

# **THE INTERNATIONAL ORGANISATION OF PENSION SUPERVISORS (IOPS)**

**METHODOLOGY FOR REVIEW OF SUPERVISORY SYSTEMS USING  
IOPS PRINCIPLES**



## METHODOLOGY FOR REVIEW OF SUPERVISORY SYSTEMS USING IOPS PRINCIPLES

### Background to the Principles

The IOPS Principles of Private Pension Supervision (the Principles), approved in 2006, provide a set of globally accepted principles covering the organisation and activities of pension supervisors.

As the introduction to the Principles states, they are “designed to cover occupational and personal pension plans and pension funds. Pension supervision includes the monitoring of the activities of pension plans and funds to ensure that they remain within the requirements of the regulatory framework, essentially enforcing compliance with the rules<sup>1</sup>. Supervisory activities vary depending on the regulatory and legal environment, policy choices and a variety of other factors. In general they may be defined as influencing changes in pensions provision that contribute to the achievement of pension supervisory objectives, either through direct intervention or guidance.”

Pension Supervisory Authorities referred to in the Principles are defined as any entity, responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements in a country or in the subdivision of a country, whether invested with its own personality or not. The Principles are designed to cover the different types of supervisory structure (specialized, partially integrated and integrated) with specified exceptions<sup>2</sup>.

It should be noted that pension products also come in many different forms (defined contribution vs. defined benefit, mandatory vs. voluntary etc.) and the pension systems of countries also differ greatly, having been shaped by many factors (from the nature of the state, to the level of economic development, and the pension market structure). The IOPS has taken account of such diversity, and intends that its Principles identify good practice which can be applied universally.

### The assessment framework

This framework provides a structured means of assessing the extent to which a pensions supervisory authority complies with the letter and spirit of the Principles.

The Framework, below, translates the text supporting each Principle into the key considerations to be taken into account in making the assessment along with a series of specific questions. The considerations and questions have been informed as appropriate by IOPS work, currently in progress, on good governance in pension supervisory authorities, as well, where relevant, by the OECD/IOPS Guidelines on the licensing

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<sup>1</sup> Pension regulation encompasses all actions having the common objective of delineating the form, rules and standards that will define permissible organisations and activities, essentially establishing the parameters within which institutions will be required to function. Principles of pension regulation are provided by the OECD: ‘*Core Principles of Occupational Pension Regulation*’ – see <http://www.oecd.org/dataoecd/14/46/33619987.pdf> The IOPS Principles are drawn from and are compatible with the draft OECD Core Principle 6 on Supervision.

<sup>2</sup> Principles need not necessarily apply to those pension plans and pension fund in European Union countries which fall outside the scope of the Directive 2003/41/EC of the European Parliament and the Council of the 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (for example pensions funded via book reserves). The Principles do not cover insurance contracts as such (although they may be used in both occupational and personal pension plans). Principles for the supervision of insurance is provided by the International Association of Insurance Supervisors: ‘*Insurance Core Principles and Methodology*’ – see <http://www.iaisweb.org/358coreprinciplesmethodologyoct03revised.pdf>

of pension entities and the IOPS Working Paper on the implementation of risk-based supervision<sup>3</sup>. It also indicates the types of evidence that may help to answer the questions. For each Principle, there is a box for an overall assessment, along with space for supporting comments, and a box for suggested recommendations to improve compliance.

The evidence to support the reviewer's assessment should be drawn from relevant legislation and publications by the supervisor, along with the available results of other external assessments undertaken in recent years (e.g. WPPP and FSAP). The supervisor should be asked to provide unpublished documents that fill in gaps in the published material or provide material evidence of what the supervisor has done or achieved. The reviewer should speak to senior staff of the supervisor(s) and, if practicable, representatives of some key stakeholders, notably supervised entities and the sponsoring ministry.

The assessment of each Principle can conclude that compliance is achieved to varying degrees, following the OECD methodology used in relation to occupational pension regulation,<sup>4</sup> namely:

- **Fully implemented** – the IOPS Principle is implemented in all material respects;
- **Broadly implemented** – the Principle is implemented in all but one or two material respects and the exceptions do not significantly detract from the overall opinion. It should be possible to say something positive about compliance in answer to nearly every question ;
- **Partly implemented** – while a negative answer is given to some questions, the responses to the majority of the questions are consistent with compliance;
- **Not implemented** - there are major shortcomings against the Principle;
- **Not applicable** – the Principle does not apply due to structural, legal or institutional features.

In making the assessment reviewers will need to consider not just the current position but also the plans that exist for changing the way the supervisor operates. These changes will, of course, not generally have been tested in practice, which means that they are unlikely to result in a fully compliant assessment that would not otherwise have been made. But they enable enough of a positive conclusion to be drawn on some questions to convert a 'partly' to a 'broadly' implemented. It may lead to an assessment that it would appear that the supervisor is likely to become more compliant. Prospective changes that have not been tested in practice should not result in a down-grading of the compliance assessment unless they patently represent a retrograde step.

