Central Bank of
Trinidad & Tobago

INDUSTRY COMMENTS ON THE DRAFT GUIDELINE ON PENSION PLAN GOVERNANCE AND RESPONSES FROM THE CENTRAL BANK OF TRINIDAD AND TOBAGO

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Abbreviations
CBTT - Central Bank of Trinidad & Tobago
IA - Insurance Act Chap 84:01

OPPB - Occupational Pension Plans Bill Policy Proposal Document
GPPG – Guideline on Pension Plan Governance
TD&R - Trust Deed and Rules
DB - Defined Benefit
DC - Defined Contribution

Reference in the Draft GPPG	Draft GPPG	Industry Comments	CBTT's Response
SECTION 1: Introduction			
Section 1.1, pg. 3	Pension Plans registered with the Central Bank may also be approved under the Income Tax Act.	The last sentence of this paragraph says '… may also be approved under the Income Tax Act'. I believe that the requirement that relaxes the requirement would be contained in the new legislation whenever that is enacted so that until then the requirement for the approval of a pension plan that is set up under trust is that it <u>must</u> be approved by the Board of Inland Revenue.	The GPPG was amended to include a new footnote 3 on page 3 which states: "*In addition to the Insurance Act, the Income Tax Act contains requirements in respect of the establishment and approval of Pension Plans, which falls under the jurisdiction of the Board of Inland Revenue (BIR). These Guidelines are not intended to provide guidance either directly or indirectly on the requirements of Pension Plans under the Income Tax Act. Trustees and Plan Sponsors should therefore refer to the BIR in respect of the requirements for approval of Pension Plans under the Income Tax Act.*"

Reference in the Draft GPPG	Draft GPPG	Industry Comments	CBTT's Response
Section 1.2, pgs. 3-4	The governance of a pension plan should be guided by best corporate practices so as to ensure that the plan is professionally managed by competent personnel.	The word 'ethical' should be included in Section 1.2. The governance of a pension plan should be guided by best corporate practices so as to ensure that the plan is professionally managed by competent personnel who are aware of their roles, responsibilities and accountabilities, and who conduct their activities in an accurate, consistent, equitable, ethical and transparent manner.	Agreed. The GPPG was amended as follows: *"The governance of a pension plan should be guided by best corporate practices so as to ensure that the plan is professionally managed by competent personnel … who conduct their activities in an accurate, consistent, equitable, ethical and transparent manner."*
Section 1.3, Page 4	The entities responsible for ensuring that a pension plan is properly governed are the trustees, management committee and the plan sponsor.	Consider including Investment Managers and their roles.	As a service provider, an investment manager's activities are to be outlined in their contract with the trustee.
SECTION 2: Purpose, Application and Scope			
Section 2.1, pg. 4	The Guideline is to be used as a tool by which trustees, management committees and plan sponsors can assess their own operations.	Include the words "for gaps" as below: The purpose of this Guideline is to provide a framework for the prudent governance of pension plans. The Guideline is to be used as a tool by which trustees, management committees and plan sponsors can assess their own operations for **gaps** and determine whether changes are required.	CBTT does not consider that an amendment is necessary to include the suggested change.

SECTION 3: Governance Framework: The Trust Deed and Rules			
Section 3.1, pg. 5	Any change or amendment to the TD&R must be done in accordance with its provisions and must be registered by the CBTT in order to be valid.	Unless the requirement for approval by the BIR no longer exists, to be valid, any change or amendment to any TD&R must also be approved by the BIR.	Please refer to the above response in respect of section 1.1 on the inclusion of footnote 3.
Section 3.3, pgs. 7 - 8	Considerations for inclusion in the pension plans' TD&R.	Some of the points suggested in Section 3.3 for inclusion in TD&R could be adopted as practice standards, without necessarily requiring them to be in a pension plan's legal documents.	Those requirements which are stipulated by statute must be adhered to and included in the TD&R, in particular, please see the Fourth Schedule, Part I of the IA. Trustees and plan sponsors can agree on whether to include other requirements in their TD&R as they seek to implement best practices.
Section 3.3(i), pg. 7	Trustees and plan sponsors should consider including in the TD&R the requirement to provide annual benefit statements to active members and exit statements when members leave the plan sponsor's employment.	It is recommended that Section 3.3(i) be amended to align with the requirement outlined in Section 4.3.1(i) i.e. providing benefit statements at least triennially to active members of defined benefit pension plans and annually for active members of defined contribution pension plans.	Agreed. The GPPG has been amended accordingly.
Section 3.3(ii), Page 7	Trustees and plan sponsors should consider including in the TD&R a mechanism for receiving and responding to member's complaints and settlement of disputes.	Maintenance of a complaints registry was another proposal included in the OPPB and we agree that it is reasonable. However, we again query whether the trust deed and rules is the best place to include this as it is currently not a legislative requirement.	Trustees and plan sponsors can agree on whether to include other requirements in their TD&R as they seek to implement best practices.

