

**OECD RECOMMENDATION ON CORE PRINCIPLES OF
OCCUPATIONAL PENSION REGULATION**

21 July 2004

Recommendation on Core Principles of Occupational Pension Regulation

THE COUNCIL,

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

Recognising the important role played by private pension systems in the retirement income systems of Member countries,

Recognising the specific nature of occupational pension arrangements and the role of employers as plan sponsors,

Recognising the need for appropriate regulation and supervision of occupational pension systems,

Recognising the desirability of establishing and maintaining set of core principles and guidelines for occupational pension regulation,

RECOMMENDS that Member countries, in establishing, amending or reviewing their occupational pension regulations in accordance with their own political, administrative and legal context, take due account of the Core Principles of Occupational Pension Regulation which are set out in the Annex to this Recommendation and form an integral part thereof.

INVITES Member countries, through their work in the Working Party on Private Pensions, to identify further good practices in occupational pension regulation.

INVITES Member countries to disseminate these principles and other good practices among public and private sector institutions that are involved in the management of private pension systems and organisations that represent the interests of plan members and beneficiaries.

INVITES Non-Member economies to take due account of this Recommendation and, if appropriate, to adhere to it under conditions to be determined by the Insurance Committee.

INSTRUCTS 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.

CORE PRINCIPLES OF OCCUPATIONAL PENSION REGULATION

Core Principle 1: Conditions for effective regulation and supervision

An adequate regulatory framework for private pensions should be enforced in a comprehensive, dynamic and flexible way (taking into account the complexity of the schemes) in order to ensure the protection of pensions plan members and beneficiaries, the soundness of pensions plans and funds and the stability of the economy as a whole. This framework should however not provide excessive burden on pensions markets, institutions, or employers.

A productive, diversified investment of retirement savings which spreads risk requires well-functioning capital markets and financial institutions. The development of advance-funded pension systems should go hand-in-hand with a strengthening of the financial market infrastructure and regulatory framework (including the development of new financial instruments and new markets such as inflation-indexed markets and the improved functioning of retirement annuity markets).

Regulation should promote a level playing field between the different operators and take account of the usefulness of a functional approach. The fair competition should benefit to the consumers and allow for the development of adequate private pensions markets.

- 1.1 Occupational pensions are subject to a set of legal provisions¹ that regulate the main aspects of the operation of those plans.
- 1.2 The legal provisions promote the protection of pensions plan members and beneficiaries and the soundness of pension funds.
- 1.3 The legal provisions provide the necessary flexibility in order to permit the efficient operation of occupational pension plans;
- 1.4 The legal system allows the enforcement of financial contracts pertaining to occupational pensions. In particular, there is a body of ethical, professional and trained lawyers and judges, and a court system, whose decisions are enforceable. Comparable standards apply in cases where alternative dispute mechanisms exist.
- 1.5 Accounting standards for plan sponsors of occupational pensions are comprehensive, documented, transparent and consistent with international standards.
- 1.6 The legal provisions take into account the state of development of financial markets.
- 1.7 The legal provisions encourage efficiency in pension provision.

¹ Throughout this document, legal provisions are defined in a broad sense. They may include the main body of the pension law, related laws (e.g. trust law), tax requirements, standards set by pension and financial sector supervisory authorities, codes of conduct developed by professional associations (e.g. a pension fund association), collectively bargained agreements, or plan documents (e.g. trust documents).

Core Principle 2: Establishment of pension plans, pension funds, and pension fund managing companies.

An institutional and functional system of adequate legal, accounting, technical, financial, and managerial criteria should apply to pension funds and plans, jointly or separately, but without excessive administrative burden. The pension fund must be legally separated from the sponsor (or at least such separation must be irrevocably guaranteed through appropriate mechanisms).