Where there is more than one authority with supervisory responsibilities, the reviewer should assess those authorities responsible for supervising a large proportion of pension entities (in terms of numbers and market share) and for most aspects of the entities' activities. Hence the assessment would not usually cover the tax authority unless it has significant supervisory responsibilities beyond those relating to tax collection. Where there is both a prudential and conduct of business supervisor, it would only cover the former, unless the latter is responsible for the supervision of a substantial element of pensions regulation. Where the assessment needs to cover more than one supervisor, conclusions on each Principle should distinguish between the supervisors to the extent that compliance by them materially differs. The overall

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<sup>3</sup> IOPS Working Paper No. 4 (August 2007) "*Experiences and Challenges with the Introduction of Risk-Based Supervision for Pension Funds*".

<sup>4</sup> OECD Working Party on Private Pensions "*Methodology for assessing the implementation of the OECD consolidated core principles of occupational pension regulation*", issued 23 May 2008 (DAF/AS/PEN/WD(2008)1/REV1).

assessment for each Principle, however, would be that of the least compliant supervisor, unless the role of that supervisor is not material to the Principle concerned.

References to ‘the supervisor’ in the rest of this document should be read as encompassing all the supervisors being covered.

Given the variations in country’s pensions, regulatory and supervisory systems and approaches, some creativity may also be needed in applying the questions and assessment in individual cases. The assessment of each principle will inevitably be based to some extent on the reviewers’ judgement. As well as looking at individual answers the reviewer will need to look at the overall picture, bearing in mind that the questions have different degrees of importance in relation to the overall conclusion. Where a Principle is not fully implemented, the report should indicate whether the constraints are within or external to the Supervisor’s control. The report should make recommendations may be made for actions that would improve compliance, indicating whether the proposed change is within the scope of the existing legislative and regulatory framework.

The Framework also includes an overall assessment sheet to facilitate drawing an overall conclusion from the judgements made about compliance with each Principle, using the same headings as applied to each Principle, above. While the performance under each Principle can be aggregated to give an overall impression, the reviewer may consider that poor performance against one or more Principles may be sufficiently serious to consider the supervisor non-compliant. For instance, a supervisor that is non-compliant with, say, the independence principle may be found non-compliant overall, given the importance of operational independence to effective supervision, regardless of the extent of compliance with the other principles. In any event, just because the supervisor is considered to be fully or broadly implementing the Principles does not necessarily mean that there is not room for improvement and recommendations may still be made.

The completed documentation will support a written report summarising the conclusions of the review, including the results of any mission to the supervisor and the views expressed by the supervisor on the conclusions drawn. Information supplied in confidence will not be included in the final report although it may influence the findings included in the report.

**Principle 1: Objectives - National laws should assign clear and explicit objectives to pension supervisory authorities.**

The principal strategic objectives of the pension supervisory authority should be clearly and publicly specified. They should include a focus on the protection of pension members and beneficiaries' interests. Objectives can also be directed towards the stability and security of pension funds and plans, the sustainability of the pension sector as a whole, the promotion of good governance and the encouragement of pension provision.

The responsibilities of the pension supervisor should be clearly and objectively stated, giving a clear mandate and assigning specific duties.

**Key considerations for the review:**

The review needs to determine whether the objectives to which the Supervisor is subject and working are clear to the supervisor and other stakeholders, and are appropriate for an effective supervisor of private pensions.

**Assessment Questions:**

- 1.1. Is there governing legislation providing for a pension supervisor,
- 1.2. Does the legislation provide objectives?
- 1.3. If not, have objectives been specified by the Executive or Legislature in a way that is public, binding and can only be changed through transparent due process?
- 1.4. Are these objectives high level, related to desired outcomes and covering some (at least) of the subjects referred to in the text of the Principle?
- 1.5. Does legislation, or other public documents, explicitly and clearly set out responsibilities and duties for the Supervisor?
- 1.6. Has the Supervisor explicitly stated the objectives, responsibilities and duties it believes to be working to, including in its strategy documents, and are these statements consistent with the answers to the above questions?
- 1.7. What impact would any planned changes to the objectives have on the answers to the above questions?

**Overall assessment (with reasons):**

**Suggested recommendations:**

**Types of supporting evidence**

- Governing legislation for the Supervisor
- Concordats, memoranda of understanding and other documents produced by the Executive or Legislature applying to the Supervisor

- Governmental statements on the responsibilities and duties of the Supervisor
- Strategies or plans produced by the Supervisor
- The Supervisor's annual reports
- Information on how the Supervisor interprets its objectives

**Principle 2: Independence - Pension supervisory authorities should have operational independence**

The pension supervisory authority should have operational independence from both political authorities and commercial interference in the exercise of its functions and powers.

