ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

International Organisation of Pension Supervisors

THE LICENSING OF PENSION ENTITIES IN PRIVATE PENSION SYSTEMS

July 2007

This comparative report provides background information to the OECD-IOPS Guidelines on the Licensing of Pension Entities. For further information on this report, please contact Juan Yermo [juan.yermo@oecd.org] or Jens Tinga [jens.tinga@oecd.org] at the OECD Financial Affairs Division.

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I. Introduction

1. This comparative chapter describes the initial findings of the OECD-IOPS project on licensing requirements for pension entities. The information was collected through questionnaires sent out to OECD and IOPS delegates and through consultation of information published on the supervisory authorities' websites. Information was collected from the following countries: Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Finland, Germany, Greece, Hungary, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Korea, Kosovo, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Slovakia, South Africa, Spain, Thailand, Turkey, United Kingdom, United States and Zambia..

2. Licensing may be defined as 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. In most of the surveyed countries, licensing involves the application and award of a licence for the pension entity before the launch of operations. In five countries (Canada, Ireland, New Zealand, United Kingdom, and United States), the licensing process consists of seeking approval in order to benefit from specific tax treatment (see Annex 1). This is complemented with a registration process involving the submission of certain documents to the relevant authority. The Netherlands presents a special case, as an assessment of the pension entity's compliance with the law takes place after it has started operations. The supervisory authority can demand corrective action but cannot stop the entity from operating. The object of licensing depends to a large extent on the pension fund construction used in each country. Broadly speaking, there are three different types of pension fund constructions: the pension trust (mostly Anglo-Saxon countries), the pension fund with legal personality (such as the foundations, mutual associations and similar legal entities in countries such as Austria, Germany, Hungary, Italy (closed funds only) and the Netherlands), and pension funds without legal personality administered by pension fund managing companies (as in Bulgaria, Poland, Portugal, Slovakia, Spain, and Turkey).

3. *Pension trusts*: The trust is a legal scheme whereby named people ("trustees") hold property on behalf of other people ("beneficiaries"). The trustees can be a board of people or a corporate trustee, which acts in the exclusive interest of the pension members and beneficiaries.

4. *Pension funds with legal personality*: The pension fund with legal personality is an independent legal entity created to manage a pension fund and is the same legal entity as the fund itself. Examples of this type of pension fund construction are foundations or mutual associations.

5. *Pension fund managing companies*: The pension fund management company is a type of financial institution in the form of a company whose exclusive activity is the administration of legally separated pension funds. This type of pension entity is typically found in jurisdictions where pension funds have no legal personality and where the pension fund management company thus represents the fund.

6. Where pension entities take the form of trusts, the object of the licensing procedure is typically the plan itself, although in Australia a licensing procedure has applied since 2004 to all prudentially regulated trustees (similar to those of pension fund managing companies in other OECD countries). Responses to the questionnaire indicate that licensing conditions and procedures in the other Anglo-Saxon countries that use the trust construct are light. The United Kingdom limits conditions for the commencement of operations by a pension plan and fund and their right to benefit from tax benefits to the submission of a set of documents, but the examination of those documents by the relevant authority is not required in order to start operating the pension plan and fund. In the United States, the plan must satisfy

certain standards in order to benefit from tax advantages, while in Canada and New Zealand the procedure involves an examination of the trust and the trustees, albeit a light one. In the Canadian case only the actuarial report is reviewed – for everything else, a Declaration of Compliance is relied on. Once the trust is in operation, the trustees are subject to rules of trust law. Where a corporate trustee manages the fund as opposed to a group of individual trustees, provisions of company law will also apply to the corporate trustee.

7. In the case of pension funds with legal personality, it is the fund itself which is the object of licensing, while the plan(s) managed by the pension fund with legal personality is/are not subject to licensing requirements. The licensing requirements vary between countries, but some common elements can be identified.

8. In the case of pension fund managing companies, the company is the object of the licensing requirements. The licensing procedures are in general similar to those of pension funds with legal personality. In some countries there is a two step licensing procedure, whereby a company must first obtain a licence for operating as a pension fund managing company and then apply for a licence to manage one particular pension fund (Bulgaria, Hungary, Spain, Turkey).

