



Recommendation of the Council on
OECD-IOPS Guidelines on the
Licensing of Pension Entities

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Date(s)

Adopted on 28/03/2008
Abrogated on 28/06/2012

THE COUNCIL,

HAVING REGARD to Articles 1, 3 and 5 b) of the Convention on the Organisation for Economic Cooperation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council on Core Principles of Occupational Pension Regulation [C(2004)41], to which the present Recommendation is complementary;

CONSIDERING that the licensing of pension entities is an integral part of the regulatory and supervisory framework for private pension systems;

CONSIDERING that regulations should encourage effective and impartial licensing requirements and procedures, thus strengthening confidence in the private pension system and its supervisory system and promoting the development of a pension market;

CONSIDERING that the Guidelines set out in the Appendix to this Recommendation are based on previous work carried out in this area by the Insurance and Private Pensions Committee and its Working Party on Private Pensions as well as the International Organisation of Pension Supervisors (IOPS) and are complemented by the annotations set out in Annex II to C(2008)18, which may be reviewed as necessary from time to time by the Insurance and Private Pensions Committee jointly with the IOPS;

CONSIDERING that the Guidelines address regulatory and supervisory concerns that arise in the establishment of pension entities;

NOTING that these Guidelines are intended to apply to occupational, private pension plans;

NOTING that these Guidelines may also apply to funded, non-occupational plans and funds managed by pension entities;

RECOGNISING that evolutions in the structure and operation of private pension plans may call for further updating and adaptation of these Guidelines;

On the proposal of the Insurance and Private Pensions Committee and its Working Party on Private Pensions;

I. RECOMMENDS that Member Countries invite public authorities to ensure effective and impartial licensing requirements and procedures related to pension entities, having regard to the contents of the Appendix to this Recommendation, of which it forms an integral part.

II. INVITES Member Countries to disseminate these Guidelines among pension funds.

III. INVITES non-members to take account of the terms of this Recommendation and, if appropriate, to adhere to it under conditions to be determined by the Insurance and Private Pensions Committee.

IV. INSTRUCTS the Insurance and Private Pensions Committee and its Working Party on Private Pensions to exchange information on progress and experiences with respect to the implementation of this Recommendation, to review that information and to report to the Council not later than three years following its adoption and, as appropriate, thereafter.

APPENDIX

GUIDELINES ON THE LICENSING OF PENSION ENTITIES

I. Definitions

Licence – The authorisation of a pension entity to operate and/or to have the right to tax benefits. The licensing requirements may be applied either as part of the licensing process or through legislation, compliance with which is subject to ongoing supervision.

Licensing – The process by which an authority grants permission to a pension entity to operate and/or to have the right to benefit from specific tax treatment. It includes a range of actions, involving the assessment of compliance with specific requirements prior to granting permission to operate or granting tax benefits, or it may be the status of compliance with such requirements.

Pension Entity – The independent legal entity with legal capacity that has ultimate legal responsibility for the pension fund. It can take the form of an independent legal entity acting as a pension trustee in the case of pension funds established as trusts, a pension fund management company, or the pension fund itself where the pension fund has legal capacity (for example foundations or mutual associations). An insurance company or other financial institution may be considered a pension entity insofar as it is legally responsible for a pension fund and otherwise fits the description in the first sentence of this definition. The term "pension entity" does not refer to plan participants, the plan itself, or the employer (unless the employer is also the pension fund management company or has directly contracted a management company to handle the corporate pension).

Pension Fund – A legally separated pool of assets that is bought with the contributions to a pension plan for the exclusive purpose of financing pension plan benefits. The plan/fund members have a legal or beneficial right or some other contractual claim against the assets of the pension fund. Pension funds take the form of either a trust, an independent entity with legal capacity (such as a foundation or mutual association) or a legally separated fund without legal capacity managed by a dedicated provider (pension fund management company) or other financial institution on behalf of the plan/fund members. The term "pension fund" does not refer to individual pension contracts.

Pension Fund Management Company – A type of financial institution in the form of a company whose exclusive activity is the management of legally separated pension funds. In some countries, these entities only manage pension fund assets. In others, they may also have the power to pay out benefits.