To ensure independence, stability and autonomy are particularly required at the senior director level of the pension supervisory authority. The nomination, appointment and removal of the head of the pension supervisory authority should be done via explicit procedures and transparent mechanisms. The head of the authority may be appointed for a fixed term.

The pension supervisory authority should also be funded in such a way as to ensure independence and there should be a transparent budgetary process.

Supervisory acts should be over-ruled only by judicial decision, including tribunals with relevant powers, or by parliamentary process.

**Key considerations for the review:**

Operational independence is taken to mean that the supervisor has autonomous management of its activities at the day to day operational and decision making level. At a higher, more policy-oriented level, supervisors, who are after all unelected, need to act consistently with broad government objectives, may properly be subject to national governmental and political influences, and should take account of the views of other stakeholders. There may be an intermediate stage where Ministerial approval is required for enforcement actions that involve removal or deregistration of an industry participant.

The review needs to determine whether the Supervisor is sufficiently isolated from improper influence from government, politicians and supervised entities. In doing so, it should look for any significant ways in which such parties can influence day to day decisions, for instance through meaningful threats of negative consequences for the supervisor were a decision to go a particular way, or through the abuse of accountability mechanisms.

**Assessment Questions:**

- 2.1 Is the Supervisor legislatively (or by some other robust means) established as a body with operational independence from the Executive?
- 2.2 Are there sufficient and effective restrictions on the ability of the government and other parties to make directions to the Authority, especially if they conflict with its mandate?
- 2.3 Do the procedures for nominating, appointing the head and other senior members of the Authority provide for transparency and independence, for instance, through specified fit and proper' tests or minimum qualifications or experience requirements?
- 2.4 Are senior members of the Authority appointed for specified terms and would termination of the member within the term be used as a mechanism to influence operational decisions?
- 2.5 Have the procedures in 2.3-2.4 been applied, and seen to be applied, in practice?
- 2.6 Does the Authority have a legally established budget established through a due process that

<p>provides short term financial security and hence operational independence?</p> <p>2.7 Where the Authority is funded by a levy on supervised entities, is this free from any interference by the entities?</p> <p>2.8 Can supervisory acts be over-ruled only through due judicial, quasi-judicial or legislative process, and have there been any exceptions?</p> <p>2.9 Are there indemnities from the prosecution of the Authority's directors or staff or to cover any costs or penalties so incurred, and are these effective in preventing or mitigating the impact of civil actions against the Authority?</p> <p>2.10 Are the circumstances, if any, in which supervisory decisions on licensing or registration can be influenced by government clearly specified and transparent?</p> <p>2.11 Does the Supervisor withhold from all external parties details relating to day to day decisions that are pending, so as to reduce the possibility of external influence?</p> <p>2.12 Has the Supervisor been free in practice from undue external influence in relation to operational matters?</p> <p>2.13 What impact would any planned changes affecting the Supervisor have on the independence of the supervisor?</p>	
<p><b><i>Overall assessment (with reasons):</i></b></p>	
<p><b><i>Suggested recommendations:</i></b></p>	
<p style="text-align: center;"><b><i>Types of supporting evidence</i></b></p>	
<ul style="list-style-type: none"> <li>• Governing legislation for the Supervisor</li> <li>• Concordats, memoranda of understanding and other documents produced by the Executive or Legislature applying to the Supervisor</li> <li>• Information on reporting lines and accountability to government</li> <li>• Structure and responsibilities of governing body (or equivalent) including split between executive and non-executives, whether the CEO is also Chair, representational nature of non-execs, lengths of terms of appointment and limitations on re-appointment.</li> <li>• Information on nomination and appointment processes</li> <li>• Information on background of, and recent changes to, senior members of the Authority</li> <li>• Descriptions of budgetary processes</li> <li>• Information on how any levy on supervised entities is set.</li> <li>• Details of any indemnities and the prevalence of civil actions taken against the Authority</li> <li>• Details of the licensing/registration regime operated by the Supervisor</li> <li>• Details of any particularly robust actions taken by the Supervisor</li> <li>• Perceptions of the extent of independence in practice</li> </ul>	

**Principle 3: Adequate Resources - Pension supervisory authorities require adequate financial, human and other resources**

The Pension supervisory authority should be granted adequate staff and access to resources.

The Authority should have its own budget sufficient to enable it to conduct proportionate, effective and independent supervision. Funding, in part or in full, of the Authority by supervised pension funds and plans could be considered, provided independence is maintained.

The Authority should hire, train and maintain sufficient staff with high professional standards, including appropriate standards of confidentiality and disclosure (e.g. of interests in regulated entities).

The directors and head of the Authority should be suitably qualified, with sufficient education, experience, capacity and reputation.

If its own capacities are insufficient, or for other reasons deemed necessary, the Authority should be able to outsource to third parties (e.g. auditors, actuaries) supervisory tasks – though it remains responsible for the supervisory process and decisions. Where pension supervisory functions are outsourced to third parties, the Authority should be able to assess their competence, monitor their performance and ensure their independence from the pension fund or any other related parties. If required, the Authority must have the ability to take actions against these third parties, directly or through the appropriate professional body. The Authority’s decision making and application of sanctions should not be outsourced.

