



**OECD-IOPS GUIDELINES ON THE LICENSING OF PENSION ENTITIES:
COMMENTS RECEIVED IN PUBLIC CONSULTATION**

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Jurisdiction/ Organisation	Section or paragraph reference	Comment	Responses	Changes to the guidelines
Israel CMISD – Capital Markets, Insurance and Savings Division	General	<p>The paper should deal more clearly with the differentiation between the licensing of pension products and the licensing of a pension entity.</p>	<p><i>The guidelines are in principle aimed at the licensing of (occupational) pension entities, not at products.</i></p>	<p>Noted.</p>
	General	<p>In recent years, there has been an increase in the cross-border supply of financial services products including pensions. The guidelines should not omit this important phenomenon and should reflect the recent changes in the markets.</p>	<p><i>The establishment and regulation of trans-national pension funds is subject to a separate project carried out in cooperation with the IOPS. It will be addressed at a later stage.</i></p>	<p>Noted.</p>
	Page 4 (14)	<p>We have some concerns regarding the dependence of the licensing process on the presence of tax benefits. Whether there are tax benefit or not should not influence the licensing procedure. The licensing procedure should be independent of any tax benefit.</p>	<p><i>In a country like the US, the only type of licensing is in fact the fulfilment of certain conditions to benefit from tax benefit.</i></p>	<p>Noted.</p>
	Page 7 (13)	<p>The license application should be expressed more clearly: what is required at a) the first stage, examination of ownership structure, fit and proper status of the owners etc; b) the second stage, the strategic and operational plan of the pension entity. The current</p>	<p><i>The guidelines do not aim to lay down an order in which the application should be made; this is left up to the countries. The only distinction that is being made is that between the content</i></p>	<p>Noted.</p>

	Page 8 (14)	<p>proposed sections are too general and require more elaboration.</p> <p>The legislation cannot cover all the possible circumstances. The legislation should provide the supervisor with additional discretion to cover cases in exceptional circumstances.</p>	<p><i>of the application and the assessment of the application.</i></p> <p><i>Both guideline 13 and the annotations to guideline 15 make it clear that the licensing authority should have a degree of discretion. The annotation to guideline 15 says: "The scope of discretion that may be exercised by the licensing authority should be precluded or limited to the extent possible". It provides a balance between the rigid application of prescribed requirements that may create an unnecessary barrier to entry, and the risk of weakening prudential controls by relaxing prescribed requirements too far.</i></p>	Noted.
Belgium	Part I, Definitions.	<p>The definitions of "<i>pension entity</i>" and "<i>pension fund</i>" do seem to create confusion. We noticed both a circular reference between both "<i>Pension entity ...can take the form of a pension fund with legal capacity</i>" and "<i>Pension funds take the form of ... an independent entity with legal capacity</i>" and a contradiction within "<i>Pension fund</i>": "<i>pool of</i></p>	<p><i>The definition of "pension fund" remains unchanged, as the present definition is laid down in the OECD Private Pension Classification and Glossary. The definition of "pension entity" has been modified and now reads: "Pension entity –</i></p>	<p>Definition of "pension entity" modified. Definition of "pension plan" included.</p>

	<p>Definitions of “pension entity”</p> <p>Guidelines 3.2, 4.2, and 5.2</p>	<p><i>assets forming an independent legal entity” versus “a legally separated fund without legal capacity”. Also a definition of pension plan would be helpful since it is referred to several times in the guidelines. Also, we wonder the scope of the “ultimate legal responsibility for the pension fund”. If the scope of this responsibility is too far reaching, this could lead to instances where the sponsoring employer of a pension plan managed by a pension fund will be avoiding his own responsibility to provide sufficient financing.</i></p> <p>Regarding the fact that insurance companies, for the sake of these guidelines, can be considered as a pension entity, we would like to receive confirmation that insurance companies managing group insurance contracts (branch 21 in EU terminology) are not envisaged by this definition.</p> <p>§ 3.2. “... pension entities should be required to maintain separate accounts and records for each of the pension funds, or ... each of the pension plans that they</p>	<p><i>the independent legal entity with legal capacity that has ultimate legal responsibility for the pension fund. This can be the pension fund itself, where it has legal capacity (for example foundations or mutual associations). Alternatively it can take the form of an independent legal entity acting as a pension trustee in the case of pension funds established as trusts, or a pension fund management company. An insurance company or other financial institution may ... ”</i></p> <p><i>The licensing process for these insurance companies should be limited to the verification of those requirements that have not already been covered by the financial institution’s other supervisor, see paragraph 17.</i></p> <p><i>In the interest of transparency, it is important to maintain separate accounts, separate funding policies and</i></p>	<p>Noted.</p> <p>Noted.</p>
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		<p style="text-align: center;"><i>manage"</i></p> <p>§ 4.2. "<i>... separate funding policies ... for each pension fund or .. each pension plan</i>"</p> <p>§ 5.2. "<i>... separate statements of investment policy ... for each pension fund or ... each pension plan</i>"</p> <p>We understand that separating the management of pension plans managed within one and the same pension entity could be usefull and sometimes even necessary. However, this should not result in an obligation to maintain separate accounts in all cases, and especially not an obligatory separation along each pension plan. Other separations could be more usefull. We would suggest to leave flexibility to the concerned parties (sponsoring employers, pension entity) and the competent regulators and supervisors. Regarding the requirement to prepare separate funding policies and separate SIPs we would also suggest to leave more flexibility to the concerned parties, and instead of require such separate policies, require that these policies take into account the eventual existance of different pension funds/ plans.</p>	<p><i>separate statements of investment policy.</i></p>	
Renaissance Investment	Scope of application	<p>The proposed guidelines are well written and will certainly give direction but the scope of application is too restricted. The scope does not attempt to specifically involve multi-</p>	<p><i>The establishment and regulation of trans-national pension funds is subject to a separate project carried out in</i></p>	<p>Noted.</p>

