INTERNATIONAL ORGANISATION OF PENSION SUPERVISORS

Good Practices on the Role of Pension Supervisory Authorities in Consumer Protection related to private pension systems

Version for public consultation

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This document contains the final version of the IOPS Good Practices.

It is expected that the Good Practices will benefit from further comments by the OECD Working Party on Private Pensions, the G20/OECD Task Force on Financial Consumer Protection, the OECD/International Network on Financial Education (INFE) and other shareholders as a part of a public consultation.

Preamble

1. In 2011, the G20 High-Level Principles on Financial Consumer Protection were developed by the G20/OECD Task Force on Financial Consumer Protection[1]. In addition, a set of Effective Approaches was developed to stimulate and support the implementation of the G20 High-Level Principles (HLPs). The High-Level Principles and Effective Approaches cover matters related to consumer protection in all parts of the financial sector. Reflecting on the applicability of the Principles to different sectors, the G20/OECD Task Force on Financial Consumer Protection states that: *"… they do not address sector specific issues dealt with by the relevant international organisations and the financial standard setters […]. Different kinds of transactions present different risk profiles. The principles may need to be adapted to specific national and sectoral contexts and should be reviewed periodically by relevant international bodies."*

2. The key objective of the International Organisation of Pension Supervisors is to achieve better supervision of private pension arrangements. Ensuring effective consumer protection of members and beneficiaries (hereafter *consumers*) in the field of private pensions is a critical component of a supervisory regime. Supervisory authorities play a major role in promoting and reinforcing consumer protection. This is increasingly recognised as one of the authorities' main objectives together with maintaining financial integrity and stability. The 2008 Global Financial Crisis seriously damaged the level of trust of consumers in the functioning of the financial system. Furthermore, the continued transformation of pension systems towards arrangements that require increasingly complex retirement savings decisions pose difficulties to consumers and call for further enhanced consumer protection measures. Such measures should adequately take into account the particularities of the different pension schemes.

[1] The Principles were endorsed by the G20 Leaders in November 2011 and adopted by the OECD Council as a Recommendation in July 2012, thereby expanding the coverage of the principles to include all OECD member countries, https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf

3. Based on its Project Report "The role of supervision related to consumer protection in private pension systems"[2], the IOPS has developed a set of Good Practices on supervisory activities in the area of pension consumer protection. These good practices should be read in conjunction with the IOPS Principles on Private Pension Supervision[3]. When elaborating these Good Practices, other existing standards and principles were considered to avoid duplication or overlap[4].

4. The proposed Good Practices focus on five of the G20 High Level Principles (HLP) and related Effective Approaches which are considered most relevant from the pension supervisory perspective: HLP 2: Role of Oversight Bodies; HLP 4: Disclosure and Transparency; HLP 5: Financial Education and Awareness; HLP 6: Responsible Business Conduct of Financial Services Providers and Authorised Agents and HLP 9: Complaints Handling and Redress.

5. Forms of private retirement provisions vary considerably among IOPS Members, with a large range of entities and pension services providers[5] involved. Although differences between the pension systems exist, the IOPS considered useful and appropriate to take a broad approach and concentrate on the matters related to consumer protection in private pensions in general. These Good Practices can be adopted and implemented in different pension systems and under different supervisory structures, albeit in different ways.

6. The adoption and implementation of these Good Practices should be tailored to the different roles and responsibilities of pension services providers, agents and intermediaries, employers, sponsors, trustees, asset managers, administrators, custodians, auditors, actuaries, advisors and other stakeholders in the pension system, taking into account their interaction and potential conflicts of interest.

7. It is recognised that achieving the objectives of these Good Practices in many cases means that the supervisors need to have a strong mandate given by legislators for performing these tasks. It is noted that in some jurisdictions legislation clearly sets out the main objectives of financial consumer protection in the area of private pensions and defines the respective responsibilities of Pension Supervisory Authorities. Setting out these objectives and defining responsibilities of Pension Supervisory Authorities takes into account the distinct features of private pensions as compared to other financial products, such as their social importance and risk characteristics. Where no sector-specific consumer protection rules exist, general consumer protection legislation could be adapted to include specific provisions in relation to private pensions. Legislators are encouraged to strengthen the roles and powers of Pension Supervisory Authorities in consumer protection where necessary and appropriate to achieve the objectives of these Good Practices.

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[2] IOPS Working Paper No. 27, www.iopsweb.org

[3] www.iopsweb.org

[4] OECD *Core Principles for Private Pension Regulation*, 2016, IAIS, *Insurance Core Principles*, 2015, IOSCO, *Objectives and Principles of Securities Regulation*, 2010, World Bank, *Good Practices for Financial Consumer Protection* (draft).