9. The licensing requirements also vary across countries within each of the three pension fund constructions described in the previous paragraphs. Findings seem to indicate that some countries concentrate on the pension funds' governance structure, whereas other countries focus more on the financial aspects of the fund. Licensing requirements also vary depending on the type of plan that is offered. For defined benefit plans, pension funds with legal personality and pension fund managing companies are often subject to additional licensing requirements such as a funding policy statement, the appointment of an actuary and, in some cases (especially where the entity underwrites risks) additional capital or solvency requirements.

II. Comparison of licensing requirements

General

10. In the vast majority of countries, the law requires the entity that is the object of the licensing regime to submit a series of documents to the relevant authority prior to the start of its operations. The Netherlands and Canada are an exception to this. In all cases an application needs to be submitted, accompanied by documents related to the financial and/or organisational structure of the entity. These documents must sometime prove that certain legislative requirements have been met, while others are submitted for reference purposes. The list of documents and information to be submitted is generally set out in the application form or in legislation, or a combination of both and tends to include the following: business plan, statutes/articles of incorporation, statement of investment policy, conflict of interest arrangements and documents related to governance.

11. The following paragraphs briefly point out the different requirements across countries concerning various aspects of licensing.

Application form

12. In over half of the surveyed countries, licence applications must be made by application form (Australia, Bulgaria, Canada, Hungary, Ireland, Italy, Jamaica, Jordan, Korea, Kosovo, Mexico, Nigeria, Pakistan, Slovakia, South Africa, Thailand, Turkey, UK and Zambia). Most application forms are available on the supervisor's own website. The application forms vary in length as do the questions asked. Some

only request the applicant's[1] contact details (United Kingdom), others ask for calculations related to the applicant's financial situation (Belgium), while yet others ask details such as the management's qualifications and the managers' paid positions in other companies (Turkey). In Germany and the Netherlands, there is no application form, but legislation specifies in which format the application must be made.

Business plan

13. Submission of a business plan that takes into account the strategic and operational aims of the applicant is required by most respondents to the questionnaire, but not all (Canada or Ireland (occupational pension schemes only)). The business plan must almost always indicate the type of obligations which the fund incurs vis-à-vis the members, the employer and the pension fund managing company. It must also set out the fund's objectives and parameters in the majority of cases, but in some countries the articles of association rather than the business plan are used to indicate the type of obligations and the fund's objectives. In some countries the business plan must contain detailed estimates of the fund's evolution in the coming years and include estimates of setting up costs and the financial means available for the fund's development (Turkey). In others, the business plan provides for a system of corporate governance, risk management and internal controls, whilst in other cases these features may be the subject of separate policies or documents. Where the trustee or management entity is separate from the pension fund, a distinction should be made in respect of business plans for the trustee entity itself that may be distinct from the plan for the pension fund.

14. In Australia, pension entities are requested to submit a business plan in order to provide a context for the analysis and review of the applicant's risk management framework. Where the applicant is already in business, audited financial statements are to be provided. In Germany, the business plan must contain evidence of sufficient funds for start-up capital as well as ongoing requirements.

Governing plan documents

15. In the majority of the surveyed countries, the document governing the operation of each pension plan is the articles of association. However, in countries where a trustee construction applies it is the trust deed and/or the governing rules of the fund or plan that set out how the plan or fund operates. The documents contain the fund's or management company's business purpose in almost all cases and in some cases also its capital structure. A non-discrimination clause must in some cases be included in the governing plan documents. In other cases a non-discrimination provision is not required as general provisions of law prohibit discriminatory access to pension funds or discrimination against pension plan members. In the latter situation, the absence of a non-discrimination provision does not affect the licence application. Procedures for amending the fund/plan rules need to be included in the governing document in some countries. The governing documents usually also refer to the terms for engaging services from third parties contracts (e.g. asset managers, custodians, consultants, etc).

