

IOPS Technical Committee

**DRAFT GOOD PRACTICES FOR
GOVERNANCE OF PENSION SUPERVISORY
AUTHORITIES**

Version for public consultation



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Introduction:

1. Promoting good governance has been at the heart of on-going reform efforts in many countries in recent years, resulting in extensive research as well as the adoption of national and internationally recognised standards and principles on the topic. Adherence to good governance practices by private pension funds (and other financial institutions responsible for managing and administering private pensions) and also by public authorities involved in their regulation and supervision is essential to strengthen private pension systems and enhance public confidence in the oversight process.

2. Along with various measures directed to reinforce and achieve greater efficiency of the supervisory control over financial institutions (e.g. improving internal organisation/structures, gaining new powers and resources, implementing a risk-based approach to supervision, etc.), strengthening internal governance structures has also been a priority for financial supervisory authorities, including pension supervisory authorities.

3. Recognising the crucial importance of good governance for pension supervisory authorities as highlighted in the IOPS Principles of Private Pension Supervision¹ (November 2010), the IOPS has developed good practices as guidance for its Members and other pension supervisory authorities.

Scope and Coverage²

4. A system of good governance within a pension supervisory authority, supported by effective internal risk management and controls and independent external audit, should lead to good management, accountability and performance outcomes, the optimal use of resources, and positive engagement with relevant stakeholders and the public. Ultimately such a system should enable the pension supervisory authorities to efficiently fulfil their supervisory mandate and achieve their main objectives.

5. The current good practices build on:

- Principle 10 of the IOPS Principles of Private Pension Supervision, which provides a solid framework for governance of pension supervisory authorities. According to Principle 10, good governance can be summarised under four broad categories: *independence, adequacy, transparency and integrity*³;

- Good governance principles elaborated for other public bodies;⁴ and

¹ IOPS Principles of Private Pension Supervision, www.iopsweb.org

² In EU countries, the good practices may not apply to those pension funds and pension plans that fall outside the scope of the EU 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, e.g. pensions funded via book reserves.

³ Footnote 14 of the IOPS Principle 10, www.iopsweb.org

⁴ The Good Governance Standard for Public Services, UK, 2004, http://www.cipfa.org.uk/pt/download/governance_standard.pdf

- Principles and standards of corporate governance for financial institutions as well as other related background reports prepared by international organisations, such as IAIS⁵, OECD⁶ or IOSCO⁷.

6. These good practices are also based on the previous work developed by the IOPS in the area, namely IOPS Working Paper 10 of November 2009 on “Governance and Performance Measurement of Pension Supervisory Authorities,”⁸ as well as the results of the assessment of countries’ compliance with the IOPS Principles on Private Pension Supervision.

7. Governance arrangements of pension supervisory authorities among IOPS Members vary considerably because of their size, structure and legislative background. Despite this diversity, the IOPS believes that general good governance practices can be identified that will be helpful to the IOPS Members when reviewing and reinforcing their current governance framework.

8. These good practices on governance do not aim to duplicate or substitute existing governance principles already adopted by or in force within pension supervisory authorities. Their purpose is to provide a list of internationally approved good governance criteria for consideration and action by pension supervisors. They allow supervisory authorities to compare and evaluate their own governance codes against current global good practice and enable them to take measures to improve them, if necessary.

9. The IOPS good governance practices suit various types of organisational structures of pension supervisory authorities (specialised, partially integrated and integrated) and a wide range of governance arrangements adopted by the IOPS Members..

10. For consistency purposes and to ensure that the IOPS good governance practices cover a wide variety of legal, organisational, procedural, and administrative structures of the current and any future IOPS Members, the following general terms used within the core text of the good practices and their meanings are listed below.

Terminology:

- *Pension supervisory authority*: any entity, responsible in a whole or in part for the supervision of pension funds, plans, schemes or arrangements in a country or a subdivision of a country, whether invested with its own personality or not.⁹

Foundation of Governance, Australian Public Services Commission, April 2009, <http://www.apsc.gov.au/foundations/introduction.htm>

Public Sector Governance, the Australian National Audit Office, August 2003; <http://www.anao.gov.au/Publications/Better-Practice-Guides?page=3>

⁵ IAIS Insurance Core Principles, Standards, Guidance and Assessment Methodology, October 2012, <http://www.iaisweb.org/index.cfm?pageID=795>

⁶ OECD Recommendation on Core Principles of Occupational Pension Regulation, June 2009: <http://www.oecd.org/dataoecd/14/46/33619987.pdf>

⁷ IOSCO, Examination of Governance for collective investment schemes, June 2006, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD219.pdf>

⁸ <http://www.iopsweb.org/dataoecd/31/56/43946767.pdf>

⁹ IOPS Principles on Private Pension Supervision, November 2010, www.iopsweb.org.