- 2.1 Legal provisions are in place applying to the establishment of pension plans and pension funds, including the legal form of pension funds that are established as independent legal entities and their governance structure.
- 2.2 Occupational pension plans have a formal, written charter or document, describing the plan's objectives and parameters, the duties and responsibilities of the governing body and the plan members' and beneficiaries' rights. In some cases, documents may reflect the extent to which various features of the plan are subject to collective bargaining. The legal provisions require also that by-laws, articles of association or trust instruments, describing their objectives and governance structure (including structure of responsibilities and fiduciary liability) are prepared for pension plans and funds jointly or separately.
- 2.3 The legal provisions require the legal separation of pension plan assets from the assets of the plan sponsor².
- 2.4 To the extent that the legal provisions require that dedicated providers (pension fund managing companies) manage autonomous pension funds set up as pools of assets or separately managed accounts, there is a licensing process for these specialised financial institutions.
- 2.5 The legal provisions identify the authority responsible for licensing of pension fund managing companies, define its powers and tasks, and detail the licensing/registration requirements.
- 2.6 A minimum amount of capital is required for all pension fund managing companies.

Core Principle 3: Pension plan liabilities, funding rules, winding up, and insurance

Private occupational plans should be funded. While full-funding exists in principle for defined contribution plans, other types of plans should be subject to minimum funding rules or other mechanisms to ensure adequate funding of pension liabilities. Rules based on winding-up approach may be promoted as a minimum level to complement the on-going approach. Flexibility can be allowed for temporary limited under-funding under restricted circumstances. Consideration should be given to the development of adequate but flexible requirements for minimum capital/guarantee in pension funds, taking account of the long term nature of their liabilities. Tax and prudential regulations should encourage a prudent level of funding. Private unfunded pay-as-you-go plans at individual company level should generally be prohibited.

Appropriate calculation methods for asset valuation and liabilities funding, including actuarial techniques and

² Non-autonomous pension funds including book reserve schemes do not fall under the scope of the core principles.

amortisation rules must be set up and based on transparent and comparable standards.

Proper winding-up mechanisms should be put in place. Arrangements (including, where necessary, priority creditors' rights for pension funds) should be put in place to ensure that contributions owed to the fund by the employer are paid in the event of his insolvency, in accordance with national laws.

The need for insolvency insurance and/or other guarantee schemes has to be properly evaluated. These mechanisms may be recommended in some cases but in an adequate framework. Recourse to insurance mechanisms (group and reinsurance) may be promoted.

Measurement of pension liabilities in defined benefit plans

- 3.1 Legal provisions are in place requiring the funding of defined benefit occupational pension plan liabilities.
- 3.2 Legal provisions are in place that require the determination of defined benefit pension plan liabilities corresponding to the financial commitments or obligations which arise out of the pension arrangement, defined as the accrued benefit rights of pension plan members and beneficiaries in ongoing pension plans.
- 3.3 These legal provisions require the use of appropriate calculation methods, including actuarial techniques and amortisation rules that are consistent with generally recognised actuarial standards and methods.

Funding Rules for defined benefit plans

- 3.4 The legal provisions require the identification and maintenance of a level of assets that is sufficient to cover ongoing plan liabilities. Legal provisions are in place for determining contribution requirements with respect to ongoing liabilities.
- 3.5 These legal provisions set out flexible methods for correcting a situation of underfunding – that is, where the value of pension assets is less than the value of the pension liabilities with appropriate distinctions concerning the source of underfunding. Additional legal provisions may be necessary to assure that additional funding is available in the event of the winding-up of a pension plan.

Winding Up

- 3.6 There are legal provisions in place regarding the allocation of plan assets and the responsibility for underfunding in the event of plan termination.
- 3.7 The legal provisions recognise the creditor rights of pension plan members and beneficiaries in the case of bankruptcy of the plan sponsor.

