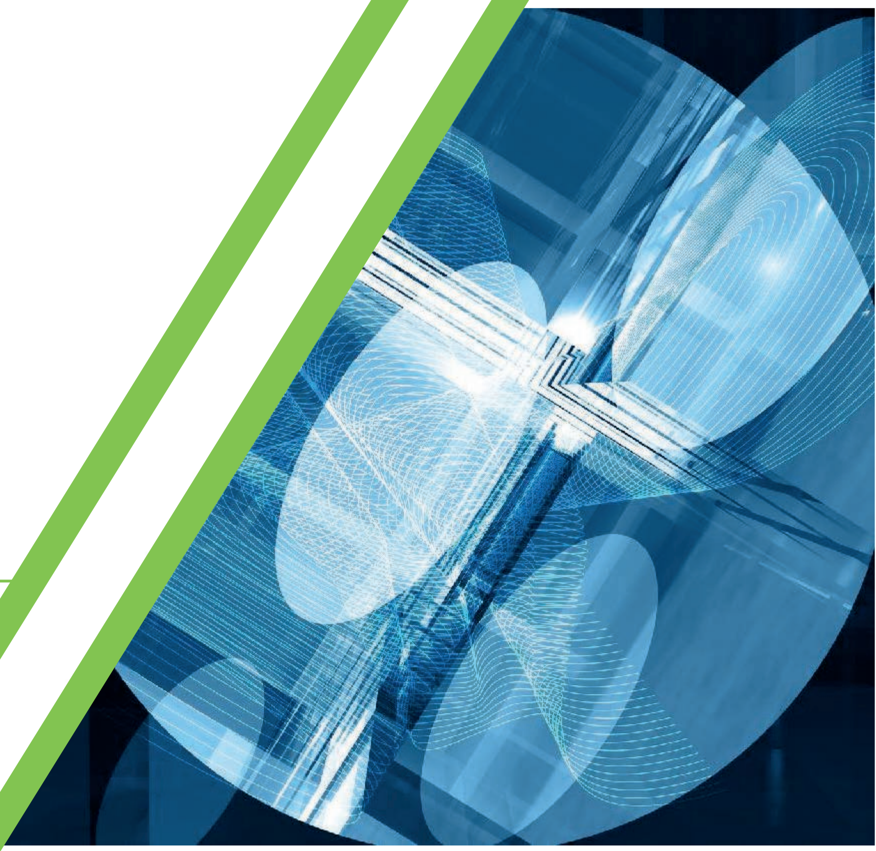
Recommendation of the Council on Guidelines for Pension Fund Governance



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Adopted on 28/04/2005
Abrogated on 28/06/2012

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

CONSIDERING that the OECD Ministers agreed in 2002 "that implementation of best practices in corporate and financial governance entails an appropriate mix of incentives, balanced between government regulation and self-regulation. [They] seek to improve such governance to enhance transparency and accountability and thereby strengthen investor confidence and the stability and resilience of financial markets";

CONSIDERING that the integrity of financial institutions depends not only on regulation and supervision, but also on the quality of governance practices within financial institutions;

CONSIDERING that the specificity of the risks and responsibilities faced by pension funds call for specific guidance on governance in addition to the more general standards provided by the revised OECD Principles of Corporate Governance [C(2004)61];

CONSIDERING that the Guidelines for Pension Funds Governance (hereinafter called the "Guidelines") complement the revised OECD Principles of Corporate Governance and that the Steering Group on Corporate Governance in October 2004 expressed the view that the Guidelines for Pension Funds Governance are fully compatible and consistent with the revised Principles;

CONSIDERING that the Guidelines address several of the regulatory concerns that arise in the establishment and operations of pension funds;

CONSIDERING that regulations on pension funds governance need to be guided under the overriding objective of pension funds which is to serve as a secure source of retirement incomes;

NOTING that while the Guidelines identify good practices in pension fund regulation, their implementation may be conducted through other means;

CONSIDERING that the Guidelines are based on previous work carried out by the Working Party on Private Pensions in this area and complement the Recommendation of the Council on Core Principles of Occupational Pension Regulation [C(2004)41] which was endorsed by the Council in April 2004;

CONSIDERING in addition that the Guidelines have been elaborated on the basis of experiences of Member countries and relevant international institutions and organisations;

RECOGNISING that evolutions of the pension funds structure or functioning or/and in the revised OECD Principles of Corporate Governance may call for further updating and adaptations of these Guidelines;

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

I. **RECOMMENDS** that Member Countries invite public authorities and pension entities to ensure an adequate and efficient governance framework for pension funds, having regard to the contents of the Annex to this Recommendation of which it forms an integral part.

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

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

IV. **INSTRUCTS** the Insurance Committee and the Working Party on Private Pensions to exchange information on progress and experiences with respect to the implementation of this Recommendation, review that information and report to the Council within three years of its adoption, or sooner, and, as appropriate, thereafter.

