



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

OECD-IOPS GUIDELINES ON THE LICENSING OF PENSION ENTITIES

Recommendation of the Council

These guidelines, prepared by the OECD Insurance and Private Pensions Committee and Working Party on Private Pensions and the International Organisation of Pension Supervisors, were adopted by the OECD Council on 28 March 2008.

RECOMMENDATION OF THE COUNCIL ON OECD-IOPS GUIDELINES ON THE LICENSING OF PENSION ENTITIES

THE COUNCIL,

Having regard to Articles 1, 3 and 5(b) of the Convention on the Organisation for Economic Cooperation and Development of 14 December 1960;

Having regard to the Recommendation of the Council on Core Principles of Occupational Pension Regulation, to which the present Recommendation is complementary;

Considering that the licensing of pension entities is an integral part of the regulatory and supervisory framework for private pension systems;

Considering that regulations should encourage effective and impartial licensing requirements and procedures, thus strengthening confidence in the private pension system and its supervisory system and promoting the development of a pension market;

Considering that the Guidelines set out below are based on previous work carried out in this area by the Insurance and Private Pensions Committee and its Working Party on Private Pensions as well as the International Organisation of Pension Supervisors (IOPS) and are complemented by annotations, which may be reviewed as necessary from time to time by the Insurance and Private Pensions Committee jointly with the IOPS;

Considering that the Guidelines address regulatory and supervisory concerns that arise in the establishment of pension entities;

Noting that these Guidelines are intended to apply to occupational, private pension plans;

Noting that these Guidelines may also apply to funded, non-occupational plans and funds managed by pension entities;

Recognising that evolutions in the structure and operation of private pension plans may call for further updating and adaptation of these Guidelines;

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

I. RECOMMENDS that Member Countries invite public authorities to ensure effective and impartial licensing requirements and procedures related to pension entities, having regard to the contents of the Appendix to this Recommendation, of which it forms an integral part.

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

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

IV. INSTRUCTS the Insurance and Private Pensions Committee and its Working Party on Private Pensions to exchange information on progress and experiences with respect to the implementation of this Recommendation, to review that information and to report to the Council not later than three years following its adoption and, as appropriate, thereafter.

GUIDELINES ON THE LICENSING OF PENSION ENTITIES

I. Definitions

Licence – The authorisation of a pension entity to operate and/or to have the right to tax benefits. The licensing requirements may be applied either as part of the licensing process or through legislation, compliance with which is subject to ongoing supervision.

Licensing – 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.

Pension entity – The independent legal entity with legal capacity that has ultimate legal responsibility for the pension fund. It can take the form of an independent legal entity acting as a pension trustee in the case of pension funds established as trusts, a pension fund management company, or the pension fund itself where the pension fund has legal capacity (for example foundations or mutual associations). An insurance company or other financial institution may be considered a pension entity insofar as it is legally responsible for a pension fund and otherwise fits the description in the first sentence of this definition. The term “pension entity” does not refer to plan participants, the plan itself, or the employer (unless the employer is also the pension fund management company or has directly contracted a management company to handle the corporate pension).

Pension fund – A legally separated pool of assets 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 trust, an independent entity with legal capacity (such as a foundation or mutual association) 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. The term “pension fund” does not refer to individual pension contracts.

Pension fund management company – A type of financial institution in the form of a company whose exclusive activity is the management of legally separated pension funds. In some countries, these entities only manage pension fund assets. In others, they may also have the power to pay out benefits.

Pension plan – 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 trust – A legal scheme whereby named people (“trustees”) hold property on behalf of other people (“beneficiaries”). More specifically in the field of pensions, the trustees, which can be a board of people or a corporate trustee, act in the exclusive interest of the pension members and other beneficiaries.

Registration – The inclusion of information regarding the pension plan or entity in a register maintained by the regulatory and/or supervisory authority. In some countries, registration is the sole or main component of the authorisation process, other than any assessment carried out for qualification for beneficial tax treatment.