		national pensions. In today's inter-connected world, this is a big omission and should be addressed before publication.	<i>cooperation with the IOPS. It will be addressed at a later stage.</i>	
Corporate Super Association, Australia	III.6, Capital requirements	<p>In the context of the current structure of stand-alone corporate superannuation funds, to establish trustee capital would pose some significant problems. Access to members' assets, to provide buffer capital, could give rise to breaches of the trusts under which the funds typically are established, and certainly gives rise to equity concerns between members and over time. Use of employer-sponsors' capital is likely to cause business strain and may well lead to closure of funds. (...) We submit that:</p> <ul style="list-style-type: none"> ▪ the proposed capital requirement is not suitable for single employer sponsored funds operating within a trust structure ▪ the comparative study does not indicate that such a requirement is best practice or otherwise called for ▪ alternatives are in use, e.g. insurance, attention to systems and other risk protection measures, that are viable methods of protecting members' interests against operational failure. 	<i>This type of trustees would be covered by the stated requirements to have access to adequate financial resources rather than the requirement to have uncommitted starting capital.</i>	Noted.

Financial services Commission, Jamaica	III.9, licence withdrawal	<p>While it may be best to list or describe specific circumstances under which a licence can be withdrawn the legal provisions should leave the regulator with some leverage to withdraw the licence under other circumstances not outlined in the statute.</p>	<p><i>It is important that the circumstances in which a pension entity may have its licence taken away are laid down in legislation and that the discretion on the part of the licensing authority is limited.</i></p>	<p>Noted.</p>
	IV.11, clarity of licensing application procedure	<p>Well established and experienced pension supervisors may be in a position to determine an estimated time frame wherein the application process must be completed. In jurisdictions where the pension industry is evolving and pension reform is still in its infancy the regulator may be encumbered by a statutory timeframe that did not have a basis informed by actual experience and the human resources available to it.</p>	<p><i>The guidelines are aspirational and encourage licensing entities to develop their skills as soon as possible.</i></p>	<p>Noted.</p>
Federacion Internacional de Administradoras de Fondos de Pensiones (FIAP)	General	<p>The document should include a reference to the criteria that should be applied in case of a merger or change in ownership of the pension agencies.</p>	<p><i>The guidelines envisage the requirements that apply when a pension entity is created, and does not envisage mergers or change in ownership situations.</i></p>	<p>Noted.</p>
	Section IV, powers and obligations of the licensing authority	<p>The principle of non-discrimination between pension agencies on the part of the regulators or supervisors must be</p>	<p><i>The “objectives” section says that “the guidelines promote effective and impartial</i></p>	<p>Noted.</p>

	<p>Section IV.2, Clarity of licensing application procedure</p>	<p>established. This means that all pension agencies of a similar type must be subject to the same regulations and licensing requirements on the part of the supervising agency, whatever their ownership structure. It is particularly important that public fund management agencies that compete with private fund managers should not have legal or regulatory privileges.</p> <p>It must be established that the authority that grants the licence must ensure that the license application resolution processes do not extend for terms that affect the viability of the respective project.</p>	<p><i>licensing requirements and procedures”.</i> <i>Furthermore, guideline 15.4 on the power to reject, modify or withdraw licences, says that “adequate protections to preclude arbitrary action on the part of the licensing authority should be in place”.</i></p> <p><i>This concern is covered by the first indent of guideline 11.1.</i></p>	<p>Noted.</p>
	<p>Section IV</p>	<p>A subsection must be included which establishes the principle of confidentiality of all the information that is not of a public nature that the licensing authority receives during the application resolution process.</p>	<p><i>A new bullet point under guideline 11.1 now reads: “ - Legal provisions require that the staff of the licensing authority observe the appropriate standards of confidentiality with regard to the information gathered as part of the licensing application process.”</i></p>	<p>Guidelines modified.</p>
	<p>III.5, Investment policy</p>	<p>It would be convenient to introduce some reflection on the limitation of fund</p>	<p><i>The guidelines lay down the requirement to</i></p>	<p>Noted.</p>