Risk management procedures, modelling techniques and internal reporting mechanisms

16. Having effective risk management procedures in place is part of the licensing requirements in some countries (Australia, Austria, Belgium, Bulgaria, Denmark, Finland (pension funds only), Germany, Hungary, Ireland, Jordan, Kosovo, Luxembourg, Netherlands, Nigeria, Pakistan, Portugal, Slovakia, Thailand). In Norway, risk management procedures must be developed once the entity is in operation. Modelling techniques appear to be required in fewer cases. Internal reporting mechanisms must be in place

[1] The word "applicant" refers to all three types of pension fund constructions, *i.e.* pension trust, pension fund with legal personality and pension fund management company.

in most of the surveyed licensing systems. Although the majority of respondents indicate a requirement for risk controls (often included within the statement of investment policy), the extent to which these are examined in the licensing process is not clear.

Investment policy

17. In the large majority of surveyed countries licence applications must contain a written investment policy (Australia, Bulgaria, Canada, Denmark, Finland (pension funds only), Germany, Greece, Hungary, Ireland (not occupational pension schemes with less than 100 members), Israel, Italy, Jamaica, Jordan, Korea, Kosovo, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Pakistan, Poland, Portugal, Slovakia, Spain, Thailand (asset management companies only), Turkey and Zambia). The investment policy must address specific items, such as the strategic asset allocation, risk management considerations, the policy on outsourcing asset management and the benchmarks to be used, as well as the mechanisms for reviewing the performance of the pension fund and for changing asset allocation. In a few cases an investment policy does not need to be included, as investment rules will apply once the fund is in operation (New Zealand, Norway, UK). The absence of an investment policy therefore does not affect the licence application in those systems. In Belgium, pension funds' investment policies are not specifically regulated. Annex 1 presents information on this subject for each surveyed country.

Funding policy and actuarial methods

18. A funding policy is required for licensing purposes in almost all countries, but actuarial methods are not required in countries where pension entities offer only DC schemes.

Governance

Internal governance

19. In all countries the entity must satisfy certain governance requirements in order to obtain a licence to operate.

20. In most countries, pension funds with legal personality and pension fund managing companies require a two-tier management structure of an executive board and a board of directors. On the other hand, for trusts, a single board structure (the board of trustees) is the norm. In most countries, pension funds with legal personality or management companies must establish an investment committee and in some, there is also a requirement to establish an audit committee. Annual general meetings take place in the countries where pension funds with legal personality have shareholders. In most cases the law sets minimum (and sometimes maximum) limits to the number of members that the boards may have.

21. In some countries, the law requires that the duties of board members are described in a document as well as the procedure for selecting board members. A few countries actually set these selection procedures in the law. Where funds or plans are established pursuant to a collective agreement, both the worker and the employer are represented in the fund's management. In some cases, workers and employers have seats on advisory boards.

22. In the vast majority of cases, the fund's management must satisfy "fit and proper" requirements (Annex 1), which must be proven by documents indicating academic experience and professional experience of several years. An exception is the United States where there is 'generally no minimum suitability requirements for an individual to act as trustee', while institutions with trust powers are licensed and regulated by states and partially by the federal government. Canada does not require information on qualifications and experience of members of the governing body but relies on a declaration of compliance and also has a conflict of interest prohibition. Ireland, Jordan, Nigeria, Norway, South Africa and the

United Kingdom are the other countries where an applicant need not meet legal "fit and proper" requirements in order to obtain a licence or to be registered.

23. Convictions for or pending cases relating to property and financial crime lead to ineligibility for positions in the fund's management, as does bankruptcy. In almost all countries, the fund must submit judicial records for every person in a management position to show that each person is of good repute. Some countries have explicit requirements in their legislation regarding qualifications and propriety, but it is not clear how claims are substantiated in the application process, while other countries require the submission of documents to substantiate integrity claims.

24. Pension fund management companies must submit business accounts of previous years in most cases.

External governance

25. In almost all surveyed countries, the applicant pension entity must indicate the name of the external auditor and an actuary when applying for a licence. In most cases a custodian and in some cases an external asset manager must also be appointed. In most cases, details of these service providers and their contracts are submitted to the supervisor for the record, while in others the supervisor has the power to reject the service provider selected by the fund. This happens when the service provider does not meet the required professional requirements, such as the relevant qualifications.

