run for profit or could have close connections with for profit entities which gives rise to conflicts of interest that are not seen to the same degree in single employer schemes.

The requirement related to conflicts of interest in DC master trusts is that the master trust deed or rules must not contain a provision that binds the scheme to a particular service provider or providers or that restricts the choice of who can provide services.

For clarity, this does not prohibit the trustees having a contract in place with a service provider that restricts the arbitrary firing of service providers without just cause or providing the service provider with the opportunity to match the services offered by another service provider.

6. Member/employer communications

A master trust faces particular communication challenges given the potential size of the scheme, the number of members in unconnected workplaces and the different role of the employer in comparison with a traditional scheme.

The requirements related to member/employer communications in DC master trusts are that trustees must have a written policy for engagement with members and employers. The policy must set out in detail the format and frequency of engagement with members and employers. The policy must also contain a commitment to active engagement with members and employers. This might include holding an annual meeting to which members and adhering employers are invited. There must be documented evidence that the policy is being implemented.

7. Charges transparency

It is particularly important that members and adhering employers can understand the master trust charges and are able to move to another provider if they are not satisfied that they are receiving value for money.

The requirements related to charges transparency in DC master trusts are:

- Trustees must have a written policy specifying:
    - how charges are transparently disclosed. The Authority will need to be satisfied that charges are reasonably understandable for members.
    - that increases in charges will only be made by giving six months' notice to members to allow the adhering employer to transfer should they so wish before the increase is implemented.
    - that members or prospective members can transfer assets in and out without charge.
- Trustees must maintain documented evidence that the policy is being implemented.

8. Marketing of the scheme

Trustees of master trusts may not have responsibility for the marketing of the scheme. However, the Authority is of the view that it is important that they have consented to the general marketing approach and to the materials used, which will include information about their scheme, in order to satisfy themselves that it is not misleading or inadvertently creating potential obligations for trustees that cannot be met.

The requirements related to marketing of a DC master trust are:

- Trustees' general consent must be required on the marketing approach for the master trust scheme.
- Trustees' general consent to marketing material in relation to the master trust scheme is also required in order to ensure they are reasonably satisfied that the content is not misleading to the reader.

9. New members

It is important that trustees are aware of the rate of new scheme members joining the scheme to ensure that they are satisfied the scheme has the capacity to provide for them.

The requirement in relation to new members of a DC master trust is that trustees must consent to the enrolment of new members into the DC master trust scheme. The Authority is satisfied that this can be an agreed strategy in general terms without the trustees having to approve each and every member.

10. Wind-up procedure

Given its potential scale, the wind-up of a master trust could be a significant process.

The Authority is of the view that the trustees of a master trust must be able to demonstrate that they have an appropriate wind-up procedure in place that protects the interests of members.

The requirements related to wind-up procedures in DC master trusts are:

- Trustees must have written procedures that they will implement in the event of wind-up.
- These procedures must be designed to ensure that benefits are transferred efficiently, in a timely manner to other pension arrangements and without cost to members and beneficiaries.
- Trustees must ensure that these procedures are kept up to date.

11. Reporting to the Authority

Given their potential scale and inherent complexity, the Authority will consider master trusts to be in the highest risk category for supervision and specific reporting requirements will be in place.

The notification requirements are:

- On the occurrence of the following events, trustees must notify the Authority and provide relevant further information:
    - a breach of the capital requirements, or
    - a decision to wind-up the master trust, or
    - a change of control of the trustee company.
- The Authority may in time prescribe further notifiable events.