**Key considerations for the review:**

The review needs to determine whether there are transparent and effective processes aimed at ensuring that the Supervisor is sufficiently resourced to discharge its mandate effectively. The allocated resources may be less than the level desired by the Authority, but if this is so the Authority should still be satisfied, and satisfy the reviewer, that it can discharge its mandate effectively. Implicit in this is some process for determining what resources (number and skills) are needed. A particular issue to watch is whether the Authority is able to engage (in-house or through contract) experts of sufficient calibre to make properly informed decisions and sustain its credibility.

**Assessment Questions:**

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| <ul style="list-style-type: none"> <li>3.1 Do the (budgetary) arrangements for funding the Supervisor reflect in a transparent manner how it needs to discharge its responsibilities?</li> <li>3.2 Does the Supervisor have longer term financial perspective (e.g 3 years or longer) that provides some stability for planning and recruitment?</li> <li>3.3 Has the Supervisor been funded to enable it to discharge its primary responsibilities at or above a level that the supervisor considers to be the defensible minimum?</li> <li>3.4 Is the Supervisor free from constraints on the number (or identity) of staff it can hire, and the amount it can pay, that prevent it from achieving its plans?</li> <li>3.5 Is the Supervisor able to obtain sufficient resources in expert disciplines?</li> <li>3.6 Does the Supervisor have processes intended to ensure that staff have necessary skills,</li> </ul> |  |
|---|--|

<p>competencies and independence?</p> <p>3.7 In particular, are senior staff appropriately qualified and of sufficient stature?</p> <p>3.8 Can the Supervisor outsource functions in support of its supervisory responsibilities where it deems it necessary or where in-house resources are insufficient?</p> <p>3.9 If so, does it have appropriate processes to oversee these functions, that secure satisfactory and proper performance and ensure that the ultimate supervisor decision is taken by the Authority?</p> <p>3.10 What impact would any planned changes to the way the supervisor is resourced have on the answers to the above questions?</p>	
<p><i>Overall assessment (with reasons):</i></p>	
<p><i>Suggested recommendations:</i></p>	
<p><i>Types of supporting evidence</i></p>	
<ul style="list-style-type: none"> <li>• Information on reporting lines and accountability to government</li> <li>• Descriptions of budgetary processes</li> <li>• Information on budget allocated compared with proposals made by the supervisor or its calculations of what is needed as a minimum</li> <li>• Size of budget for pension supervision relative to the number of supervised entities and value of funds under management</li> <li>• Human resource policies covering recruitment, training, assessment and conflicts of interest.</li> <li>• Information on senior members of the Authority</li> <li>• Numbers (full time equivalents) and qualifications of staff involved with or supporting pension supervision</li> <li>• Information on the scope and extent of outsourcing, and how the Supervisor oversees any outsourced supervisory functions</li> <li>• Representations as to the adequacy of resourcing in practice</li> </ul>	

**Principle 4: Adequate Powers – Pension supervisory authorities should be endowed with the necessary investigatory and enforcement powers to fulfil their functions and achieve their objectives**

Pension supervisory authorities should be legally charged to undertake supervision and should be granted adequate powers and the capacity to exercise these powers.

The pension supervisory authority should have the power to conduct necessary supervisory functions, according to the nature of the pension system being supervised. Effective supervision of pension funds or plans should focus on legal compliance, financial control, minimum capital requirements, investment activity, good governance and integrity, actuarial examination, the supervision of pension plan or fund managers, and the provision of adequate disclosure and information to members. Powers should allow for relevant off-site and on-site inspection.

Pension supervisory authorities should have comprehensive investigatory and enforcement powers. On the suspicion of problems, they should have the power to conduct a full investigation, to oblige funds to submit documents and information, and to impose corrective measures and remedial actions if their orders are not obeyed –up to and including the power to impose administrative sanctions such as fines, the power to direct management, the power to revoke licences and the power to refer matters for criminal prosecution. In some cases, powers may include the ability to issue binding regulation.

**Key considerations for the review:**

The review needs to determine whether the Supervisor has sufficient powers to discharge its mandate effectively. In doing so, it should consider whether the powers cover all elements of the Supervisor’s mandate include a sufficient range to enable responses to be targeted to the seriousness of the problem and can be used effectively in practice. Where the supervisor licences pension entities this can potentially provide strong powers to promote the good running of pension plans, and the review should look for substantive compliance with the OECD/IOPS Licensing Guidelines as they relate to supervision.