II. Introduction

Objective

1. The guidelines promote effective and impartial licensing requirements and procedures, thus strengthening confidence in the pension system and its supervisory system and promoting the development of a pension market, while avoiding the creation of inappropriate barriers to market access.
2. The guidelines also envisage a licensing process that is consistent with principles set out by other financial regulatory and supervisory bodies in order to ensure regulatory coherence.
3. The guidelines promote the objective of a licensing and supervision regime to establish and maintain a robust system of pension fund management by requiring applicant pension entities to demonstrate they have in place the policies and procedures that are consistent with a system that seeks to ensure that benefits are delivered to plan members as provided under the terms of the plan and consistent with the pension laws of the country.
4. The guidelines support and complement the powers of continuous supervision of pension plans and pension entities by the supervisor and envisage that the criteria for issuing licences be consistent with and support those applied in ongoing supervision. In this way, the licensing process serves also as a regulatory tool that ensures pension entities meet ongoing minimum criteria from the point at which they are licensed.
5. The guidelines are complemented by other OECD and IOPS pension regulatory and supervisory guidelines, which supplement further some of the requirements set out in these guidelines.

Scope of application

6. These guidelines are intended to apply to occupational, privately managed pension entities, that is, to those that manage plans whose membership depends on an employment relationship – regardless of whether they are voluntary or mandatory on the part of employers or employees and regardless of whether the plans serve as the primary or supplementary means of providing retirement income¹.
7. Other pension entities are not specifically addressed by these guidelines, but the guidelines can nonetheless be applied to pension entities that manage personal pension plans. Similarly, these guidelines may also be valuable for pension entities in the public sector.
8. These guidelines set out a full licensing process for pension entities. The specific application of the guidelines in each country depends on the framework of safety mechanisms available in that country, the way each country's pension system and labour policies work and the nature of ongoing supervision.
9. In some countries, where a full licensing regime as described in these guidelines is not applied to the start of operation of a pension entity, licensing may be restricted only to the authorisation given for purposes of beneficial tax treatment. Other than that, the establishment of a pension entity may require only the submission of certain documents to the relevant authority and the registration of the pension entity and/or pension plan. As such, the registration of pension entities and/or plans does not require the supervisor to conduct an approval process with respect to these guidelines. This alternative to a full

¹ In EU countries, these Guidelines may not apply to those occupational, private pension entities and pension plans which fall outside the scope of the 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 (Article 2 of the Directive).

licensing process as defined in these guidelines may be deemed appropriate given the country's general legal system, the existing oversight of financial institutions involved in pension plan/fund management and the goal of facilitating the establishment of pension plans in the country. In countries applying this approach, it is critical that a well-developed and effective ongoing legal regime be in place (including remedies for wrongdoing by pension entities) in order to promote a similar level of protection of pension funds and/or plans as the one that can be achieved through the implementation of the advance approval standards in these guidelines.

10. Similarly, the requirements for good governance that are conditions of licensing need to be established in these alternative licensing approaches by means of legislation and guidance that place duties on those charged with running the pension entities. In particular, the legislation should require pension entities to have similar controls and documentation in place as would be required for licensing purposes in a licensing regime, albeit that registration need not be contingent on the provision of such information by the pension entity. The legislation should also permit affected members to inquire and/or complain about actions or decisions that adversely affect them, and the supervisory authority to investigate breaches of those requirements that would apply in a licensing regime. A critical foundation to this is that the legal system be sufficiently developed so that imposition of those requirements by legislation is reasonably expected to be effective at producing general compliance.

11. When implementing these guidelines, consideration should be given to the situation where a pension entity from one country, where it has duly been licensed, establishes itself in another country and benefits from recognition in the host country of the licence obtained in the home country.²

12. To the extent that financial institutions are capacitated to perform the functions of pension fund administration and management, the licensing process should be limited to the verification of those requirements that have not already been covered by the financial institution's other supervisor(s). Examples of matters that may only apply to the extent that they have not already been covered by a financial institution's other supervisor(s) might be those relating to capital, governance and governing documents, and business planning at guidelines 6.1, 7.2 and 8.1 and paragraph 7 of the Annotations.