- *Overseeing authorities*: (parent) ministry or other statutory authority and the legislature, when required by the governing legislation, responsible for monitoring the activities of the pension supervisory authority.
- *Head of pension supervisory authority*: a person who is appointed by the relevant public authorities and charged with the overall responsibility, possibly shared with other members of the Governing body, for managing the authority so that it efficiently carries out its mission and achieves its statutory objectives while ensuring the efficient and ethical use of resources.
- *Governing body*: the body with overall responsibility to direct and ensure strategic planning, oversight and control of the authority. This body may be composed entirely of senior executives of the authority, or entirely of non-executive members or may comprise a combination of the two.
- *Pension plan*¹⁰: a pension plan is 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 fund*¹¹: a pension fund is a legally separated pool of assets forming an independent legal entity 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 special purpose entity with legal capacity (such as a trust, foundation, or corporate entity) 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.
- *Private pension fund*¹²: a pension fund that is regulated under private sector law.
- *Private pension plans*¹³: a pension plan administrated by an institution other than general government. Private pension plans may be administrated directly by a private sector employer acting as the plan sponsor, a private pension fund or a private sector provider. Private pension plans may complement or substitute for public pension plans. In some countries, these may include plans for public sector workers.
- *Supervised entities*: private pension funds, plans, schemes, pension service providers and arrangements that have been at any time under the competence (within the purview) of a pension supervisory authority..
- *Pension services providers*: entity providing private pension products or services.

¹⁰ Private Pensions, OECD Classification and Glossary

http://www.oecd.org/document/42/0,3746,en_2649_34853_34768618_1_1_1_1,00.html

¹¹ Idem footnote 11

¹² Idem footnote 11

http://www.oecd.org/document/42/0,3746,en_2649_34853_34768618_1_1_1_1,00.html

¹³ Idem footnote 11.

11. These good practices are intended to further develop the provisions on governance of the IOPS Principles of Private Pension Supervision which will fully apply. This is particularly relevant for those IOPS Principles which include governance issues such as the IOPS Principle 10 and Principles 2 to 5.

Good Practice 1: Head of the pension supervisory authority and Governing body

The Head of the pension supervisory authority and its Governing body should be responsible for promoting and putting into practice good governance values and principles within the pension supervisory authority.

Transparent appointment processes and remuneration practices should be in place for the Head of the pension supervisory authority and the Governing body.

1.1 Good governance values ultimately underpin the pension supervisory authority's philosophy, culture, strategies, and decision-making processes and empower strong leadership. —The Head and Governing body of the pension supervisory authority take the lead in developing, promoting and upholding the good governance values and principles within the authority and securing adherence to these principles by the staff.

1.2 The governance structure of the pension supervisory authority should be clearly defined. The pension supervisory authority should be overseen by a Governing body of a manageable size, the structure, organisation and composition of which should reflect each authority's specific institutional and governance models.

1.3 The Governing body of the pension supervisory authority should be responsible for its decisions and actions and accountable for its performance to the overseeing authorities.

1.4¹⁴ The appointment of the Head of the pension supervisory authority and members of the Governing body should take place via explicit procedures and transparent mechanisms. A professional and competence-based selection process ensures that only relevantly qualified candidates are considered for appointment. Other terms and conditions pertaining to the appointment of the Head of the pension supervisory authority and the Governing body, including remuneration policy, should be publicly disclosed. The choice of the candidates should not pose actual or future conflict of interest.

1.5 The Head of the authority should be appointed for a fixed term (normally between 3-7 years), possibly renewable. The Governing body Members should be also appointed for a fixed term of service (generally with the possibility of renewal). Efforts should be undertaken to achieve the right balance between continuity of membership of the Governing body and its renewal with new members. Any exceptional early replacement of the Head of the pension supervisory authority and Members of the Governing body for reasons other than non-performance of their duties or in accordance with provisions in relevant legislation should be avoided and reasons for replacement publicly disclosed.

1.6 The remuneration policy, including bonuses, pertaining to the Head of the pension supervisory authority and the Governing body should be set in a clear and transparent manner and disclosed publicly.

¹⁴ IOPS Principle 2 of Private Pension Supervision – Independence - to be fully implemented under this section.

Good Practice 2: Decision making processes

The pension supervisory authority should have well documented decision making processes and operational procedures including a clear division of responsibilities for supervisory decisions with serious impact.

2.1 Decisions within the pension supervisory authority should be developed and taken in line with, and to support, high-level objectives and strategic orientations of the authority and have regard to the medium and long term and should be based on good quality information and, where necessary, advice.