**Assessment Questions:**

- 4.1 Are the Supervisor’s powers clearly established by its governing legislation?
- 4.2 Is the Supervisor empowered to obtain the information it needs?
- 4.3 Does the Supervisor have sufficient powers to investigate potential problems and conduct supervision on and off site, without being constrained by reliance on others?
- 4.4 Are the responsibilities of supervised entities sufficiently defined in legislation to enable the Supervisor to meet its objectives by enforcing them?
- 4.5 Is the Supervisor empowered to act to resolve breaches of the responsibilities of supervised entities?
- 4.6 Where the supervised entities’ responsibilities, or the Supervisor’s powers to enforce them, are insufficient, is there a process available (and used) for the Supervisor to seek appropriate changes?
- 4.7 Is there a clear licensing or registration process that enables the Supervisor (if the licensing

<p>authority) to obtain sufficient information and to reject/revoke/amend the licence/registration of a seriously non-compliant entity (or sufficiently involves the supervisor where it is not the licensing authority)?</p> <p>4.8 Can the Supervisor enforce legislation relating to funding and capital adequacy, so far as appropriate (including any reserves that need to be held by DC funds)?</p> <p>4.9 Can the Supervisor enforce legislation relating to the governance of supervised entities, including fitness and propriety?</p> <p>4.10 Do the Supervisor's powers include measures to correct and remedy problems as well as an appropriate range of sanctions (e.g fines)?</p> <p>4.11 Is the Supervisor empowered to take control of or appoint new management to a supervised entity in serious difficulties?</p> <p>4.12 Has the Supervisor successfully used a range of its powers?</p> <p>4.13 Where the Supervisor has not used significant powers, is this because the necessity has not yet arisen and does it have the capacity to use them where necessary?</p> <p>4.14 Where powers have proved to be too unwieldy or costly to use in most cases, has the Supervisor successfully implemented alternative approaches?</p> <p>4.15 What impact would any planned changes to the Supervisor's powers have on the answers to the above questions?</p>	
<p><b><i>Overall assessment (with reasons):</i></b></p>	
<p><b><i>Suggested recommendations:</i></b></p>	
<p style="text-align: center;"><b><i>Types of supporting evidence</i></b></p>	
<ul style="list-style-type: none"> <li>• Governing legislation</li> <li>• The Supervisor's enforcement policies.</li> <li>• The Supervisor's role in the process for licensing or registering pension entities and information on licences or registrations rejected, amended or revoked.</li> <li>• Information on the Supervisor's inspection programme(s)</li> <li>• Information on actions (including enforcement) taken by the Supervisor in response to problems at supervised entities.</li> <li>• Representations made as to adequacy of powers in practice</li> </ul>	

**Principle 5: Risk Orientation** -*Pension supervision should seek to mitigate the greatest potential risks to the pension system*

The objectives of private pension supervision should be risk-based. Pension supervisory authorities should have a strategy for allocating their finite resources which targets mitigating actions on pension funds or plans which represent the highest risks to achieving the supervisor’s objectives. This assumes that they understand the probability and impact of potential risks.

Pension supervisory authorities should be pro-active, seeking to avoid significant problems before they occur and intervening, in a proportionate way, at as early a stage as possible and searching for those supervisory instruments which add most value to the desired supervisory result.

**Key considerations for the review:**

As the relevant IOPS working paper states: “Risk-based supervision specifically attempts to vary the scope and intensity of supervision according to the level of risk to which individual pension funds are estimated to pose (in regard to the individual members and beneficiaries of the pension fund and also to the pension fund itself). This is seen as a more ‘sophisticated’ approach than the former ‘compliance’ based attitude to supervision, where all pension funds are treated the same. A risk based approach allows scarce supervisory resources to be targeted at the pension funds which are seen to be at most risk and allows supervisors to take a more proactive approach, attempting to avoid potential problems before they occur. A broad definition of risk-based supervision would include the whole risk management architecture, including risk-based regulations and risk-based supervisory procedures. A narrower definition would consider only the supervisory part of the overall risk management architecture.”

The review needs to determine whether the supervisor has moved towards some form of risk orientation appropriate to its circumstances and objectives. In doing so, it is important to recognise that the way risk orientation is implemented can vary substantially, as indicated above, reflecting local circumstances. Risk orientation can potentially encompass supervisory objectives, its strategic resource allocation, the way it seeks to focus on the identified risks, reliance on entity risk management, the use of risk assessment or scoring models or applying quantitative risk-based models to assess compliance. It would be unusual, however, to find all these approaches in any one supervisor.