26. Pension funds are allowed to outsource their activities. A considerable number of countries do not set limits to which the funds can be outsourced, while others provide that the fund's core functions cannot be contracted out. Generally the pension entity remains responsible for the activities which it contracts out. In some countries service agreements must contain certain provisions such as in relation to sub-contracting of functions by the service provider (Australia). Service providers must satisfy the standards relevant to their profession. In certain cases the licensing authority can prohibit the fund from concluding an agreement with the service provider, for example where the provider does not meet professional requirements (Turkey).

Conflict of interest policy

27. An internal conflict of interest policy is required in some of the countries (Australia, Bulgaria, Canada, Denmark, Germany, Luxembourg, Netherlands, Pakistan, Slovakia), but not in others (Austria, Belgium, Finland, Kosovo, Norway, South Africa, Turkey, United Kingdom, Zambia). It may be more or less detailed. It sometimes includes restrictions for or the obligation to provide information about shareholders with significant shares in the fund institution or the management company. In countries such as Spain, Israel, Poland, Portugal and Thailand, conflict of interest rules do not form part of the licensing requirements but apply as part of company law. Similarly, in Hungary, Jordan and the United States, pension entities must observe the rules laid down in national pension legislation. In Ireland, the entities providing Personal Retirement Savings Accounts (PRSAs) are expected to observe a code of conduct which is laid down in the authorisation letter sent by the authorities. Trust law obliges trustees to avoid certain conflicts of interest in Ireland (occupational pension schemes) and New Zealand, for example.

28. Several countries require details on major shareholders in the fund or information about their (management) functions in other funds or companies (Australia, Germany, Turkey).

Reinsurance/guarantee fund

29. Some licensing systems require pension funds with legal personality or pension fund managing companies to purchase reinsurance or to inform the authority of the reinsurance arrangements that they

have made (Denmark, Germany, Jamaica, Jordan and, in certain circumstances, Netherlands) or to establish a guarantee fund (Belgium, Norway, Portugal). Where reinsurance is optional, the fund must provide the contact details if it takes out reinsurance (Belgium, Spain). Annex 1 presents information on this subject for each surveyed country.

Capital requirements

30. For pension fund managing companies in all of the surveyed countries, capital requirements are part of the licensing requirements. Such requirements also apply to some pension funds with legal personality (e.g. those set up in the form of mutual associations in Germany), but are not generally applied to pension funds set up in the trust form. However, corporate trustees of public offer (retail) funds in Australia must meet certain capital requirements. Where the applicant is already in business, audited financial statements are to be provided in most countries.

Minimum number of participants

31. In some countries, such as Austria, a minimum number of participants is required before a licence is granted (or in order to benefit from tax breaks, such as in the United States). In some countries, small pension funds are outside the scope of licensing requirements (such as in Australia, where most small funds with fewer than five members are outside the scope of the licensing legislation). Austria, Denmark, Finland (pension funds), Hungary, Jamaica, Slovakia and the United States require pension entities to have a minimum number of participants for licensing or authorisation purposes.

III. Comparison of licence application assessment processes

32. There are licensing procedures in all surveyed countries, ranging from light-weight to fully-fledged procedures. In a limited number of countries licences are subject to periodic renewal. Licences can be withdrawn in certain circumstances in almost all countries.

Initial licence, renewal and withdrawal

33. Once the applicant pension entity has sent the required documents to the licensing authority, the latter examines these and will ask for additional information if necessary. Some documents must be submitted for assessment by the authority, while others will not be assessed. The initial findings of the survey indicate a large variation between pension systems in the aspects and documents examined by the licensing authority.

34. Most licensing authorities must decide on the application within a certain time limit, which can be extended if additional time is required by the entity or by the licensing authority, for example when it is necessary to seek additional information from the applicant. Where the authority is subject to specific timeframes in which to decide an application, there is usually provision for the ‘clock’ to stop while the extra information is sought, as for example in Australia.