[5] Pension services provider – entity providing private pension products and services.

8. It is crucial that the objectives of these Good Practices are achieved and consumers' interests are protected effectively. Therefore, recognising the voluntary nature of these Good Practices, the word "*should"* needs to be interpreted as an encouragement for the pension supervisory authorities to voluntarily adopt and implement them.

I. Role of Pension Supervisory Authorities in Consumer Protection related to private pension systems

1. Regardless of the regulatory and supervisory structures adopted, Pension Supervisory Authorities should remain greatly involved in enhancing consumer protection. This is especially relevant in the systems where private pensions offer the main source of retirement income and also where individuals are confronted with a number of choices. Embedding a consumer protection mandate in the responsibilities of Pension Supervisory Authorities and assigning them with necessary powers or reinforcing their powers could be seen as a desirable development to enhance protection of consumers' interests and safeguard their confidence in private pension arrangements.

2. Where prudential supervision and business conduct supervision of pensions are carried out by different institutions, a sufficient level of information exchange and collaboration between them should be in place, supported as necessary by administrative arrangements such as Memoranda of Understanding (MoU). In jurisdictions where pension products are offered by different suppliers (e.g. insurers and pension providers) Pension Supervisory Authorities should contribute to achieving a comparable level of consumer protection for example, through cooperation with other authorities.

3. Pension Supervisory Authorities should maintain consultations with the pension industry and consumer associations on how to address key pension consumer protection issues and foster compliance.

4. In cases where pension services providers operate in more than one jurisdiction, the relevant Pension Supervisory Authorities should liaise with each other to ensure that cross-border services providers/product suppliers are subject to supervision with respect to all activities so that customers of domestic and cross-border service providers/product suppliers are subject to a comparable level of protection.

5. Pension Supervisory Authorities should ensure, including through issuing guidance and standards, that pension services providers are aware of and duly comply with regulations and supervisory requirements in the area of consumer protection, thus applying a preventive rather than corrective supervisory approach.

6. Special attention by Pension Supervisory Authorities should be devoted to the review of pension products' design and their governance that may be supported by making rules, adoption of specific supervisory guidelines, or taking enforcement action. Pensions Supervisory Authorities should expect firms to design and maintain products that meet the needs of the intended target market. The Pension Supervisory Authority may be involved in approving, if relevant, or setting standards for pension products' design and their governing rules to ascertain that they comply with legal provisions and/or supervisory requirements and are in the best interests of consumers.

7. Pension Supervisory Authorities should place a focus on the governance and risk management practices of trustees (board of trustees) and managing directors (board of directors) of pension funds or schemes as a part of broader efforts to foster a consumer culture ensuring responsible and accountable actions of the senior management of financial services providers and trustees and holding them accountable for failures. Pension Supervisory Authorities should endeavour to impact and influence the longer term behaviour of pension services providers, putting interests and the fair treatment of consumers in the focus of the entities' corporate culture.

8. Pension Supervisory Authorities should have and effectively use their powers to ban the promotion, intermediation or distribution of pension products and services if they are fraudulent or which are incorrectly or misleadingly distributed.

9. Pension Supervisory Authorities should have the responsibility to ensure that consumers can easily verify, in particular on Authorities' web-sites, whether the pension services providers they are dealing with – or intend dealing with – and, where relevant, the products they are purchasing are duly authorised/registered and/or supervised by relevant competent authorities.

10. Pension Supervisory Authorities should publish in a timely manner on their website or via other communication channels, warnings against unlicensed/unregistered providers and against problematic, fraudulent or otherwise illegal products and activities.

11. Pension Supervisory Authorities should carefully monitor and assess the potential impact of FinTech innovation and the digitalisation of financial services for consumers of pension products and services, and may rely on proper internal and external expertise. Pension Supervisory Authorities should adapt their supervisory practices accordingly to ensure a level playing field between traditional and FinTech market players, their compliance with the duty of care, a high level of consumer protection regardless of whether pension products and services are offered through traditional or innovative channels and to avoid any forms of financial exclusion. Pension Supervisory Authorities should allow the establishment of businesses to bring innovative financial products and services to the market where – in the Authority's view – these products and services might benefit consumers.

12. The principles of risk-based supervision should be applied also in the field of consumer protection. In particular, Pension Supervisory Authorities should use their resources prioritising the activities that may be more effective in preventing or detecting misbehaviour of pension services providers and their agents that may have a significant impact on a large number of consumers.