13. To the extent that an applicant for a licence has not yet commenced operating, some specific requirements may not be in place at the point of application for a licence. Examples may include risk control and internal reporting and audit mechanisms, and statements of investment policy listed at guidelines 3.1, 5.1 and 8.1 (vi). In such cases, preparations to establish the relevant procedures or policies should be evidenced and capable of review by the licensing authority.

III. Licensing requirements

1. Legal provisions on licensing

1.1 Legal provisions are in place requiring the licensing of pension entities (and where relevant, pension plans) by the relevant authorities.

1.2 Legal provisions are in place regarding the type of pension plans and/or pension funds that can be established and the legal form of pension entities.

² For example, the mutual recognition arrangements that are in place in the EU.

2. Governing documents

2.1 Pension plans or/and pension entities should have formal, written charters or documents describing the plan's/entity's objectives and the plan's parameters (such as types of contributions and benefits), its governance structure and outsourcing or third party service provisions, and the rights of members and other beneficiaries.

3. Risk control, reporting and auditing mechanisms

3.1 Pension entities should have adequate risk control mechanisms in place to address investment, operational and governance risks, as well as internal reporting and auditing mechanisms.

3.2 If they manage more than one pension plan or fund, pension entities should be required to maintain separate accounts and records for each of the pension funds, or where relevant, each of the pension plans that they manage.

4. Funding policy

4.1 Pension entities that offer defined benefit (DB) and hybrid/mixed plans should have a funding policy that specifies the sources of funding, the actuarial method to be used, and the mechanisms for fulfilling legal funding requirements.

4.2 Where a pension entity manages assets for different pension funds or plans, separate funding policies and methods should be prepared for each pension fund or, where relevant, each pension plan.

5. Investment policy

5.1 Pension entities should prepare a statement of investment policy.

5.2 Where a pension entity manages different pension plans or funds, separate statements of investment policy should be prepared for each pension fund or, where relevant, each pension plan.

6. Capital requirements

6.1 At least where directly exposed to financial and demographic risks, pension entities should be required to hold a minimum amount of free, uncommitted starting capital or otherwise have access to adequate financial resources. The amount should be dependent on the risks to be covered. The required minimum capital should not be used to cover set-up costs. In order to ensure the guarantee function of the minimum capital, legislation could require the setting aside of appropriate assets. In some jurisdictions, capital requirements may also be satisfied by the purchase of insurance providing the same level of protection to the plan members and plan beneficiaries.

7. Governance

7.1 Pension entities should have a governing body that is ultimately responsible for the entity and a code of conduct for the members of its governing bodies and staff. The code of conduct may be laid out in specific legislation applying to pension entities.

7.2 Members of the governing bodies of the pension entity should be subject to fit and proper requirements.

7.3 Pension entities should be required to keep a functional separation between those staff responsible for investments and those responsible for settlement and bookkeeping.

8. Business plan

8.1 Pension entities should create a business plan which should at least include (i) a list of the plans/funds that the pension entity will manage; (ii) the types of obligations that the pension entity proposes to incur (e.g. return or benefit guarantees), if any; (iii) the estimated setting-up costs and the financial means to be used for this purpose; (iv) the projected development of the fund/plan; (v) where relevant, the means for fulfilling any capital requirements; and (vi) details regarding the adequate risk control reporting and auditing mechanisms, and a sound investment policy that are in place or to be established at start-up.

9. Licence withdrawal

9.1 The legal provisions require the withdrawal of a licence from a pension entity in certain circumstances.

9.2 Legal provisions grant the pension entity whose licence has involuntarily been withdrawn the possibility to appeal the decision and have it reviewed.

IV. Powers and obligations of the licensing authority

10. Role of the licensing authority in supervisory matters

10.1 The legal provisions should endorse the role of the licensing authority in the wider supervisory and regulatory system and, where there are separate licensing and supervisory authorities, allow for the supervisory authority to be consulted on each specific licence application.

11. Clarity of licensing application procedure

11.1 The legal provisions should promote the clear setting out of the application process, including:

- information about the obligations of the licensing authority, for example the timeframe in which it must decide on an application;
- procedures for the licensing authority to seek further information from the applicant;
- the actions that the licensing authority will take to confirm the information received as part of the licence application;
- the requirement 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 (with the exception of information which may have to be provided to other public authorities).