Pension Plan – A legally binding contract having an explicit retirement objective (or – in order to satisfy tax-related conditions or contract provisions – the benefits cannot be paid at all or without a significant penalty unless the beneficiary is older than a legally defined retirement age). This contract may be part of a broader employment contract, it may be set forth in the plan rules or documents, or it may be required by law. In addition to having an explicit retirement objective, pension plans may offer additional benefits, such as disability, sickness and survivors' benefits.

Pension Trust – A legal scheme whereby named people ("trustees") hold property on behalf of other people ("beneficiaries"). More specifically in the field of pensions, the trustees, which can be a board of people or a corporate trustee, act in the exclusive interest of the pension members and other beneficiaries.

Registration – The inclusion of information regarding the pension plan or entity in a register maintained by the regulatory and/or supervisory authority. In some countries, registration is the sole or main component of the authorisation process, other than any assessment carried out for qualification for beneficial tax treatment.

II. Introduction

Objective

The guidelines promote effective and impartial licensing requirements and procedures, thus strengthening confidence in the pension system and its supervisory system and promoting the development of a pension market, while avoiding the creation of inappropriate barriers to market access.

The guidelines also envisage a licensing process that is consistent with principles set out by other financial regulatory and supervisory bodies in order to ensure regulatory coherence.

The guidelines promote the objective of a licensing and supervision regime to establish and maintain a robust system of pension fund management by requiring applicant pension entities to demonstrate they have in place the policies and procedures that are consistent with a system that seeks to ensure that benefits are delivered to plan members as provided under the terms of the plan and consistent with the pension laws of the country.

The guidelines support and complement the powers of continuous supervision of pension plans and pension entities by the supervisor and envisage that the criteria for issuing licences be consistent with and support those applied in ongoing supervision. In this way, the licensing process serves also as a regulatory tool that ensures pension entities meet ongoing minimum criteria from the point at which they are licensed.

The guidelines are complemented by other OECD and IOPS pension regulatory and supervisory guidelines, which supplement further some of the requirements set out in these guidelines.

Scope of Application

These guidelines are intended to apply to occupational, privately managed pension entities, that is, to those that manage plans whose membership depends on an employment relationship – regardless of whether they are voluntary or mandatory on the part of employers or employees and regardless of whether the plans serve as the primary or supplementary means of providing retirement income¹.

Other pension entities are not specifically addressed by these guidelines, but the guidelines can nonetheless be applied to pension entities that manage personal pension plans. Similarly, these guidelines may also be valuable for pension entities in the public sector.

These guidelines set out a full licensing process for pension entities. The specific application of the guidelines in each country depends on the framework of safety mechanisms available in that country, the way each country's pension system and labour policies work and the nature of ongoing supervision.

In some countries, where a full licensing regime as described in these guidelines is not applied to the start of operation of a pension entity, licensing may be restricted only to the authorisation given for purposes of beneficial tax treatment. Other than that, the establishment of a pension entity may require only the submission of certain documents to the relevant authority and the registration of the pension entity and/or pension plan. As such, the registration of pension entities and/or plans does not require the supervisor to conduct an approval process with respect to these guidelines. This alternative to a full licensing process as defined in these guidelines may be deemed appropriate given the country's general legal system, the existing oversight of financial institutions involved in pension plan/fund management and the goal of facilitating the establishment of pension plans in the country. In countries applying this approach, it is critical that a well-developed and effective ongoing legal regime be in place (including remedies for wrongdoing by pension entities) in order to promote a similar level of protection of pension funds and/or plans as the one that can be achieved through the implementation of the advance approval standards in these guidelines.

Similarly, the requirements for good governance that are conditions of licensing need to be established in these alternative licensing approaches by means of legislation and guidance that place duties on those charged with running the pension entities. In particular, the legislation should require pension

entities to have similar controls and documentation in place as would be required for licensing purposes in a licensing regime, albeit that registration need not be contingent on the provision of such information by the pension entity. The legislation should also permit affected members to inquire and/or complain about actions or decisions that adversely affect them, and the supervisory authority to investigate breaches of those requirements that would apply in a licensing regime. A critical foundation to this is that the legal system be sufficiently developed so that imposition of those requirements by legislation is reasonably expected to be effective at producing general compliance.