ANNEX

GUIDELINES FOR PENSION FUND GOVERNANCE

The following Guidelines are applicable to *autonomous, collective or group pension funds that support private occupational pension plans*. In some countries, they may also be appropriate for pension funds established under personal pension arrangements. Their practical implementation may vary from country to country, the aim being that the underlying objectives of the Guidelines are met.

These Guidelines are consistent and compatible with the revised Principles of Corporate Governance [C(2004)61], which they complement.

> *- Regulations on pension funds governance need to be guided under the overriding objective that pension funds are set up to serve as a secure source of retirement incomes.*

I. GOVERNANCE STRUCTURE

> *- The governance structure should ensure an appropriate division of operational and oversight responsibilities, and the accountability and suitability of those with such responsibilities.*

1. Identification of Responsibilities

There should be a clear identification and assignment of operational and oversight responsibilities in the governance of a pension fund. To the extent that a pension entity is established that owns the pension fund on behalf of plan/fund members, the legal form of this entity, its internal governance structure, and its main objectives should be clearly stated in the pension entity's statutes, by-laws, contract or trust instrument, or in documents associated with any of these. If the pension fund is established as a separate account managed by financial institutions, the pension plan or contract between plan sponsors/members and the financial institution should clearly state the responsibilities of the latter with respect to the management of the pension fund.

2. Governing Body

Every pension fund should have a governing body[1] vested with the power to administer the pension fund and who is ultimately responsible for ensuring the adherence to the terms of the arrangement and the protection of the best interest of plan members and beneficiaries. The responsibilities of the governing body should be consistent with the overriding objective of a pension fund which is to serve as a secure source of retirement income. The governing body should not be able to completely absolve itself of its responsibilities by delegating certain functions to external service providers. For instance, the governing body should retain the responsibility for monitoring and oversight of such external service providers.

3. Expert Advice

Where it lacks sufficient expertise to make fully informed decisions and fulfil its responsibilities the governing body could be required by the regulator to seek expert advice or appoint professionals to carry out certain functions.

4. Auditor

An auditor, independent of the pension entity, the governing body, and the plan sponsor, should be appointed by the appropriate body or authority to carry out a periodic audit consistent with the needs of the arrangement. Depending on the general supervisory framework, the auditor should report promptly to the governing body and - if the governing body does not take any appropriate remedial action - to the competent authorities wherever he or she becomes aware, while carrying out his or her tasks, of certain facts which may have a significant negative effect on the financial situation or the administrative and accounting organisation of a pension fund.

5. Actuary

An actuary should be appointed by the governing body for all defined benefit plans financed via pension funds. As soon as the actuary realises, on performing his or her professional or legal duties, that the fund does not or is unlikely to comply with the appropriate statutory requirements and depending on the general supervisory framework, he or she shall inform the governing body and - if the governing body does not take any appropriate remedial action - the supervisory authority without delay.

6. Custodian

Custody of the pension fund assets may be carried out by the pension entity, the financial institution that manages the pension fund, or by an independent custodian. If an independent custodian is appointed by the governing body to hold the pension fund assets and to ensure their safekeeping, the pension fund assets should be legally separated from those of the custodian. The custodian should not be able to absolve itself of its responsibility by entrusting to a third party all or some of the assets in its safekeeping.

7. Accountability

The governing body should be accountable to the pension plan members and beneficiaries and the competent authorities. The governing body may also be accountable to the plan sponsor to an extent commensurate with its responsibility as benefit provider. In order to guarantee the accountability of the governing body, it should be legally liable for its actions.

8. Suitability

The governing body should be subject to minimum suitability standards in order to ensure a high level of integrity and professionalism in the administration of the pension fund.

II. GOVERNANCE MECHANISMS

> *- Pension funds should have appropriate control, communication, and incentive mechanisms that encourage good decision making, proper and timely execution, transparency, and regular review and assessment.*

9. Internal Controls

There should be appropriate controls in place to ensure that all persons and entities with operational and oversight responsibilities act in accordance with the objectives set out in the pension entity's by-laws, statutes, contract, or trust instrument, or in documents associated with any of these, and that they comply with the law. Such controls should cover all basic organisational and administrative procedures; depending upon the scale and complexity of the plan, these controls will include performance assessment, compensation mechanisms, information systems and processes, and risk management procedures.

10. Reporting

Reporting channels between all the persons and entities involved in the administration of the pension fund should be established in order to ensure the effective and timely transmission of relevant and accurate information.

11. Disclosure

The governing body should disclose relevant information to all parties involved (notably pension plan members and beneficiaries, supervisory authorities, etc.) in a clear, accurate, and timely fashion.

12. Redress

Pension plan members and beneficiaries should be granted access to statutory redress mechanisms through at least the regulatory/supervisory authority or the courts that assure prompt redress.

[1] The governing body may also be an administrator.

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