12. Submission of documents

12.1 The licensing authority should have the power to require the submission of the governing documents and other documents necessary for assessing the entity's compliance with the licensing requirements described in section III.

13. Assessment of the licence application

13.1 The licensing authority should have the power to:

- examine the proposed legal, managerial and ownership structures of the applicant and its wider group (if any);
- evaluate proposed directors and other members of the governing bodies as to their expertise and integrity, their skills and experience and their judicial records;
- review the proposed strategic and operating plans of the applicant, including:
 - determining that an appropriate system of corporate governance, risk management and internal controls and a code of conduct will be in place, and
 - considering whether the operational structure of the applicant reflects the scope and degree of sophistication of the proposed activities of the applicant;
- review the policies and procedures that the applicant has/intends to put in place to ensure ongoing compliance with its obligations under relevant legislation and the conditions of the licence and the risk management control framework established by the applicant.
- review financial projections for the applicant and assess its financial strength and other resources;
- where applicable, identify and determine the suitability of major shareholders, including the ultimate beneficial owners, and others that may exert significant influence on the applicant, as well as assess the transparency of the ownership structure and the sources of initial capital (if required).

13.2 The licensing authority should, under specific circumstances, have flexibility in applying legislative requirements so that the type, scale and complexity of an applicant's activities may be taken into account in the assessment as to whether and how licensing criteria are met. The circumstances in which the licensing authority may apply legislative requirements flexibly must be clearly stated in legislation and protection against arbitrary action on the part of the licensing authority must be guaranteed.

13.3 The licensing authority may have the power to impose conditions on the licence of the applicant, and to subsequently vary or withdraw those conditions. The circumstances in which conditions can be imposed, withdrawn or modified must be clearly stated in legislation.

14. Guidance materials

14.1 The licensing and/or supervisory authority/authorities may provide guidance to applicants regarding their expectations as to how they may meet licensing criteria, so that better internal systems (such as risk management systems) result for the applicant.

14.2 The licensing authority should provide appropriate guidance to officers carrying out the licensing assessment.

15. Power to reject, modify or withdraw a licence

15.1 The licensing authority should have the power to reject an application if the criteria are not fulfilled or if the information provided is inadequate, so that the assessment process supports the objectives of the licensing regime. Any rejection should include identification of the specific criteria on which the rejection is based.

15.2 The licensing authority should have the power to make adjustments to a licence already granted and to withdraw a licence when the conditions for the licence are no longer fulfilled. These powers must be clearly stated in legislation.

15.3 The licensing authority should have a review mechanism in place to examine the demands of entities whose licence has been modified or withdrawn.

15.4 Decisions of the licensing authority should be open to administrative and judicial appeal. Adequate protections to preclude arbitrary action on the part of the licensing authority should be in place.

ANNOTATIONS TO THE GUIDELINES ON THE LICENSING OF PENSION ENTITIES

III. Licensing requirements

1. Legal provisions on licensing

1. In the interest of clarity, legal certainty and the objectives set out in the introduction to these guidelines, licensing rules are laid down in legislation. The legal provisions set out the framework for the licensing process and indicate the powers, procedures, duties and responsibilities of all parties involved. Legal provisions usually affect pension entities, but in some jurisdictions also apply to pension plans, especially where each plan is linked to a single pension entity.

2. Legal provisions indicate the type of pension plans or funds that can be established (for example defined benefit (DB), mixed, hybrid or defined contribution (DC) plans) and the legal form of pension entities (for example trustee, foundation, non-profit association, joint-stock corporation, limited liability company).

2. Governing documents

3. The pension entity's or pension plan's governing documents can be the charter, articles of incorporation, articles of association, trust deed, the entity's statutes or the plan rules, depending on the relevant legal provisions and the legal form of the pension entity.

4. The objective of the pension entity and the pension plan is to be a secure source of retirement income.

5. The governing documents specify whether or not any return or benefit guarantees or promises are conditional on the performance of the fund or plan. Where there are unconditional promises, it is essential that the governing documents specify whether the sponsoring employer and/or the plan members may be required to increase their contributions in order to restore the financial balance of the fund or plan.