SECTION 4: Governance Framework: The Responsible Entities			
Section 4, pgs. 9-21	Responsibilities of the trustees, management committees and plan sponsors.	Under Section 4 captioned The Trustees, it is the Management Committee's view that all of these responsibilities should be applicable to both Trustees and Management Committees.	The law imposes certain obligations on trustees which cannot be delegated to the management committee and as such trustees and the management committee have different roles in the management of a pension plan, although some functions of the management committee may overlap with that of the trustees.
		The responsibilities of the Management Committee and the Trustees are usually specified in each plan's TD&R. Therefore, some of the responsibilities assigned to the Trustees/Management Committee in Section 4 may not apply to every pension plan. Is the suggestion that all plans' TD&R be amended to comply with these guidelines?	The GPPG is to be used as a best practice guide the recommendations of which should be implemented as agreed by trustees, management committees and plan sponsors.
Section 4.1, pgs. 9-15	Responsibilities of the trustees.	It should be mandatory for trustees to attend any presentations or meeting with the plan sponsor or management committee being conducted by the investment managers.	The trustees and plan sponsor may amend the TD&R or implement procedures to reflect this position.

Section 4.1.3, pg. 9	Trustees and management committees should explore the possibility of including a pensioner representative in their body so that the pensioners' position and interests may be heard.	There should be more definitive wording around this suggestion to ensure that this suggestion is not considered mandatory.	Agreed. This GPPG was amended as follows: "*Individual trustees may explore the possibility of including a pensioner representative in their body so that the pensioners' position and interests may be heard.*"
		We note that the draft Guideline suggests that the trustee and management committee should decide whether there should be a pensioner representative. This would not be appropriate as it is the function of the trustee and management committee to administer the pension plan as constituted by the trust deed and rules and in compliance with the relevant legislation, not to determine the contents of the trust deed and rules. Therefore any requirement to include a pensioner representative should be enshrined in legislation or failing that, added to the plan's TD&R via an amendment agreed by the plan's sponsor and trustee.	The inclusion of a pensioner trustee is a best practice option which the CBTT believes should be explored.
Section 4.1.4, pgs. 9-10	Trustees are required to use proper care and skill and act impartially at all times in the fulfilment of these duties.	The word 'ethically' should be included.	Agreed. The GPPG was amended as follows: *"They are required to use proper care and skill and act ethically and impartially at all times in the fulfillment of these duties."*

Section 4.1.6, pg. 10	Trustees must retain oversight of the pension plan's service providers. Appropriate oversight mechanisms for service providers should also be established by the management committee when a pension plan has a corporate trustee.	Clarification is required around the expectation of management committee oversight when the pension plan has a corporate trustee that must also retain oversight. Rather than management committee setting up oversight procedures for monitoring service providers we expect the management committee to work with the corporate trustee to do this. For example, the statutory obligation to prepare annual audited financial statements and have triennial actuarial valuations carried out and submitted to the Central Bank lies with the corporate trustee, not with the management committee. It should therefore be the former rather than the latter that has the responsibility to make sure that the relevant service providers perform to the level required. The only exceptions to this would be the oversight of the trustee itself and of the investment manager where an actual or perceived conflict of interest may exist because the trustee and investment manager are both subsidiaries of the same parent company.	Management committees should know what is required of service providers and therefore be able to monitor whether they and the corporate trustees, who also provide remunerated services to the pension plan, are preforming in accordance with the requirements.