When implementing these guidelines, consideration should be given to the situation where a pension entity from one country, where it has duly been licensed, establishes itself in another country and benefits from recognition in the host country of the licence obtained in the home country².

To the extent that financial institutions are capacitated to perform the functions of pension fund administration and management, the licensing process should be limited to the verification of those requirements that have not already been covered by the financial institution's other supervisor(s). Examples of matters that may only apply to the extent that they have not already been covered by a financial institution's other supervisor(s) might be those relating to capital, governance and governing documents, and business planning at guidelines 6.1, 7.2 and 8.1 and paragraph 7 of the Annotations.

To the extent that an applicant for a licence has not yet commenced operating, some specific requirements may not be in place at the point of application for a licence. Examples may include risk control and internal reporting and audit mechanisms, and statements of investment policy listed at guidelines 3.1, 5.1 and 8.1 (vi). In such cases, preparations to establish the relevant procedures or policies should be evidenced and capable of review by the licensing authority.

III. Licensing Requirements

1. Legal Provisions on Licensing

1.1 Legal provisions are in place requiring the licensing of pension entities (and where relevant, pension plans) by the relevant authorities.

1.2 Legal provisions are in place regarding the type of pension plans and/or pension funds that can be established and the legal form of pension entities.

2. Governing Documents

2.1 Pension plans or/and pension entities should have formal, written charters or documents describing the plan's/entity's objectives and the plan's parameters (such as types of contributions and benefits), its governance structure and outsourcing or third party service provisions, and the rights of members and other beneficiaries.

3. Risk Control, Reporting and Auditing Mechanisms

3.1 Pension entities should have adequate risk control mechanisms in place to address investment, operational and governance risks, as well as internal reporting and auditing mechanisms.

3.2 If they manage more than one pension plan or fund, pension entities should be required to maintain separate accounts and records for each of the pension funds, or where relevant, each of the pension plans that they manage.

4. Funding Policy

4.1 Pension entities that offer defined benefit (DB) and hybrid/mixed plans should have a funding policy that specifies the sources of funding, the actuarial method to be used, and the mechanisms for fulfilling legal funding requirements.

4.2 Where a pension entity manages assets for different pension funds or plans, separate funding policies and methods should be prepared for each pension fund or, where relevant, each pension plan.

5. Investment Policy

5.1 Pension entities should prepare a statement of investment policy.

5.2 Where a pension entity manages different pension plans or funds, separate statements of investment policy should be prepared for each pension fund or, where relevant, each pension plan.

6. Capital Requirements

6.1 At least where directly exposed to financial and demographic risks, pension entities should be required to hold a minimum amount of free, uncommitted starting capital or otherwise have access to adequate financial resources. The amount should be dependent on the risks to be covered. The required minimum capital should not be used to cover set-up costs. In order to ensure the guarantee function of the minimum capital, legislation could require the setting aside of appropriate assets. In some jurisdictions, capital requirements may also be satisfied by the purchase of insurance providing the same level of protection to the plan members and plan beneficiaries.

7. Governance

7.1 Pension entities should have a governing body that is ultimately responsible for the entity and a code of conduct for the members of its governing bodies and staff. The code of conduct may be laid out in specific legislation applying to pension entities.

7.2 Members of the governing bodies of the pension entity should be subject to fit and proper requirements.

7.3 Pension entities should be required to keep a functional separation between those staff responsible for investments and those responsible for settlement and bookkeeping.

8. Business Plan

8.1 Pension entities should create a business plan which should at least include (i) a list of the plans/funds that the pension entity will manage; (ii) the types of obligations that the pension entity proposes to incur (e.g. return or benefit guarantees), if any; (iii) the estimated setting-up costs and the financial means to be used for this purpose; (iv) the projected development of the fund/plan; (v) where relevant, the means for fulfilling any capital requirements; and (vi) details regarding the adequate risk control reporting and auditing mechanisms, and a sound investment policy that are in place or to be established at start-up.