**Assessment Questions:**

- 5.1 Are the Supervisor’s objectives (mandated and operational) risk-based, for instance being focused on risk mitigation or outcomes, rather than, or as well as, compliance?
- 5.2 Does the Supervisor have a robustly based strategy for allocating resources to the highest risks so as to achieve its objectives?
- 5.3 In devising such a strategy does the Supervisor in particular consider macro-economic issues and impacts where appropriate?
- 5.4 Does the Supervisor, on the basis of evidence understand the probability and impact of potential risks?
- 5.5 Is the Supervisor proactive, identifying and acting upon risks before problems occur?
- 5.6 Does the Supervisor risk assess (all or the most

<p>significant) individual supervised entities, for instance through a risk scoring model or measures of exposure to risk?</p> <p>5.7 Does the Supervisor, decide on interventions (including guidance) on the basis of assessed risk?</p> <p>5.8 Does the Supervisor seek to encourage risk management practice by supervised entities, and where appropriate place some reliance on it?</p> <p>5.9 What impact would any planned changes to the Supervisory mandate or approach have on the answers to the above questions?</p>	
<p><i>Overall assessment (with reasons):</i></p>	
<p><i>Suggested recommendations:</i></p>	
<p><i>Types of supporting evidence</i></p>	
<ul style="list-style-type: none"> <li>• The Supervisor’s objectives</li> <li>• The Supervisor’s strategy or plans.</li> <li>• Information on the Supervisor’s risk assessment methodology and tools</li> <li>• The Supervisor’s enforcement policies.</li> <li>• Information on the Supervisor’s inspection programme(s)</li> <li>• Information on actions taken by the Supervisor in response to problems at supervised entities.</li> <li>• The Supervisor’s guidelines etc on pension entity risk management</li> <li>• Representations as to the Supervisor’s risk focus in practice</li> </ul>	

**Principle 6: Proportionality and Consistency** - *Pension supervisory authorities should ensure that investigatory and enforcement requirements are proportional to the risks being mitigated and that their actions are consistent*

The remedial actions and if necessary sanctions imposed by the pension supervisory authority should be proportional to the problem which is being addressed. In taking or promoting mitigating actions, pension supervisory authorities should choose between the powers available to them according to the assessed seriousness of the risk or compliance failure being addressed.

The extent of supervisory demands placed on pension funds or plans and associated parties being supervised should be in accordance with the value expected to be derived.

In fulfilling its supervisory powers, the pension supervisory authority should give pension funds and plans flexibility, where appropriate, in the way they achieve compliance with regulatory requirements.

Supervisory decisions and intervention should be consistent, taking appropriately into account circumstances of each individual case. Supervisors should have procedures (for example, documentation, training and review) for ensuring that similar decisions are taken in similar circumstances and that these decisions are taken on objective and unbiased grounds.

**Key considerations for the review:**

The review needs to determine whether the Supervisor discharges its mandate with appropriate proportionality and has effective processes to secure consistency.

**Assessment Questions:**

- 6.1 Do the Supervisor’s powers enable it to vary its supervisory actions according to the magnitude of risks being addressed?
- 6.2 Does the Supervisor have procedures for helping the choice of a proportionate response, such as an enforcement pyramid or intervention ladder?
- 6.3 Has the Supervisor chosen interventions that, on the basis of available evidence, are proportionate to the problems and risks it has encountered?
- 6.4 Does the Supervisor check that demands (e.g for information) placed on supervised entities are proportionate?
- 6.5 Does the Supervisor allow supervised entities appropriate flexibility in deciding how to comply with legislation?
- 6.6 Does the Supervisor from time to time review whether its interventions are achieving the desired effect in a proportionate manner?
- 6.7 Does the Supervisor have processes designed to ensure appropriate consistency between interventions in similar circumstances, such as review processes and precedent documentation?
- 6.8 What impact would any planned changes to the Supervisory approach or procedures have

on the answers to the above questions?	
<i>Overall assessment (with reasons):</i>	
<i>Suggested recommendations:</i>	
<i>Types of supporting evidence</i>	
<ul style="list-style-type: none"> <li>• Governing legislation</li> <li>• The Supervisor’s strategy or plans</li> <li>• The Supervisor’s enforcement policies.</li> <li>• Information on the Supervisor’s inspection programme(s)</li> <li>• Information on the Supervisor’s decision making and review processes</li> <li>• Information on actions taken by the Supervisor in response to problems at supervised entities.</li> <li>• Representations as to proportionality and consistency in practice</li> </ul>	

**Principle 7: Consultation and Cooperation** - *Pension supervisory authorities should consult with the bodies they are overseeing and cooperate with other supervisory authorities*

The pension supervisory authority should consult, as appropriate, with the pensions sector when determining its approach to supervision.

The pension supervisory authority is empowered to exchange information with other relevant supervisory authorities, subject to legal and confidentiality requirements. This includes cooperation with other authorities or departments involved in pension supervision both nationally and internationally (particularly where cross-border pensions are involved), as well as with authorities supervising other relevant financial institutions or markets and law enforcement agencies. Cooperation should be for both efficiency purposes (avoiding overlaps and promoting economies of scale and scope) as well as promoting pro-active preventative measures (e.g. tackling financial crime).