Section 4.1.6, pg. 10		The Trustees (as the holders of the trust) have ultimate responsibility in respect of decisions and/or actions taken on advice provided by service providers. However, the oversight of service providers as per Section 4.1.6 depends on the plan's TD&R. In some cases, service providers may be paid for and appointed by the plan sponsor. In such cases, the Trustees may not be a party to service agreements and therefore not in a position to ensure that the "pension plan receives adequate value for money". This section may need to be rephrased to allow for this and achieve the intended aim.	Trustees should ensure that they are privy to all the terms and conditions of the service agreements for the pension plan. This should especially be the case when the service provider is paid out of the plan's funds and/or the service provided contributes to the fulfilment of the trustees' statutory obligations.
Section 4.1.7, pgs. 10-13	Trustees should prepare comprehensive policies and procedure documents detailing how they would accomplish their duties.	Communication to management committees from trustees and plan sponsors regarding financial statements, reports and any legislative submissions should be mandatory.	The trustees and plan sponsors may amend the TD&R or establish procedures to reflect this position.
		Corporate trustees are generally responsible for many pension plans so will this simply involve the drawing up of very similar documents for their plans? If this is the case there is a danger that this requirement will simply result in tick-box compliance that adds little value to the governance process (but increases a plan's costs). A governance document that describes the main features of how the plan is run and is available to the plan members may be of some value but it might be better if the focus was placed on verifying the ability and expertise of service providers involved in running the pension plans.	Corporate trustees will be aware that there are commonalities in the duties they perform for their various pension plans. Therefore, it is unlikely that they will have to prepare separate procedure documents for each of their plans.

Section 4.1.7(i), pg. 11	Individual trustees should arrange for the plan sponsor's management, internal auditor, compliance officer or external auditors to conduct annual reviews of their operations.	The suggestion for individual trustees to be reviewed by the employer's internal audit team may result in conflicts of interest. It would be better for these checks to be carried out as part of the pension plan's external audit. This may not be needed every year but perhaps say every 3 years, the audit could be extended to cover governance procedures.	Trustees should decide, in accordance with their corporate governance and risk management frameworks, how many layers of review they deem necessary and, the most suitable body or bodies to conduct reviews. As stated in the GPPG, the CBTT is of the view that annual reviews should be conducted.
Section 4.1.7(iv), pg. 12	Trustees should have procedures on maintaining and providing data to the actuaries for the actuarial valuation reports which should include deadline dates by which the data are to be supplied to the actuaries so that the final reports can be submitted to the CBTT within timeframes specified in the IA.	This Section suggests inclusion of deadline dates for data to be sent to actuaries for timely filing with the CBTT. However, this does not address filings that are already past their due date.	Filings that are late are in breach of the IA and will not be provisioned for in the GPPG.
Section 4.1.8, pgs. 13-14	Trustees should identify and assess the risks facing the pension plan on an ongoing basis.	The first sentence assess on an ongoing basis is vague it should be changed to a specific time period e.g. every quarter or bi-annually.	Trustees are expected to establish the frequency with which a risk assessment of their pension plan is needed. However, trustees should always be alert to internal and external events which may impact their pension plan and be able to perform a risk assessment as required.

Section 4.1.9(i), Pg. 14	Trustee responsibilities should include selecting the actuary, investment manager, asset custodian and auditor in consultation with the management committee and/ or plan sponsor.	It should be mandatory that the management committee is involved in this procedure.	This cannot be made mandatory by the CBTT as this is not specified in legislation. The trustees and plan sponsors may amend the TD&R or establish procedures to reflect this position.
		Section 4.1.9(i) does not include the pension plan administrator as an entity to be selected by the trustees.	The list is not intended to be exhaustive. Trustees and plan sponsors can agree on further service providers to be selected by the trustees.
Section 4.1.9(vii), Pg. 15	Trustee responsibilities should include ensuring that the actuary complies with the relevant standards for completing actuarial valuation reports.	This section would require the trustee to take responsibility for ensuring that the actuary complies with the relevant professional standards when preparing actuarial valuation reports and cites the Caribbean Actuarial Association's professional standard as an example. … It is the actuary that is responsible for complying with professional standards and, ultimately, for the professional body to police compliance; not the trustee. It would be odd to expect a trustee to have sufficient actuarial expertise to determine whether an actuary has complied with an actuarial professional standard. If it were applicable, the Central Bank as the regulator should check compliance of the actuarial report with any legislative requirements.	Actuaries state that their reports have been prepared in accordance with certain practice standards. It would be prudent for trustees to familiarise themselves with what these standards require so that, in their review of the reports, they can satisfy themselves that the actuary is compliant. The section has been amended to read, in part, as follows: *Ensuring that actuaries comply with the practice standards that they have cited compliance with in completing actuarial valuation reports.*