9. Licence Withdrawal

9.1 The legal provisions require the withdrawal of a licence from a pension entity in certain circumstances.

9.2 Legal provisions grant the pension entity whose licence has involuntarily been withdrawn the possibility to appeal the decision and have it reviewed.

IV. Powers and Obligations of the Licensing Authority

10. Role of the Licensing Authority in Supervisory Matters

10.1 The legal provisions should endorse the role of the licensing authority in the wider supervisory and regulatory system and, where there are separate licensing and supervisory authorities, allow for the supervisory authority to be consulted on each specific licence application.

11. Clarity of Licensing Application Procedure

11.1 The legal provisions should promote the clear setting out of the application process, including:

- Information about the obligations of the licensing authority, for example the timeframe in which it must decide on an application;
- Procedures for the licensing authority to seek further information from the applicant;
- The actions that the licensing authority will take to confirm the information received as part of the licence application;
- The requirement that the staff of the licensing authority observe the appropriate standards of confidentiality with regard to the information gathered as part of the licensing application process (with the exception of information which may have to be provided to other public authorities).

12. Submission of Documents

12.1 The licensing authority should have the power to require the submission of the governing documents and other documents necessary for assessing the entity's compliance with the licensing requirements described in Section III.

13. Assessment of the Licence Application

13.1 The licensing authority should have the power to:

- Examine the proposed legal, managerial and ownership structures of the applicant and its wider group (if any);
- Evaluate proposed directors and other members of the governing bodies as to their expertise and integrity, their skills and experience and their judicial records;
- Review the proposed strategic and operating plans of the applicant, including:
 - Determining that an appropriate system of corporate governance, risk management and internal controls and a code of conduct will be in place, and
 - Considering whether the operational structure of the applicant reflects the scope and degree of sophistication of the proposed activities of the applicant;
- Review the policies and procedures that the applicant has/intends to put in place to ensure ongoing compliance with its obligations under relevant legislation and the conditions of the licence and the risk management control framework established by the applicant.
- Review financial projections for the applicant and assess its financial strength and other resources;
- Where applicable, identify and determine the suitability of major shareholders, including the ultimate beneficial owners, and others that may exert significant influence on the applicant, as well as assess the transparency of the ownership structure and the sources of initial capital (if required).

13.2 The licensing authority should, under specific circumstances, have flexibility in applying legislative requirements so that the type, scale and complexity of an applicant's activities may be taken into account in the assessment as to whether and how licensing criteria are met. The circumstances in which the licensing authority may apply legislative requirements flexibly must be clearly stated in legislation and protection against arbitrary action on the part of the licensing authority must be guaranteed.

13.3 The licensing authority may have the power to impose conditions on the licence of the applicant, and to subsequently vary or withdraw those conditions. The circumstances in which conditions can be imposed, withdrawn or modified must be clearly stated in legislation.

14. Guidance Materials

14.1 The licensing and/or supervisory authority/authorities may provide guidance to applicants regarding their expectations as to how they may meet licensing criteria, so that better internal systems (such as risk management systems) result for the applicant.

14.2 The licensing authority should provide appropriate guidance to officers carrying out the licensing assessment.

15. Power to Reject, Modify or Withdraw a Licence

15.1 The licensing authority should have the power to reject an application if the criteria are not fulfilled or if the information provided is inadequate, so that the assessment process supports the objectives of the licensing regime. Any rejection should include identification of the specific criteria on which the rejection is based.

15.2 The licensing authority should have the power to make adjustments to a licence already granted and to withdraw a licence when the conditions for the licence are no longer fulfilled. These powers must be clearly stated in legislation.

15.3 The licensing authority should have a review mechanism in place to examine the demands of entities whose licence has been modified or withdrawn.

15.4 Decisions of the licensing authority should be open to administrative and judicial appeal. Adequate protections to preclude arbitrary action on the part of the licensing authority should be in place.

¹ In EU countries, these Guidelines may not apply to those occupational, private pension entities and pension plans which fall outside the scope of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision (Article 2 of the Directive).

² For example, the mutual recognition arrangements that are in place in the EU.

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