6. It is important that the governing documents also set out the (i) legal form of the pension entity, its capital structure and purpose; (ii) the contributions and benefits (iii) the vehicles to be used to ensure the legal separation of the pension plan/fund assets from the pension fund management company as well as the other plans and /or funds managed by it; (iv) the organisational structure; (v) the governance structure and the roles and responsibilities of the governing body or bodies; and (vi) any affiliation contracts through which the pension entity subjects itself to the management of another company.

3. Risk control, reporting and auditing mechanisms

7. It is essential for adequate supervision, transparency and sound corporate conduct that arrangements for a periodic audit and reporting duties for the auditor, actuary (DB plans) and the governing bodies are in place.

8. Disclosure rules increase the transparency of the actions of the governing bodies, as does the establishment of organisational and administrative procedures. The reasons mentioned directly above also

make it desirable to have separate accounts for each pension fund, or where relevant, each pension plan managed by the pension entity.

9. Risk management procedures contribute to sound corporate practice and help to establish adequate risk measurement and management systems. These procedures include mechanisms to identify and address conflicts of interest and operational risks, such as those linked to technological failure. Specific tools are also required for the assessment and management of investment risks and other risks related to the pension fund or, where applicable, pension plan.

4. Funding policy

10. The funding policy sets out in detail the strategy that the pension entity follows to comply with the required funding levels set by the regulator. In the case of DB plans and hybrid/mixed plans, the funding policy is based on approved actuarial methods and techniques.

11. In the interest of transparency, it is essential that there be identified funding policies and methods for each pension fund, or where relevant, each pension plan administered by the pension entity

5. Investment policy

12. The investment policy establishes the financial objectives of the fund or the plan. It also sets out the investment principles, the strategic asset allocation, the performance and risk objectives, the process for selecting asset managers as well as the mechanisms for monitoring and reviewing performance and changing the asset allocation and asset managers.

13. Submission of the investment policy as part of the licence application permits the licensing authority to assess whether the investment policy is adequate and whether it is in line with the fund's objectives and liabilities and the relevant legislative requirements, and facilitates effective post-licensing supervision of the pension entity's investment activities. It is particularly important that the investment policy is consistent with the financial liabilities of the pension plan or fund.

6. Capital requirements

14. In certain jurisdictions, the pension entity must have a minimum amount of basic capital in order to be licensed. Where this is the case, the minimum amount of starting capital that is required depends on the types of risks managed, the extent to which the pension entity bears any liability for any return/benefit guarantees or for mismanagement, and the size of the funds managed. In these jurisdictions, the licensing authority must receive proof that the capital requirements have been fulfilled (to the extent that this is not addressed by the financial institution's other supervisor(s)).

7. Governance

15. Pension entities are normally required to submit information setting out the pension entity's governance structure, such as the names, CVs and contact details of the members of the governing body. This information may also include copies of professional certificates and a declaration confirming that they have not been convicted of a financial or property-related crime and that no criminal proceedings are pending against them. The requested information may be contained in any of the following documents, which the pension entity will usually be asked to submit:

- the entity's or, where relevant, the plan's charters or documents;

- a code of conduct for the members of the governing body and other supporting staff that, among other issues, addresses conflicts of interest and prohibited appointments;
- any outsourcing (third party) service contract;
- information regarding risk management, internal reporting and auditing mechanisms.

16. For supervisory purposes and in the interest of transparency, the pension entity may also be required to submit one or more of the following: the contact details of the plan sponsor(s), the plan/fund actuary, the independent auditor and the custodian.

17. In some jurisdictions, corporate governance requirements may take the form of formal restrictions under which the manager of the pension plan or fund is prohibited from exercising its power over the plan or fund to direct investments towards related parties. More generally these requirements can be reflected in prohibitions against a person who is in any manner related to the pension entity from being involved in any transaction involving assets of the plan or fund.