		The trustees are responsible for ensuring the actuary complies with relevant standards for completing actuarial valuation reports such as APS1 as per item 4.1.9 (vii). Is the intention for the Trustees to convey in some way to the CBTT that they are satisfied that reports are compliant and disclose the standard with which compliant?	The CBTT may conduct its own review and correspond with the trustees accordingly.
Section 4.1.9(viii) & (ix), pgs. 15	Trustee responsibilities should include submitting actuarial valuation reports and annual financial statements to the CBTT no later than nine and six months after the valuation date and financial year end respectively. Copies should also be submitted to the management committee and plan sponsor.	A fixed timeline to communicate the copies of the documents to the plan sponsors and management committees should be stated.	A timeline can be agreed with the Trustees or may be included in the TD&R.

Section 4.1.9(xi), pg. 15	Trustee responsibilities should include ensuring the orderly wind-up of the pension plan.	This reflects the fact that the TD&R of most pension plans place the responsibility of winding-up a pension plan on the trustee. However, wind-ups are often complicated and time-consuming and in some cases contentious. We expect the trustee to do its best to wind-up the pension plan as efficiently as possible and suggest that the Guideline changes the wording for this section. This is because we do not think it is appropriate for this section to state that the trustee should simply "ensure" an orderly wind-up as this may not be feasible.	The trustee is the principal party responsible for overseeing the winding-up of a pension plan and supplying the CBTT with documentation to facilitate the cancellation of the pension plan's registration. We do not agree that the wording should be changed.
Section 4.2.1(ii), pg. 16	The management committee must be comprised of at least one representative of active members. If there are no active members, the management committee should have a minimum of one pensioner representative.	Whilst this is a reasonable suggestion, it is inconsistent with the Income Tax Act, which requires an "employee" to be a management committee representative.	Noted. Section 4.2.1(ii) has been amended to reflect the requirements of the Income Tax Act. A new section 4.2.2 has been added to reflect the suggestion of a pensioner and/or deferred pensioner being added to management committees. The subsequent subsections have been re-number accordingly.

Section 4.2.4(a) & (b), pg. 17 (renumbered 4.2.5(a) & (b) in the GPPG)	The management committee should be responsible for ensuring that members' best interests are served by all decisions and actions taken by the trustees and plan sponsor and ensuring that all members are fairly and equitably treated.	Investment managers should be included.	Please see response to comments in respect of section 1.3 above.
		This section can be interpreted in many different ways as it is not clear what is meant by the management committee ensuring that all actions and decisions serve 'members' best interests". The duty of the management committee is generally to help the trustee administer the pension plan in accordance with the TD&R and current legislation. It is therefore important to understand what the CBTT means by 'members' best interests."	Management committees have an oversight role with respect to the decisions and actions of the corporate trustees and the plan sponsor. It is in the exercise of this oversight that they must ensure that, within the requirements of the TD&R and legislation, those decisions and actions are not detrimental to members.
Section 4.2.4(c)(iii), pg. 17 (renumbered 4.2.5(c)(iii) in the GPPG)	The management committee should be responsible for overseeing the investment of the plan's assets which will include meeting with the trustees and/or investment managers at least annually to review the investment performance and to evaluate the effectiveness and relevance of the SIP.	Sections 4.1.7(ii) and 4.2.4(c)(iii) do not present a consistent time period for reviewing the SIP (Statement of Investment Policy).	Agreed. Section 4.2.4(c)(iii) was amended as follows: "*meeting with the trustees and/or investment managers at least annually to review the investment performance and at least triennially to evaluate the effectiveness and relevance of the SIP.*"