**Key considerations for the review:**

Exposing supervisory policy decisions to public scrutiny, through consultation before they are taken, should result in better decision making and buy-in by supervised entities, while co-operation with other agencies is important where responsibilities for supervised entities are shared. The review needs to determine whether the Supervisor therefore discharges its mandate in an appropriately consultative and co-operative manner

**Assessment Questions:**

- 7.1 Does the Supervisor consult with the pensions sector when determining strategic supervisory approaches?
- 7.2 Are these consultation processes designed so as to facilitate considered responses that can influence its approaches, for example allowing sufficient time for responses?
- 7.3 Does the Supervisor have other processes or forums to facilitate 2-way communication with supervised entities and other interested parties?
- 7.4 Is the Supervisor empowered to exchange information with other relevant national authorities, subject to appropriate requirements?
- 7.5 Is the Supervisor empowered to exchange information with pension supervisors in other countries as appropriate?
- 7.6 Does the Supervisor have effective processes for information sharing and conflict resolution with relevant authorities, subject to confidentiality constraints, for example through memorandums of understanding?
- 7.7 What impact would any planned changes to the Supervisor's procedures have on the answers to the above questions?

**Overall assessment (with reasons):**

*Suggested recommendations:*

*Types of supporting evidence*

- Governing legislation
- The Supervisor's strategy or plans
- Information on the Supervisor's consultation processes.
- Information on the Supervisor's processes for sharing information with other authorities, including memorandums of understanding
- Information on actions taken by the Supervisor in response to problems at supervised entities.
- Representations made as to the extent of consultation or effectiveness of co-operation

**Principle 8: Confidentiality** - *Pension supervisory authorities should treat confidential information appropriately*

The pension supervisor should only release confidential information if permitted by law.

The pension supervisor in regard to non-public information should when requested by the providing authority keep information confidential and maintain appropriate safeguards for the protection of confidential information within its possession.

Where unsure of the status of the information, the supervisory authority should treat it as confidential if not publicly available or should check the status with the provider.

If agreed by the providing authority, the receiving supervisory authority may pass on information to other supervisory bodies or law enforcement agencies with legitimate supervisory interests and equivalent confidentiality standards.

Where staff transfer between the supervisory authority and the private sector, mechanisms should exist to ensure against the disclosure of confidential information.

Third parties to whom the pension supervisory authority has outsourced supervisory tasks should be subject to the same confidentiality requirements as the staff of the pension supervisory authority itself.

**Key considerations for the review:**

The review needs to determine whether the Supervisor can maintain the confidences with which it is entrusted

**Assessment Questions:**

- 8.1 Does the Supervisor have a confidentiality policy which sets out the Authority's procedures to prevent inappropriate disclosure of non-public information (as defined by law)?
- 8.2 Do these procedures appropriately cover disclosure to other government agencies or supervisory bodies?
- 8.3 Are there mechanisms to prevent disclosure of confidential information by staff, including after they have left the Supervisor?
- 8.4 Are confidentiality requirements applied similarly to third parties to which supervisory functions are outsourced?
- 8.5 What impact would any planned changes to the Supervisor's mandate or procedures have on the answers to the above questions?

**Overall assessment (with reasons):**

**Suggested recommendations:**

*Types of supporting evidence*

- Governing legislation
- The Supervisor's confidentiality and information management policy and procedures
- Staff code of conduct
- Information on how the Supervisor applies confidentiality to outsourced supervisory functions
- Representations as to any issues with confidentiality

**Principle 9: Transparency - Pension supervisory authorities should conduct their operations in a transparent manner**

Pension supervisory authorities should adopt clear, transparent and consistent supervisory processes. The rules and procedures of the pension supervisory authority, and updates thereof, should be published. The pension supervisory authority should generally operate in a transparent environment and should provide and publish a regular report – at least annually and in a timely manner – on the conduct of its policy, explaining its objectives and describing its performance in pursuing those objectives. The pension supervisory authority should be subject to regular audit and reporting requirements which allow for the assessment of how well the authority is fulfilling its responsibilities and ensuring the mandate and functions of the pension supervisory authority cannot be changed on an ad hoc basis.

When directing the management of pension funds or plans pension supervisory authorities should explain to those affected why they are acting.

Pension supervisory authorities should provide and publish clear and accurate information for the pension industry and the general public on a regular basis – such as the financial situation of the pension fund industry and observations on major developments in the pension sector. Disclosure will generally be on an aggregate basis, but could also be on individual pension funds, in which case the rules of confidentiality may be particularly relevant.

**Key considerations for the review:**

The review needs to determine whether the Supervisor’s objectives, frameworks, decisions and their rationale, data and other information are provided to stakeholders in a comprehensive, assessable manner. Such transparency helps to enable accountability to key stakeholders and to command the understanding and respect of the supervised community. It should also help to reduce market uncertainty and counter poor operating practices and policies. Reporting on supervisory interventions after they have been made, with reasons, should help supervised entities understand better what is expected of them.