Core Principle 4: Asset Management

Investment by pension funds should be adequately regulated. This includes the need for an integrated assets/liabilities approach, for both institutional and functional approaches, and the consideration of principles related to diversification, dispersion, and maturity and currency matching. Quantitative regulations and prudent-person principles should be carefully assessed, having regard to both the security and profitability objectives of pension funds. Self-investment should be limited, unless appropriate safeguards exist. Investment abroad by pension funds should be permitted, subject to prudent management principles.

Increased reliance on modern and effective risk management, industry-wide risk management standards for pension funds and other institutions involved in the provision of retirement income should be promoted. The development of asset liability management techniques should be given proper consideration.

Valuation of pension assets

- 4.1 The legal provisions establish a proper and disclosed basis for valuing pension assets.

Prudent Person Standard

- 4.2 The governing body of the pension plan/fund and other appropriate parties is subject to a standard of prudent behaviour such that the investment of pension assets is undertaken with care, skill, prudence and diligence.

Portfolio limits

- 4.3 The legal provisions may include maximum levels of investment by category to the extent that they are consistent with the principles of diversification, dispersion, and maturity and risk management pursuant to which assets should be invested. The legal provisions shall not prescribe a minimum level of investment for any given category of investment, except on an exceptional and temporary basis and for compelling prudential reasons.
- 4.4 Self-investment by those undertaking investment management of pension funds should be prohibited or limited, unless appropriate safeguards exist. Investment in assets of the plan sponsor, in parties related or affiliated with any pension entity or pension fund managing company is prohibited or strictly limited.
- 4.5 Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the pension fund to excessive risk concentration.
- 4.6 Investment abroad by pension funds should not be prohibited.

Investment policy

- 4.7 The governing body or the party responsible for the investment management of pension assets is required to set forth and actively observe an overall investment policy.

Core Principle 5: Rights of members and beneficiaries and adequacy of benefits

Non-discriminatory access should be granted to private pensions schemes. Regulation should aim at avoiding exclusions based on age, salary, gender, period of service, terms of employment, part-time employment, and civil status. It should also promote the protection of vested rights and proper entitlement process, as regard to contributions from both employees and employers. Policies for indexation should be encouraged. Portability of pensions rights is essential when professional mobility is promoted. Mechanisms for the protection of beneficiaries in case of early departure, especially when membership is not voluntary, should be encouraged.

Proper assessment of adequacy of private schemes (risks, benefits, coverage) should be promoted, especially when these schemes play a public role, through substitution or substantial complementary function to public schemes and when they are mandatory. Adequacy should be evaluated taking into account the various sources of retirement income (tax-and-transfer systems, advance-funded systems, private savings and earnings).

Appropriate disclosure and education should be promoted as regards respective costs and benefits characteristics of pension plans, especially where individual choice is offered. Beneficiaries should be educated on misuse of retirement benefits (in particular in case of lump sum) and adequate preservation of their rights. Disclosure of fees structure, plans performance and benefits modalities should be especially promoted in the case of individual pension plans.

Access to plan participation, equal treatment and entitlements under the pension plan

- 5.1 Employees have non-discriminatory access to the private pension plan established by their employer. Specifically, regulation aims at avoiding exclusions from plan participation that are based on non-economic criteria, such as age, gender, marital status or nationality. In the case of mandatory pension plans, those plans that serve as the primary means of providing retirement income, and those that are significantly subsidised by the state, regulation also aim at avoiding other unreasonable exclusions from plan participation, including exclusions based on salary, periods of service and terms of employment, (e.g., by distinguishing between part-time and full-time employees or those employed on an at-will and fixed-term basis). Regulation of voluntary and supplementary pension plans also aims towards similarly broad access, although the extent of such access may take into account factors including the voluntary nature of the arrangement, the unique needs of the employer establishing the pension plan, and the adequacy of other pension benefits.
- 5.2 Employees are equally treated under the plan rules with respect to portability rights, disclosure requirements, governance and redress mechanisms, and other rights associated with the plan.
- 5.3 If establishing rules for benefit levels and accrual or contribution rates, regulators may take into account the extent of integration of occupational plans with other public or mandated sources of retirement income and the adequacy of the totality of the benefits provided.
- 5.4 Employees are protected from retaliatory actions and threats of retaliation by their employer or pension plan representatives with respect to pension benefits and the exercising of rights under a pension plan. For example, they should be protected from terminations of employment carried out with the intent to prevent the vesting of an accrued benefit under the pension plan. Similarly, individuals exercising their rights under a pension plan, including but not limited to their filing of a claim or appeal or their initiation of administrative or judicial action, should be protected from retaliatory action, such as termination of employment, suspension, discipline, fine or any other type of discrimination.