18. A separation between the staff responsible for investments and those responsible for settlement and bookkeeping is desirable in order to avoid conflicts of interest, to enhance transparency and to protect the interests of the pension entity members and beneficiaries. This separation could be reflected in the pension entity's organizational structure.

19. Where outsourcing arrangements are made clear during the licensing procedure, it will be clear to all parties involved who carries out what activity. Information on the outsourcing arrangements permits the authority to assess whether the applicant does not overstep the limits to outsourcing, does not breach its duty to monitor and oversee the external service providers and does not absolve itself of its responsibility for the outsourced activities.

8. Business plan

20. The business plan describes the proposed activity of the pension entity in the first years after its establishment. The projected development of activities includes information on the contributions levels, assets under management, benefit payments, and operational expenses for each of the funds or plans that it will manage. Information on parameters such as the expected number of plan members, information about the target group (type of income group, type of occupation, etc.) and the projected pay-back period of set-up costs could also be included in the documents regarding the projected development of the plan/fund.

9. Licence withdrawal

21. It is in the interest of legal certainty that the law sets out the circumstances under which a licence can be or is considered withdrawn. This is, for example, the case in any of the following situations: (i) whenever the entity no longer meets the licensing requirements; (ii) whenever it seriously infringes the law; (iii) when the pension entity expressly renounces the licence; (iv) if the pension entity does not make use of the licence within a certain period of time; (v) when the pension entity ceases to operate; or (vi) when the licence was obtained by providing false or incorrect information. In jurisdictions where a licence can be withdrawn if the pension fund does not make use of the licence within a certain period, the law must clearly indicate that period.

22. Justice requires that statutory redress mechanisms be available to those pension entities whose licence has involuntarily been withdrawn.

IV. Powers and obligations of the licensing authority

10. Role of the licensing authority in supervisory matters

23. This guideline underlines the importance of the link between the licensing of pension entities and their continuous supervision, as both are essential to achieving the objectives set out in the introduction to these guidelines. In most cases, the licensing authority and the supervisor are one and the same entity, and consistency between the licensing requirements and the rules and aims of continuous supervision is thus ensured. Where there are two or more separate entities, however, consultation of the supervisor on licence applications contributes to consistency between licensing practices and continuous supervision.

11. Clarity of licensing application procedure

24. In the interest of legal certainty for applicants and licensing authorities, and in order to ensure an expedient licensing procedure, it is important that the law clearly sets out the different steps in the licensing procedure and the powers of the licensing authority. These powers could include a review of the documents and on-site inspection either before or after licensing. Equally, the duties and responsibilities of the licensing authority and the applicant must be described.

25. The steps of the application process that should be clearly described include, first of all, the information and documents which the licensing authority requests from the applicant. Other steps that should be set out are whether and when the licensing authority can request additional information or request rectification of deficient applications and the time-limit within which the applicant should comply with such requests. It is also important for the applicant to know what types of decisions the licensing authority can take, which documents will be reviewed, whether on-site inspection will take place, whether and to what extent the licensing authority can carry out checks with other public authorities for the purpose of the licence application. Finally, the applicant must be aware how the decision of the licensing authority will be notified and understand the process for appealing the decision if the applicant feels aggrieved by it.

12. Submission of documents

26. In order for the authority to assess whether the pension entity meets the licensing requirements and in order to facilitate on-going supervision, the pension entity may be asked to submit written information on the requirements set out in section III. This information includes the governing documents, documents proving that the pension entity meets the capital requirements (if any), the governance structure, risk control mechanisms and reporting and auditing mechanisms. Auditing mechanisms, if not required in the before obtaining approval to operate, must be developed afterwards. Other material to be submitted includes documents setting out the funding policy, the investment policy, capital requirements (if any) and the business plan.

13. Assessment of the licence application

27. As the scope of licensing assessments varies, it is important that the licensing authority has the power to assess various aspects of the pension entity. Those powers should be clearly set out in legislation. The intensity of the licence assessment may vary according to the size and complexity of the pension entity's operations and the scope of any such powers should not only be clearly delineated in relevant legislation, but any such power should be required to be exercised treating all parties the same way and consistent with the rule of law, and which thus not only follow processes which are transparent, but also follow substantive practices which are pre-established and transparent. The practices in the previous sentence also apply to the annotations to guideline IV.15 ("Power to reject, modify or withdraw a licence").