		<p>investment in stocks issued by the employing entity itself. Such measures tend to avoid a company's financial crisis affecting worker's employment, as well as their future pensions, as a result of the drop in the current market value of the company's stocks and consequently of the funds' conversion value. This measure is included in Article 18.1 f) of the Spanish Directive 2003/41, relative to the activities and the supervision of employment pension funds, whereby the investment in the promoting company cannot exceed 5% of the portfolio as a whole and when the promoting company belongs to an investment group, the investment in the companies belonging to the same group as the promoting company cannot exceed 10% of the portfolio.</p> <p>It would be convenient to add the underlined text below: "Member of the governing bodies of the pension entity should be subject to fit and proper requirements, <u>including such relative to the company honor and professionalism and the knowledge and experience required for compliance of their functions.</u>"</p> <p>It would be convenient to add the underlined text below: (iii) the vehicles to</p>	<p><i>submit a statement of investment policy, but do not aim to specify what the content of the investment policy should be. It is up to the country itself to lay down investment rules for pension entities.</i></p> <p><i>The underlined phrase would be included in the term "fit and proper".</i></p> <p><i>The phrase now reads: "iii) the vehicles to be used</i></p>	<p>Noted.</p> <p>Guidelines modified.</p>
	<p>III.7.2, governance</p> <p>Annex, section 2, Governing documents</p>			

		<p>be used to ensure the legal separation of the pension plan/fund assets from the pension fund management company, <u>as well as the other plans/funds managed by it.</u>"</p>	<p><i>to ensure the legal separation of the pension plan/fund assets from the pension fund management company, as well as the other plans/funds managed by it."</i></p>	
<p>Association of Super-annuation Funds of Australia (ASFA)</p>	<p>Guideline 7.2, governance</p>	<p>In ASFA's Policy Principle 9.7 ("Licence requirements, including the fit and proper test, must not undermine the representative trustee structure"), the reference to "representative trustee structure" is a reference to our requirement for member representatives. Often in Australia these individuals are either appointed by trade unions or elected directly by members. This has been a successful innovation in Australia and has brought about a robust governance structure within those funds. The Australian experience with licensing is that licensing requirements should not undermine such practice by expecting trustees to possess financial or other expertise prior to appointment.</p>	<p><i>The reference to "fit and proper requirements" is a broad term and may not only refer to the requirement to possess financial or other expertise prior to appointment.</i></p>	<p>Noted.</p>
	<p>General</p>	<p>In respect to regulatory coherence, this is been a challenge in Australia with the "twin peaks" regulatory approach where prudential regulation and disclosure / consumer protection regulation are split between two regulators. The situation has been improving in recent years</p>	<p>Paragraph 7 of the guidelines ("objective") states that <i>the "guidelines envisage a licensing process that is consistent with principles set out by other financial regulatory and supervisory bodies</i></p>	<p>Noted.</p>

	Guideline III.6, capital requirements	<p>but not without considerable effort from all the stakeholders.</p> <p>Coherence, both within jurisdictions and between jurisdictions, is to be encouraged where possible.</p> <p>ASFA supports public offer funds having the ability to meet their capital requirements by way of an approved guarantee. ASFA does not support any capital requirement for non-public offer funds, nor the use of the adequate resources standard to impose de facto capital requirements.</p>	<p><i>in order to ensure regulatory coherence.”</i></p> <p><i>Please refer to the comment from the Corporate Super Association from Australia above.</i></p>	Noted.
USA Delegation WPPP	Definitions	<p>The USA Delegation requested the following clarifications to the definitions:</p> <p>Regarding the sentence that begins "An insurance company or other ...", it is assumed that this sentence means that insurance companies are generally not pension entities, but may be in specific circumstances. For example, an insurer which agrees to issue fixed annuities in connection with an occupational pension plan would not thereby be a pension entity, but, for example, an insurer which agrees to issue an annuity in connection with an occupational pension plan where the amount payable is by reference to a segregated pool of pension assets for which the issuer is responsible would thereby be a pension entity.</p>	The definitions should be interpreted as outlined	

		<p>In the last sentence of the definition, what is the meaning of the words "or has directly contracted a management company to handle the corporate pension"? I assume that, for example, this does not make an employer a pension entity in what is the most common US case where a pension plan is funded through a trust and the investment of trust assets is directed by an independent investment management company merely because the investment management company performs its services pursuant to a contract directly with the employer.</p>		
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