Benefit Accrual and Vesting Rights

- 5.5 Regulations promote the protection of benefits that an employee accrues by participating in an occupational pension plan, prevent the retroactive reduction of the value of benefits previously accrued in the plan and provide that plan members obtain timely notice regarding any reduction in the rate of future benefit accruals in the pension plan.
- 5.6 Accrued benefits vest immediately or after a period of employment with the employer sponsoring the plan that is reasonable in light of average employee tenure. Benefits derived from member contributions to the pension plan should be immediately vested.
- 5.7 Practices that substantially undermine or eviscerate benefit accrual and vesting rights are not permitted.
- 5.8 Vested benefits of those individuals who have severed employment with an employer are protected and not subject to forfeiture, regardless of reasons for severance, except in the limited case of dismissals resulting from acts of gross malfeasance that are clearly defined.
- 5.9 Vested benefits are protected from the creditors of the plan sponsor and plan service providers (including any financial institutions or other entities managing the pension plan or plan assets or acting as a custodian of pension fund assets associated with the plan) – at a minimum by the legal separation of plan assets. Vested benefits are also protected when the plan sponsor or a plan service provider changes ownership due to merger, acquisition, sale, or other corporate transaction, or files for bankruptcy. Similarly, the extent to which vested benefits are protected from the creditors of individual plan members and beneficiaries is addressed.

Pension portability and rights of early leavers

- 5.10 Individuals who are changing jobs are able, upon request, to move the value of their vested account balance in a defined contribution plan from their former employer's pension plan either to the plan of their current employer (where permitted) or to a similar, tax-protected environment provided by an alternative financial instrument or institution. Where feasible, a similar portability right is available to individuals in defined benefit plans. There may be diminished need for individual portability rights where there are industry-wide and other types of multiple-employer pension plans.
- 5.11 Individuals have the right to timely execution of the request to transfer the value of their vested benefit accruals.
- 5.12 With respect to defined benefit pension plan benefits, the actuarial and interest rate assumptions used in valuing an individual's vested benefit accrual that is to be transferred are fair and reasonable. These assumptions are made readily available to the individual transferring the value of his vested benefit.
- 5.13 Portability rights are available to members of a pension plan when they separate from service with an employer, regardless of whether the separation is voluntarily, involuntary or by mutual agreement.
- 5.14 Portability rights are not inhibited by the assessment of unreasonable charges or fees, such as excessive transaction charges or excessive back-end fees. At a minimum, members and beneficiaries are informed of the presence of any such charges or fees.

- 5.15 Individuals are not required to exercise their portability rights and, generally, are permitted to leave their vested benefits in the pension plan of their former employer.