35. In all countries, the licensing authority can oblige the applicant to make amendments if it fails to meet certain conditions. Some licensing authorities may also carry out an on-site inspection of the premises (Annex 1) in certain cases to satisfy itself that the required infrastructure and procedures are in place (Australia, Hungary, Korea, Nigeria, Thailand and Turkey).

36. There are three levels of pre-licensing inspection:

No review: Canada does not review documents submitted with the application or conduct an on-site visit. Instead it relies on a Declaration of Compliance and subsequent risk assessment to determine whether an on-site visit will be made at a later time.

Document review (all or some of the documents submitted in the application process): For example, Belgium, Israel, Denmark, Jamaica and Spain all review business plans and the fund/plan's governing documents. Not all countries review documents and information regarding internal and external governance structures and policies

Document review and on-site inspection: In six countries (see paragraph 35) the authority has the power to carry out on-site review, for example in respect of installation and operation of electronic equipment: network structure, emergency plans, data management).

37. Whilst Canada's approach reduces the administrative burden on the licensing authority, it contrasts with other practices such as detailed review of all documents submitted and an on-site review and detailed review of all or particular documents submitted.

38. The ultimate approval or refusal decision is usually taken by individual assessors within the authority, although in certain cases the authority's pension director takes the final decision. Refusal decisions must almost always be accompanied by a statement of reasons. The licence decision in many cases is reported in the state's official journal.

39. In some cases the licensing procedure is followed by a registration procedure with a commercial or other register, for example where it is the trustee that is licensed and the fund that is registered (Australia, Hungary, Turkey). Similarly, part of the application is sometimes assessed by a body other than the licensing authority, for example, the tax authorities (United States). In Ireland, informal meetings precede the initial licence application.

40. The majority of countries do not have licence renewal procedures, but they can be found in Finland, Israel, Jordan, Norway, Spain and Zambia. Renewal processes appear to be less elaborate and shorter than processes for obtaining an initial licence.

41. Almost all countries which took part in the survey have legislation setting out circumstances in which the licence can be withdrawn. The most common reasons for licence termination are:

- the licensed entity does not start business within a certain period after obtaining the licence;
- the entity ceases to operate;
- infraction of legislative requirements;
- bankruptcy, insolvency or liquidation.

42. An on-site inspection is part of the procedure for withdrawal in the majority of the surveyed countries. Timelines are often not set out either in legislation or other regulatory documents. The body responsible for the withdrawal is always the same body that granted the initial (or in some cases, the renewal) licence. Sometimes the decision to withdraw a licence is subject to consent by the relevant Minister (Turkey and, in certain circumstances, Australia). Review of the licence withdrawal decision is possible in most countries, but not in, for example, Austria. There is often no administrative appeal stage; the entity that sees its licence withdrawn must bring its case before a court of law.

43. Most countries appear to provide some guidance to applicants, although in some, such as Austria, the information to be provided is specified in legislation and it appears no other material is offered.

Information published in the public domain

44. Most authorities keep registers of licensed funds on their websites. The registerscontain the entity's contact details, the sponsor's name and the business products offered by the fund. A record of the authority's licence withdrawal decision must be published in the large majority of countries. The publication sometimes contains a short explanation of the reason why the licence was revoked.

Guidance material for the supervisor

45. Some authorities have guidance material for their assessors. The provision of guidance to assessors in these cases ranges from nil in the case of Austria, where the licence requirements are set in legislation, to limited in the case of Denmark where guidance material is only available in relation to applications for nation-wide pension funds, to a procedural manual in Jamaica (which, like Australia, has made the transition to a new licensing regime) that sets out procedures for assessment of fitness and propriety and financial analysis, as well as guidance notes to assist with interpretation of operational, financial and legal issues. Turkey has a detailed manual for on-site inspections.