28. The licensing authority may need to assess the expertise and integrity of the pension entity's directors and senior management by means of a fit and proper test, including the potential for conflicts of interest, assessing the skills and experience in relevant financial operations commensurate with the intended activities of the applicant, and seeking confirmation that there is no record of relevant criminal activities or adverse regulatory judgments that make a person unfit to uphold important positions in the applicant pension entity.

29. The licensing authority may, where applicable, need to assess the suitability of the pension entity's shareholders in similar fashion to the way it assesses the pension entity's directors and senior management.

30. The licensing authority will normally also have the power to carry out an assessment of the financial strength of the applicant (including whether any mandatory capital requirements are met), the adequacy of the funding policy and actuarial techniques and methods, its operation structure and governance, to support the proposed strategic plan.

31. The assessment may also involve an examination of mechanisms related to the prevention and detection of criminal activities by anyone within the pension entity, as well as mechanisms related to the oversight of proposed outsourced functions.

32. In jurisdictions where the licensing entity may impose conditions on the licence of the applicant, the powers and limitations to impose these conditions must be clearly set out in legislation in order to ensure transparency, fairness and legal certainty in licensing procedures. Conditions can be imposed, modified or withdrawn either following a request by the licensee or unilaterally by the licensing authority (if necessary in conjunction with the supervisory authority where there is a separate supervisor).

14. Guidance materials

33. The licensing application process in many countries involves the submission and analysis of complex information. It is therefore beneficial to make guidance materials available to both the licence assessors working for the licensing authority and to the applicants. They reduce the amount of time that is required to assess a licence application and facilitate the assessors' tasks. Useful guidance materials for assessors are checklists and manuals, or a set of procedures for off-site or on-site inspections.

34. Equally, the licensing process can be made easier for the applicant if there are guidance materials available to applicants. Useful materials would include a checklist of all requirements that the applicant has to meet, application forms and explanation guides accompanying the application forms, as well as explanations on how applicants will satisfy the licensing criteria.

15. Power to reject, modify or withdraw a licence

35. A licensing system is only effective if the licensing authority has the power to reject the licence application when the applicant does not satisfy the licensing requirements. It is important that the licensing authority does not have unchecked discretion when making the decision, but be required to rely on whether the legislative requirements have been fulfilled. The power to reject licence applications needs to be exercised pursuant to transparent practices, which are disclosed in advance to the entity seeking licensing. Transparency is also required in the rejection decision and practices need to be consistent with the rule of law. The scope of discretion that may be exercised by the licensing authority should be precluded or limited to the extent possible.

36. In order to ensure a transparent and fair process, it is also essential that the licensing authority informs the applicant of the precise reasons that led to the decision to reject the licence application.

37. In licensing systems where the licensing authority has the power to impose conditions on the operating licence, it normally has the power to modify those conditions should the situation require this.

38. The licensing authority also has the power to withdraw the licence, but only in specific circumstances to be clearly identified in the legislative requirements (see Guideline 9 on licence withdrawal).

39. The licensing authority also needs to inform the pension entity in a clear and timely manner of the precise reasons that led to the decision to withdraw the licence.

40. Pension entities whose licence has been withdrawn or modified should be able to have the withdrawal or modification decision reconsidered (administrative appeal) or examined by a court of law (judicial appeal). The review mechanism should be transparent and include due process protections in modification and especially in withdrawal of authorisation or loss of tax benefits. Care should be taken that such withdrawal or loss does not occur prior to the completion of the review mechanism, except in cases in which delay would result in irremediable harm, particularly to plan members. The review mechanisms should avoid unnecessarily costly or burdensome requirements or procedures (again, conditional on adequate protections for plan members).

41. The possibility to launch an administrative or judicial appeal encourages licensing authorities to make decisions that withstand judicial scrutiny, while on the other hand giving the opportunity to pension entities to express their grievances and ensure decisions are fair.