2.2 The pension supervisory authority should regularly review its supervisory decisions to ensure they are aligned with the organisation's purpose and contribute to the attainment of the best results for the supervisory service users and general public.

2.3 The decision making processes within the pension supervisory authority should be adequately detailed and documented in internal regulations. Documentation should outline all stages and processes in the development, taking, reviewing and signing off of a final decision to ensure that the decisions are taken in strict conformity with internal procedures and respect the requirements of the governing legislation, regulations and the Governing body policies.

2.4 Taking supervisory decisions with serious impact on supervised entities, such as the introduction of enforcement action/use of sanctions, etc., should in principle involve functional separation of duties between those proposing such decisions and those approving these decisions.

2.5 Procedures for authorisation of decisions should, where appropriate, include wide internal consultations, be subject to independent review and appeals processes and should require a transfer to the appropriate level of seniority within the authority for the final sign-off of the decision at the executive (senior management) level.

2.6 Appropriate procedural safeguards should also be available to prevent irregularities arising in the conduct of operations, decision making and review processes.

2.7 Major decisions taken by the Governing body/senior executives within a pension supervisory authority should be announced and explained to the supervised entities and the public, subject to confidentiality requirements.

Good Practice 3: Internal controls and internal and external audits

The pension supervisory authority should establish and maintain effective internal controls and should be subject to regular independent internal and external audits.

3.1 The Head of the pension supervisory authority and the Governing body should have primary responsibility for and strongly support the overall internal control systems of the pension supervisory authority that ensure the proper and efficient functioning of the authority.

3.2 Risk management programmes (including risk assessment) should be developed and implemented as a part of larger supervisory review/control processes to identify and evaluate emerging risks to which the authority is confronted, and to devise appropriate strategies/responses to mitigate these risks.

3.3 A comprehensive internal control system should cover the full range of the authority's activities, operating programmes and responsibilities, allowing for irregularities or weaknesses detected to be promptly and efficiently corrected. Suitable oversight mechanisms should be in place when the supervisory authority outsources its functions to third parties or hires outside experts (to be subject to the same professional standards and confidentiality rules as the supervisory staff).

3.4 The primary focus of internal controls should be on the careful assessment and measurement of the risks facing the authority and the prioritisation of cases representing the highest potential risk to the achievement of the authority's statutory objectives. Examples of some of the other issues which could be covered by internal controls include: adherence by the staff to rules (pension law, regulations) and internal procedures; the safeguard of assets/resources and information, timeliness and quality of production/record of financial, management, and supervisory information; proper collection, safeguarding, disclosure and transfer of confidential information.

3.5 The internal control systems, including policies and procedures, should be well-designed and be clearly documented, remain cost-effective, flexible and adaptable to the changes in the external and internal environment and be subject to periodic assessments (especially in volatile periods).

3.6 An effective and objective internal audit function should be part of the authority's internal control system. Some of the topics which could be covered by the internal audit are reviewing the consistency and transparency of the decision making process; checking strict adherence to rules and management policies; measuring and assessing the efficiency and effectiveness of the overall internal control system and making recommendations to the Governing body/senior management how to improve the internal controls system and to correct any irregularities observed.

3.7 The Head of the pension supervisory authority and/or the Governing body should ensure the operational independence of the internal audit function.

3.8 In addition to internal audits, external audits should be performed by a separate auditor. External audits cover a range of issues, and are used, amongst others, to verify compliance with the principle of legality (law, regulations, administrative acts/procedures); to monitor consistency and the efficiency of the operating model and management process; to audit the authority's financial statements; to check, if deemed necessary, the effectiveness of the supervisory authority's internal control systems, including the proper functioning of internal audits; and to suggest, where relevant, corrective actions/responses to audit

findings. The appointment of external audits should be regulated by law and could involve the approbation of national authorities.

Good Practice 4: Code of conduct and managing conflicts of interest

The pension supervisory authority should establish and adhere to its own code of conduct aimed at all employees, including the Governing body and the senior executive management, and should have an efficient conflict of interest resolution policy.

4.1 A code of conduct should consolidate the key principles of efficient governance, and norms and value of ethical behaviour. Adherence to shared good governance values is a central part of an authority's corporate culture, underpinning its processes for decision making and execution of its strategy as well as behaviour within the pension supervisory authority.

4.2 The pension supervisory authority should establish its own code of conduct for all staff members of the pension supervisory authority. If deemed appropriate, a separate code could be established for the Governing body and senior executive management.

4.3 The code of conduct should be available and easy to access by all staff members of the pension supervisory authority. For transparency purposes, it could also be publicly available on the authority's web-site.

4.4 The code of conduct should include provisions on staff relations with the entities overseen by the authority, market players, ethical behaviour and conduct principles of staff, acceptance/giving of gifts and hospitality, use of resources and treatment of confidential information.