Licence application fees

46. There is a large variety in licence application fees. Some countries charge no fees while others charge several thousands of dollars/euros (Germany, Ireland). In some cases, such as Canada, a basic fee is charged which is increased by a certain amount for each pension plan member or by reference to the size of the fund (in terms of members). Pension entities are expected to meet the costs for obtaining official certificates, extracts from official registers and notary declarations in all cases. Annex 1 indicates for each country whether the applicant pension entity is required to pay a licence application fee.

ANNEX 1

A COMPARISON OF SOME ASPECTS OF LICENSING OF PENSION ENTITIES IN IOPS AND OECD COUNTRIES

	Is there a licensing process in addition to the procedure for beneficial tax treatment?	**Statement of investment policy required?**	**"Fit and proper" requirements for pension entity management?**	**Reinsurance or guarantee fund required?**	**Licence application fee?**	**On-site inspection part of application assessment process?**
Australia	Yes	Yes	Yes	No	Yes	Yes
Austria	Yes	No	Yes	No	Yes	No
Belgium	Yes	No	Yes	Yes (reserve fund)	No	No
Bulgaria	Yes	Yes (pension management authorisation only)	Yes	No (pension licence and pension management authorisation)	Yes (pension licence and pension management authorisation)	No (pension licence and pension management authorisation)
Canada	No	Yes	No	No	Yes	No
Denmark	Yes	Yes	Yes	Yes (reinsurance)	No	No
Finland	Yes	Yes (pension funds only)	Yes (pension insurance companies only)	No	Yes (both pension funds and pension insurance companies)	No
Germany	Yes	Yes	Yes	Yes (intended reinsurance arrangements)	Yes	No
Greece	Yes	Yes	No information available	No	No information available	No information available
Hungary	Yes	Yes (within 180 days)	Yes	No	No	Yes

	Is there a licensing process in addition to the procedure for beneficial tax treatment?	Statement of investment policy required?	"Fit and proper" requirements for pension entity management?	Reinsurance or guarantee fund required?	Licence application fee?	On-site inspection part of application assessment process?
Ireland	Yes (PRSA); No (OPS)	Yes (PRSAs and OPS with over 100 members)	No	No	Yes (PRSA only)	No
Israel	Yes	Yes	Yes	No	No	No
Italy	Yes	Yes	Yes	No	No	No
Jamaica	Yes	Yes	Yes	Yes (investment manager)	Yes	No
Japan	Yes	No	Yes	No information available	No	No
Jordan	Yes	Yes	No	Yes (reinsurance)	Yes	No
Korea	Yes	Yes	Yes	No information available	No	Yes
Kosovo	Yes	Yes	Yes	No information available	Yes	No
Luxembourg	Yes	Yes	Yes	No	Yes	No
Mexico	Yes	Yes (AFORES)	Yes (AFORES and SIEFORES)	No information available	Yes	No
Netherlands	Yes	Yes	Yes	Yes (reinsurance), but exemption possible	No	No
New Zealand	No	Yes	No	No	No information available	No
Nigeria	Yes	Yes	No	No	Yes	Yes
Norway	Yes	No	No	Yes (reserve fund)	No	No
Pakistan	Yes	Yes	Yes	No information available	Yes	Yes
Poland	Yes	Yes	Yes	No information available	No information available	No information available

	Is there a licensing process in addition to the procedure for beneficial tax treatment?	Statement of investment policy required?	“Fit and proper” requirements for pension entity management?	Reinsurance or guarantee fund required?	Licence application fee?	On-site inspection part of application assessment process?
Portugal	Yes	Yes (open and closed pension funds)	Yes	Yes (pension fund management companies only)	No	No
Slovakia	Yes	Yes	Yes	No	Yes	No
South Africa	Yes	Yes	No	No	Yes	No, unless pension fund management company was already conducting business
Spain	Yes	Yes	Yes	No	No	No
Thailand	Yes	Yes (asset management company only)	Yes	No	Yes	Yes, if applicant consents
Turkey	Yes	Yes	Yes	No	No	Yes
United Kingdom	No	No	No	No	No	No
United States	No	No	No	No	No information available	No
Zambia	Yes	Yes	Yes	No	Yes	No, unless considered necessary