II. Disclosure and Transparency

13. Pension Supervisory Authorities, in co-operation with other public authorities, where relevant, should require and monitor that the key pre-contractual information to prospective consumers (e.g. through key information documents, scheme information, product dashboards) is written in a simple manner to foster understanding of the provided information and that, where relevant, a standardised format is used to foster comparability.

The development of similar documents that facilitate the choice by members between various benefit pay-out options should be encouraged. Pension Supervisory Authorities may require suitable layering and presentation of the essential information about pension schemes and products.

14. Pension Supervisory Authorities should require and monitor the use of standardised pension benefit statements which provide consumers with both generic information about their pension plans and their individual pension accounts or accrued entitlements taking into account the specific nature of the pension scheme in a consolidated, simple and clear way. The use of paper or digital pension benefit statements should be considered.

15. Pension Supervisory Authorities should take into account the findings of behavioural economics when setting standards for disclosure by pension funds and pension services providers.

16. Inclusion of meaningful pension projection – preferably containing the pension income coming from both public and private pension schemes - in the pension benefit statements to indicate the possible ultimate pension benefit is encouraged. Pension Supervisory Authorities, in co-operation with other public authorities, where relevant, should seek to identify the best way and the format to convey pension projections to members and should ensure that clear rules for pension projections, are in place. Pension Supervisory Authorities or other regulatory bodies should be primarily responsible for the development and revision of the methodology and the assumptions on which the projections are calculated and provided to members. Provision of pension projections via online web-tools on Pension Supervisory Authorities' websites, mobile apps or other educational websites should be encouraged. Where projection tools are available on the Pension Supervisory Authority's web-site, it should make a proper disclaimer to point out that the aim of projections is to offer guidance, but it is not a promise. Where pension projections fall under the responsibility of pension services providers, the Pension Supervisory Authorities should set the methodology and assumptions for those projections or at least closely monitor the appropriateness of methodologies and assumptions chosen by the pension services providers, including proper disclosure.

17. Pension Supervisory Authorities should encourage a high level of transparency of costs deducted from members' contributions and assets, as well as promote disclosure of simple, standardised and comparable information on costs and charges levied by pension schemes/funds including information on transaction costs and administration charges.

18. Pension Supervisory Authorities should encourage disclosure of the information on investment returns, which should also contain multi-year comparisons, in particular where members bear investment risk or can take investment decisions. For investment returns awareness should be raised about the limitation of using past investment returns as a guide for future returns or using short-term yield experience as a guide for long term returns. Such simple, standardised and comparable information could also be made available on the Pension Supervisory Authorities' web-sites or other public electronic platforms.

Provision of simple, standardised and comparable information on pension products and services, including for the withdrawal phase[6], should also be encouraged.

19. Pension Supervisory Authorities should encourage the provision of default options and choices, including low cost schemes/products, where applicable.

20. Pension Supervisory Authorities should evaluate the effectiveness of the information provided to consumers, e.g. through consumer testing or the analysis of other relevant data, to verify whether consumers understand this information and whether it influences their decisions. Such practice may further guide actions by Pension Supervisory Authorities to improve the disclosed material, in particular regarding the use of consumer friendly language and presentation. Disclosure has, for example, been found to be most effective when it is targeted rather than generic. Pensions Supervisory Authorities should also be mindful of the limits of disclosure and the risk that too much information can complicate consumer decision making.

III. Financial Education and Awareness

21. Pension Supervisory Authorities should promote the enhancement of consumers' awareness and where they have such a mandate they should provide financial education programmes as part of a wider financial consumer protection policy and a national strategy for financial education (education strategy)[7]. Where Pension Supervisory Authorities do not have such a mandate, they should contribute to the elaboration of national strategies for financial education and related programmes and co-operate closely with public authorities and other stakeholders responsible for the provision of financial education on private pension matters.

22. Pension Supervisory Authorities should ensure that financial education programmes are tailored to the needs and capacities of a targeted audience and take into consideration particular types of private pension arrangements.

23. Pension Supervisory Authorities' websites should serve as one of the primary sources of information and guidance material to consumers, notwithstanding the responsibility of pension services providers to disclose key information on pension services and products to consumers. Where this function is the mandate of other public authorities (e.g. public guidance providers) the Pension Supervisory Authorities' should provide links to the relevant information source.

24. As part of their supervisory activities, where they have a mandate, Pension Supervisory Authorities should make continuous efforts to assess, refine and improve the impact of their financial education efforts.

[6] In some jurisdictions, Pension Supervisory Authorities introduced automated auction systems for the withdrawal phase to support consumers' choices over pay-out products (options).

[7] OECD/INFE High level Principles on National Strategies for Financial Education endorsed by G20 Leaders in 2012.