Section 4.2.4(d), pgs. 17 (renumbered 4.2.5(d) in the GPPG)	Where the management committee does not possess the skills to perform the duties required, they may retain the services of an investment advisor or other skilled professional to assist in carrying out their mandate.	A deficiency in the skills of the management committee to perform the requisite duties associated with the investment of the pension plan's assets should be addressed via requirements for appropriate training and qualifications rather than introducing a third-party advisor to the management committee. The potential exists that an advisor could interfere with the investment manager's ability to freely carry out the investment mandate with oversight by the trustee, management committee and scrutiny by the Actuary from time to time. This could impact on the profitability/sustainability of the pension plan and the ease of operation in situations where the management committee, under the guidance of this advisor, is unable to reach consensus with the trustee and/or other service providers. Questions arise concerning the appropriate process to select and appoint such an advisor, the required qualifications to be appointed in this role and the source of funding to remunerate such an advisor. It is not conclusive that this advisor should be remunerated out of the pension plan's assets or paid by the sponsor.	Section 6 and Appendix III of the GPPG discusses training and knowledge requirements of trustees and management committees. Where the retaining of a third-party advisor will be at the expense of the pension plan, trustees should discuss with management committees the prudence of this initiative. Section 4.2.4(d) was amended as follows: "*Where the management committee does not possess the requisite skills to perform the duties required in c) above, they may consider consulting with an expert advisor to assist in carrying out this mandate.*" The CBTT will not advise on the procurement process for an advisor.

Section 4.3.1(j)(iii), pg. 20	Responsibilities of the plan sponsor should include providing a statement to each member leaving the plan sponsor's employment prior to retirement.	This section deals with notifications to members leaving the plan prior to retirement. It does not appear to allow for persons who are leaving on account of retirement, whether early, normal or late, or to the beneficiaries of persons who died prior to retirement. What is meant by 'the value of the deferred pension benefit'? Should this refer to 'amount'? The suggestion to include a transfer value in the exit benefit statement is inappropriate. This is because the transfer value is the result of an actuarial calculation that would add significantly to the cost of producing the statements for no obvious gain in understanding. The quantum of a transfer value only becomes relevant when a transfer is a real possibility… and only makes sense in the context of what a receiving pension plan might offer in return. What is needed in the member benefit statement is the information that the option to a transfer is available on leaving service and the transfer value is only calculated on request	These matters will be addressed in a separate communications Guideline to be issued. Agreed. The GPPG was amended accordingly. Agreed. The GPPG was amended as follows: *"the transfer out value to another approved pension plan or annuity product, if requested by the member."*

Section 4.3.1(l), Pg. 20-21	Responsibilities of the plan sponsor to prepare an annual report to plan members with input from the trustees and management committee.	The annual report of the plan is typically the responsibility of trustees and not the plan sponsor.	The CBTT does not consider than an amendment to the GPPG is required.
SECTION 5: Fit and Proper Criteria For Trustees and Management Committees			
Sections 5, pgs. 21	Corporate trustees, individual trustees and members of the management committees should meet minimum fit and proper standards.	We note that the Insurance Act (current governing legislation) does not give the CBTT the power to introduce fit and proper requirements for Trustees and/or Management Committee members. To suggest otherwise is a statutory overreach. The Fit and proper criteria for trustees and management committee members are inconsistent with the requirements set out in the separate draft guideline for assessing fit and proper persons, where they are much more onerous. Which criteria does CBTT expect to apply?	Corporate trustees are subject to the CBTT's Fit and Proper requirements by virtue of their operating licences. Individual trustees and management committees will not be required to adhere to the CBTT's Fit and Proper Guideline requirements. The GPPG has been amended to reflect this position.