4.5 Policies on conflict of interests (whether personal or professional, such as holding equity investments in supervised entities, having an interest/business relationship with the regulated/supervised entity, etc.), their adequate disclosure and settlement process should be in place, as a part of code of conduct or set as a separate document. Policies on conflict of interest should be regularly reviewed to address new potential conflicts and/or incorporate any other relevant amendments.

4.6 Full adherence and strict observance and compliance with the code of conduct by all staff members should remain mandatory for the whole duration of employment or appointment and after for a defined period, if required. A breach of the code provisions may under defined circumstances (e.g. outlined in an intervention ladder) entail a disciplinary action, including dismissal, if appropriate.

Good Practice 5: Appeal procedures

Appeal procedures should be made available for settling disputes arising between supervised entities and the pension supervisory authority.

5.1 Statutory procedures (including administrative appeal processes and judicial reviews) should be put in place for supervised entities to correct, review and appeal against decisions taken by the pension supervisory authority, if considered inconsistent with legal provisions.

5.2 The supervisory authority should provide supervised entities with a formal internal review process for supervisory decisions with serious impact. This review should be undertaken by persons other than the original decision makers. This could serve as an alternative dispute resolution process to administrative and judicial reviews.

5.3 The personal liability of the supervisory authority's staff should be limited in relation to carrying out their duties in good faith.

5.4 Supervisory staff should have indemnity and protection from civil actions and ensuing costs when defending their actions while on duty.

Good Practice 6: Performance measurement and training

The pension supervisory authority should be subject to regular performance evaluation against its stated goals and objectives. Tailored training should be provided to the supervisory staff to optimise their performance.

6.1 The Governing body of the pension supervisory authority should establish internal performance evaluation procedures within the authority to regularly monitor and assess the way management and operational activities are conducted to evaluate the achievement of the authority's identified goals and priorities.

6.2 The evaluation process should aim to assess both qualitative and quantitative aspects of supervisory activities, including their outcome and impact, and may establish linkages between high-level organisational strategic goals and specific supervisory activities and inputs to attain these objectives (through performance of particular supervisory tasks).

6.3 Sufficient resources (financial and human) should be allocated to monitor the performance of the pension supervisory authority on a regular basis.

6.4 As a part of the evaluation process, specific measurable performance targets and objectives should be set and performance criteria elaborated to gather performance information for review within a defined timetable.

6.5 In parallel, efforts should be undertaken to increase the level of expertise and knowledge of supervisory staff through the organisation of tailored training programmes to optimise performance, and to increase motivation and retention of staff.

Good Practice 7: Accountability

The pension supervisory authority should ensure robust public accountability and transparency in its relationships with the overseeing authorities¹⁵.

7.1 The pension supervisory authority should be held accountable for achieving its statutory objectives and efficiently executing its supervisory duties and responsibilities.

7.2 The pension supervisory authority should have an active and planned policy for publishing and reporting on its activities, if appropriate, to the overseeing authorities.

7.3 Regular interactions should be maintained with the overseeing authorities by means of providing regular reporting and exchange of information on the key supervisory activities, performance and internal and external control results. Evaluation feedback is used to review and improve the authority's operational and management efficiency.

7.4 The pension supervisory authority could be subject to special legal requirements, including confidentiality provisions, with regard to the information to be provided and reported to the overseeing authorities.

7.5 The pension supervisory authority may be subject to regular reviews by the legislature and have a responsibility to respond to requests for information and policy briefings, when required by the governing legislation

Good Practice 8: Communication

The pension supervisory authority should encourage regular and open dialogue and relationships with all stakeholders and the public.

8.1 The Governing body should give a clear statement of the pension supervisory authority's mandate, mission and strategic objectives and supervisory requirements and procedures, accompanied with practical guidance and explanatory information, which are publicly disclosed and easy to access.

8.2 The pension supervisory authority should have a clear policy in communicating and engaging in meaningful and open exchange of views with all stakeholders and the public.

8.3 The pension supervisory authority should inform public and supervised entities of the results of its supervisory work and any future planned activities, subject to confidentiality requirements, and could collect views and feedback on the quality of supervisory activities and satisfaction with the duties performed and supervisory services provided.

8.4 The pension supervisory authority should communicate and maintain working relationships with other statutory authorities working in the financial area ensuring co-ordination of policy and supervisory activities.

¹⁵ Idem footnote 14 - IOPS Principle 2 of Private Pension Supervision – Independence - to be fully implemented under this section.

8.5 Co-operation at the international level should be further promoted allowing for regular exchange of information and development of common strategies and responses to ensure greater consistency and efficiency of supervisory action.