IV. Responsible Business Conduct of Pension Services Providers and Authorised Agents

25. Pension services providers and their agents should be licensed, registered or approved by a Pension Supervisory Authority or another competent Authority before they commence operations; pension products should be approved by or notified to the Pension Supervisory Authority before they are distributed.

26. As a part of the licensing/approval process, Pension Supervisory Authorities should examine and monitor on an ongoing basis whether trustees, board members, senior management of pension services providers and their agents, including pension advisers, comply with fit and proper requirements and whether the products and services they distribute and offer meet best interests of the consumers.

27. Where relevant, Pension Supervisory Authorities should be involved in creating rules, monitoring and supervising business conduct and/or general compliance with consumer protection rules, general governance rules, fiduciary rules and legal requirements by pension services providers, trustees and authorised agents. The monitoring should include whether pension services providers and trustees adhere to business conduct rules including fair treatment of consumers and whether they have in place measures to avoid or mitigate conflict of interest situations that could negatively impact the consumers' best interests.

28. Pension Supervisory Authorities should be involved in monitoring marketing strategies and sales practices, even in jurisdictions with a system of multiple financial sector supervisory agencies, where several supervisory authorities are given powers to conduct inspections and investigation into the marketing activities of their respective regulatees. The monitoring of marketing activities may include the power to ban certain advertisement campaigns using misleading, unclear or false information.

29. Pension Supervisory Authorities should monitor, and where appropriate, set the systems of personalised consumer warnings offered by pension services providers on pension products at different stages (pre-sale, point of sale, savings accumulation, decumulation and withdrawal) to allow the consumers to understand the types of risk and how these risks may affect them.

30. Pension Supervisory Authorities should use on-site and off-site supervisory techniques and may also apply other supervisory tools where possible such as mystery shopping to monitor business practices, including those involving new technologies for early detection of conduct issues. The application of these tools should help to identify any problems related to distribution that may be attributed to failures or weaknesses in internal governance, controls, insufficient knowledge and preparedness of pension services providers and their agents. The supervisory tools may include thematic reviews and inspections in order to identify market-wide business conduct issues.

31. Pension Supervisory Authorities should deploy effective enforcement tools to take corrective actions and/or actions with a deterrent effect in case of non-compliance of pension services providers and other entities with business conduct rules in all stages of their relationship with the consumers (pre-sale, point of sale, post-sale). These should include the ability to impose fines, suspend or prohibit activities, prosecute offences in

criminal courts, order injunctions or remove a product from the market. Such measures should be reviewed if necessary to adjust to the evolving market environment.

V. Complaints Handling and Redress

32. Pension Supervisory Authorities should, as far as prescribed by legislation, require pension services providers to have in place adequate complaints handling or internal dispute resolution mechanisms. Authorities should monitor the effectiveness of such mechanisms and should take appropriate supervisory action or impose sanctions where those mechanisms do not work properly. Pension Supervisory Authorities should also ensure that the pension services providers properly disclose on their web-sites information about the complaints procedure and, where possible and deemed necessary, relevant information on the nature of the complaints resolved.

33. Pension Supervisory Authorities should work together with other public authorities and liaise with stakeholders, in particular through awareness and financial education programmes, to empower consumers with the necessary levels of financial competence and knowledge to efficiently contest, where appropriate, the potential misbehaviour of pension services providers.

34. Pension Supervisory Authorities should make available information on the Authority's web-site about procedures and formalities on lodging complaints and the role of the Authority in handling complaints.

35. In some circumstances Pension Supervisory Authorities could be involved in handling complaints from consumers, especially in jurisdictions with a relatively limited number of pension funds/providers. In other circumstances this could be the role of the Pensions or Financial Ombudsman Service or alternative dispute resolution mechanisms. Pension Supervisory Authorities may have a role in handling complaints in particular when a consumer does not receive a satisfactory response from the pension company, sponsor or employer.

36. When involved in the complaint resolution process, Pension Supervisory Authorities should keep the complainants informed of the status of their complaint. Where compensation is available Pension Supervisory Authorities should provide information on the availability of and process for receiving compensation.

37. Pension Supervisory Authorities should collect and analyse on a regular basis statistics on complaints received from pension services providers, agents, intermediaries, trustees and other relevant stakeholders, and the nature of such complaints as a source for their risk-based business conduct and prudential supervision of pension services providers. Pension Supervisory Authorities should publish information on complaints and the way they were handled, in an aggregated way.

38. Issues identified through the analysis of consumers' complaints data may offer a useful source of information for Pension Supervisory Authorities when developing and adapting their consumer protection, financial education and supervision policies.