SECTION 6: Knowledge Requirements of Trustees and Management Committees			
Section 6, pgs. 22	Corporate trustees, individual trustees and members of management committees should collectively have the necessary skills and knowledge to oversee the operations of a pension plan, and to monitor any external parties to whom such functions have been delegated. They should also seek to enhance their competence and knowledge via appropriate training.	It is suggested that some form of training or way to judge competence should be included in the guidelines for Trustees (particularly individual) and members of the Management Committee. Who determines what constitutes appropriate training of trustees and members of management committees?	Trustees and management committees should seek training which will enhance the skillset required to fulfil their mandates. The CBTT will not suggest training which may be considered acceptable or necessary.
SECTION 7: Delegation and Expert Advice			
Section 7.1, pg. 23	Trustees and management committees may delegate functions to external service providers where they lack sufficient expertise to make fully informed decisions.	What is the appropriate process to select and appoint an advisor?	Corporate governance frameworks may detail acceptable procurement and engagement practices. It is not the role of the CBTT to advise on such matters.
Section 7.2, pgs. 23	Trustees and management committees should verify that service providers have adequate qualifications and relevant experience.	What are the required qualifications to be appointed in the role of advisor?	See the response to Section 7.1 above.

Section 7.3, pg. 23	The service deliverables and associated fees should be encapsulated in service agreements or contracts which are to be monitored and adhered to.	It is not conclusive that this advisor should be remunerated out of the pension plan's assets or paid by the sponsor.	The payment for any service providers or advisors should be addressed in the TD&R or in a separate schedule. It is not within the remit of the CBTT to provide directives on such matters.
General Comments on GPPG			
		We are of the view that all the principles may not be relevant to the various types of registered plans. We therefore recommend that the document clearly articulate that the principles laid out are recommended and not mandatory.	The GPPG suggests best practices for the governance of all pension plans. The GPPG has no force in law. However, there are certain legislated requirements mentioned within the GPPG to which pension plans must adhere.
		Timeframes seem only to have been given in Paragraph 4.1.9 for the preparation of the audited accounts, the valuation report and the semi-annual returns. These are the ones that are currently identified in current legislation used for approving pension plans and by a Central Bank regulation under the Central Bank Act. No timeframes have been given for other activities, e.g. payment of monthly contributions by the Sponsor to name one.	Trustees, management committees and plan sponsors can agree on timeframes for the activities of a pension plan for which no timeframes are prescribed in law.

		There is no mention of any penalties that were listed in your Occupational Pension Plan Bill Policy Proposal Document (2012) and there does not appear to be a date by which the pension plans regulated by the Central Bank must comply with these Guidelines. What power does the CBTT have to demand corrective action if governance failure is identified?	Section 183 of the IA contains penalties for non-compliance with certain requirements. The equivalent provision in the Insurance Act No. 4 of 2018 is section 225. The GPPG is meant to be a tool for trustees, management committees and plan sponsors to enhance their own operations. The GPPG has no force in law. Therefore, there is no date for compliance and the CBTT does not have enforcement capabilities to require that the GPPG be adhered to.
		Clarification is required with respect to accounting valuations of the Plan required under IAS 19. These valuations, although primarily for the financial reporting requirements of the Company, are also used by the Company to assess the up-to-date funding position of the Plan. Where does CBTT stand on the costs of accounting valuations as an operational expense of the Pan? We are of the view that these costs are an operational expense of the Pension Plan.	The payment of any service should be addressed in the TD&R of the pension plan or in a separate schedule. It is not within the remit of the CBTT to provide directives on such matters.

		A formal document should be provided by CBTT for record of registration of the actuaries report and should be shared with the management committee and Sponsor.	Trustees should submit copies of actuarial valuation reports to management committees when they are received. Management committees should seek to be made aware of when the trustees are in receipt of the actuarial valuation reports to ensure that they receive copies.
		The word “shall” to be used for mandatory actions and “should” where optional to ensure there is no ambiguity.	Noted.
		Are any interventions being considered by the CBTT on results of registered Actuarial Reports? Does the legislation consider audit/intervention by the CBTT based on the results of the Actuarial report?	The CBTT routinely requests that trustees provide information on whether recommendations stated in actuarial valuation reports are implemented. This is particular the case for pension plans with funding deficits.
		It is suggested that a minimum timeframe for benefit payments and communication with members via benefit statements be included in the guidelines.	Communication matters will be addressed in a subsequent guideline to be issued.