Disclosure and availability of information

- 5.16 Members and beneficiaries in pension plans, as well as potential plan members, have a legal right to ready access or disclosure to basic information about the pension plan, including adequate information regarding their rights of access, anticipated contribution and/or benefit accrual rates, vesting schedules, other rights and obligations, investment policy, the names and manner of contacting responsible parties for plan administration and governance, and claims processes or procedures.
- 5.17 Plan documents, annual accounts, and annual financial and actuarial reports, if not automatically disclosed, are made readily available to plan members and to beneficiaries where relevant for copying for no more than reasonable charge or fee.
- 5.18 Members and beneficiaries are notified in timely fashion if required employer and member contributions have not been made to the pension plan.
- 5.19 Timely, individualised benefit statement is provided to each plan member (and to beneficiaries where relevant). The information included on the benefit statement and the frequency of its delivery will depend on the type of pension plan. The information included enables the plan member to identify current benefit accruals or account balances and the extent to which the accruals or account balances are vested. For pension plans with individual accounts, the information includes the date and value of contributions made to the account, investment performance, earnings and/or losses. For member-directed accounts, a record of all transactions (purchases and sales) occurring in the member's account during the relevant reporting period is provided. This information and other similarly personal data is maintained and delivered in a manner that takes full account of its confidential nature.
- 5.20 Individuals are provided adequate information about the rules associated with the portability of their vested benefit accruals, especially where the transfer of these assets may entail a loss of certain benefits or rights that were associated with the pension plan in which the benefit originated.
- 5.21 Disclosure materials are written in a manner expected to be readily understood by the members and beneficiaries to whom they are directed.
- 5.22 Consideration is given to adequate forms of delivery of disclosure materials, including mail, delivery at the workplace, and via email or websites, where feasible.
- 5.23 Amendments or changes to the pension plan that will significantly impact members and beneficiaries, their rights and their benefits are disclosed to them in timely fashion and in a manner expected to be readily understood by them.

Additional rights in the case of member-directed, occupational plans

- 5.24 Where members direct their own investments in an occupational pension plan, they have the right to a number and diversity of investment choices sufficient to permit them to construct an appropriate investment portfolio in light of their own individual circumstances and in the context of the particular pension programme.

- 5.25 Members are provided with complete information regarding investment choices that is standardised and readily comparable. At a minimum this information should include disclosure of all charges, fees and expenses associated with each investment choice, as well as portfolio composition and historical investment performance data.
- 5.26 Members managing their own individual accounts have the right to timely and fair execution of their investment decisions and to written confirmation of these transactions. The right (or responsibility) to make and execute investment decisions should not be inhibited by the assessment of any unreasonable charges or fees.
- 5.27 Members and beneficiaries who are required to manage their own individual accounts are provided sufficient opportunity to acquire the financial skills or education and other assistance that they need in order to make appropriate investment decisions in their pension plans.

Entitlement process and rights of redress

- 5.28 Members and beneficiaries (and individuals claiming the right to be deemed a member or beneficiary under a pension plan) are entitled to a fair process or procedure in which their entitlements, rights and benefits under the pension plan may be claimed or asserted.
- 5.29 The claim process or procedure is expeditious and transparent. It is easy to understand and has only reasonable or no cost to the individual claimant.
- 5.30 The process includes independent administrative or judicial recourse if initial claims of rights or benefits are denied by the pension plan administrator, fiduciary, or employer. This process provides for adequate remedial measures to redress the loss of rights or benefits suffered by the member or beneficiary whose claim has been found to be valid.

Core Principle 6: Supervision

Effective supervision of pension funds and plans must be set-up and focus on legal compliance, financial control, actuarial examination and supervision of managers. Appropriate supervisory bodies, properly staffed and funded, should be established in order to conduct when relevant off and on site supervision, at least for some categories of funds and in particular when problems are reported. Supervisory bodies should be endowed with appropriate regulatory and supervisory powers over individual plans, in order to prevent miss-selling cases arising from irregularities in the distribution and expenses methods.

Organisation

- 6.1 Legal provisions clearly and objectively state the responsibilities of the pension supervisor.
- 6.2 These legal provisions grant the pension supervisor operational independence from both political authorities and commercial interference in the exercise of its functions and powers.
- 6.3 The legal provisions grant the pension supervisor adequate powers, legal protection, and proper resources and staff, and the capacity to perform its functions and exercise its powers.
- 6.4 The legal provisions require that the pension supervisor adopts clear, transparent, and consistent regulatory and supervisory processes. Where appropriate, the rules and procedures of the supervisor are published and updated regularly. These legal provisions allow the pension

supervisor to consult, as appropriate, with the pensions sector when determining its approach to supervision and regulation.

- 6.5 The legal provisions require that the staff of the pension supervisor observe the highest professional standards including appropriate standards of confidentiality.
- 6.6 If its own capacities are insufficient, the legal provisions allow for the pension supervisor to outsource to third parties (e.g. auditors, actuaries) supervisory tasks such as on-site inspections and off-site monitoring
- 6.7 Third parties are subject to the same confidentiality requirements as the pension supervisor and have legal liability for the services rendered. If required, the pension supervisor must have the ability to take actions against these third parties either directly or through the appropriate professional body.
- 6.8 The pension supervisor is empowered to exchange information with other relevant agencies, taking into account data protection standards.

Authorisation

- 6.9 The pension supervisor has the authority to inspect and, where necessary, require the revision of the founding documents of pension plans, pension entities, and pension fund managing companies.
- 6.10 The pension supervisor has the authority to execute a fit-and-proper test of the members of the governing body of pension funds in order to assess whether the person is qualified for the task. The supervisor has the authority to disqualify members of the governing body on the basis of this test.
- 6.11 The pension supervisor has the authority to reject a proposed member of the governing body on the basis of a fit and proper test.

Reporting / off-site supervision

- 6.12 The pension supervisor has authority to review and, where necessary, require the revision of the funding evaluation of defined benefit plans and the audited financial statement of pension funds that must be prepared on a periodic basis. The nature of this requirement should take into account information already required by other financial regulators.
- 6.13 The pension supervisor has the authority to review and, if it does not comply with current legal provisions, require the revision of the investment policy as set forth by the governing body of the pension fund.
- 6.14 The supervisor has the authority to review from time to time the actual investment strategies of pension funds and assess the extent to which their investment policies have been implemented.

On-site inspection

- 6.15 The pension supervisor has the authority to undertake on-site inspections of a pension plan and fund, which include at least the activities listed below:
 - evaluation of the governance and internal control system, including internal audit, reporting and monitoring;
 - compliance with the contribution and benefit schedules as stated in the legal provisions and the pension plan's charter;
 - compliance with funding and investment regulations, including the plan's investment policy and any relevant plan rules;
 - analysis of the pension fund operations and relationships with external service providers and other parties (e.g. pension consultants, asset managers, and custodians).
- 6.16 If its own capacities are insufficient, the pension supervisor has the authority to delegate on-site examinations to external auditors, or other qualified parties. It must have sufficient powers to investigate and gather information deemed necessary to carry out its supervisory function.
- 6.17 The pension supervisor has the authority to carry out limited inspections, investigating only areas of specific concern.

Sanctions, intervention, and other remedial actions

- 6.18 The pension supervisor should be provided with comprehensive investigatory and enforcement powers including:
 - regulatory and investigative powers to obtain data, information, documents statements and records from persons involved in the relevant conduct or who may have information relevant to the inquiry;
 - power to seek orders and/or to take other action to ensure compliance with these regulatory, administrative and investigation powers;
 - power to impose administrative sanctions and / or to seek orders from courts or tribunals;
 - power to initiate or to refer matters for criminal prosecution.
- 6.19 There are procedures in place for the governing body of pension plans and pension funds to appeal to the pension supervisor for decisions taken by the latter that affect them and which they consider inconsistent with the legal provisions.
- 6.20 The pension supervisor has the authority:
 - to require a change in the organisational or governance structure of a pension entity if it is deemed necessary to ensure their proper functioning.
 - to request the replacement of members of the governing body that are not carrying out their duties in accordance with the legal provisions.

- in the case of external service providers, as appropriate, to request their replacement or report them to their own professional body.
- 6.21 The pension supervisor has the authority to intervene in the management of a pension plan on the basis of supervisory analysis that shows the likely insolvency of the plan.