**Assessment Questions:**

- 9.1 Does the Supervisor publish its rules and procedures?
- 9.2 Is the Supervisor subject to appropriate audit and reporting requirements that do not compromise the independence of its mandate?
- 9.3 Does the Supervisor publish an annual report explaining how it meets its objectives?
- 9.4 Does the Supervisor publish information supporting its proposed strategic decisions and plans, including any assessment of cost/benefit?
- 9.5 Does the Supervisor’s website provide information to help supervised entities understand what is expected of them?
- 9.6 Has the Supervisor explained to individual supervised entities subject to its actions why it has taken the action?
- 9.7 Has the Supervisor published its supervisory decisions, with appropriate explanations (subject to confidentiality constraints) in a way that should help supervised entities understand better what is expected of them?

<p>9.8 Is there evidence of the Supervisor regularly publishing clear and accurate aggregate information on the pension sector, including its assessment of risks in the sector?</p> <p>9.9 What impact would any planned changes to the Supervisor's communications approach or media have on the answers to the above questions?</p>	
<p><i>Overall assessment (with reasons):</i></p>	
<p><i>Suggested recommendations:</i></p>	
<p style="text-align: center;"><i>Types of supporting evidence</i></p>	
<ul style="list-style-type: none"> <li>• Governing legislation</li> <li>• Information on reporting lines and accountability to government and the legislature (including audit)</li> <li>• The Supervisor's annual reports or equivalent</li> <li>• The Supervisor's website</li> <li>• Strategies or plans produced by the Supervisor</li> <li>• The Supervisor's enforcement policies (covering how it explains its interventions)</li> <li>• Explanations of its decisions that the Supervisor has provided to supervised entities and published</li> <li>• The aggregate information the Supervisor publishes on the pension sector</li> <li>• Representations made as to the transparency of supervision</li> </ul>	

**Principle 10: Governance** - *The supervisory authority should adhere to its own governance code and should be accountable*

The pension supervisory authority should establish and adhere to a governance code, outlining suitable internal controls, checks and balances, and effective processes for risk and performance management. A code of conduct should be established and enforced in relation to all staff members.

There should be clearly documented procedures for decision-making, with processes for referring decisions up to the appropriate level of seniority, reviewing and documenting decisions.

For interventions with serious impact there should be some separation between those within the authority proposing interventions and those taking the final decision, so the scope for emergency action is balanced by a review process.

Pension supervisory authorities should be clearly accountable for their general conduct and activity. Pension supervisory authorities should have accountability arrangements, which may vary according to specific country circumstances and which may include accountability to a range of bodies, from parliament to the members and beneficiaries of pension funds or plans.

Procedures should be in place for the governing body of a pension plan or fund to appeal to the pension supervisory authority or relevant tribunal for decisions taken by the pension supervisory authority that affect them and which they consider inconsistent with legal provisions.

**Key considerations for the review:**

The review needs to determine whether the Supervisor's governance arrangements set a good example to the supervised community and ensure that supervisory processes are fair, subject to due process and do not involve conflicts of interest. In particular, the governance arrangements (taken with arrangements for transparency) should secure accountability of staff to the board/senior management, and hence to government and the legislature. This necessitates effective processes for internal scrutiny and review including appropriate performance measurement.

**Assessment Questions:**

- 10.1 Does the Supervisor have appropriate codified procedures for internal governance, and is compliance with these monitored and enforced?
- 10.2 Is there a code of conduct applying to all staff that includes rules on receipt of gifts, hospitality et, claiming expenses and declaring conflicts of interest?
- 10.3 Are there effective arrangements for managing actual and potential conflicts of interest affecting supervisory management or staff, such as obligations to step aside from the decision making process where conflicted.
- 10.4 Are there clearly documented procedures and business rules for taking, reviewing decisions and recording and disseminating decisions?
- 10.5 Does the Supervisor have processes to ensure that actions against supervised entities are taken, and seen to be taken, on the basis of unbiased evidence?

<p>10.6 Is there independent review, within the Supervisor (for example at board level), of decisions with serious implications for supervised entities?</p> <p>10.7 Is responsibility for authorising the use of sanctions against supervised entities separated from executive functions and subject to due process?</p> <p>10.8 Is there an appeals process against such decisions where they apply to individual supervised entities?</p> <p>10.9 Are there appropriate arrangements for holding the Supervisor to account to the legislature or other stakeholders, such as reporting to parliamentary or stakeholder committees, annual meetings or independent reviews?</p> <p>10.10 Does the Supervisor regularly measure its performance against objectives, and provide the board/senior management and external stakeholders with the results?</p> <p>10.11 Does the Supervisor have documented internal controls and risk management processes (appropriate to its size)?</p> <p>10.12 What impact would any planned changes to the Supervisor's procedures have on the answers to the above questions?</p>	
<p><b><i>Overall assessment (with reasons):</i></b></p>	
<p><b><i>Suggested recommendations</i></b></p>	
<p><b><i>Types of supporting evidence</i></b></p>	
<ul style="list-style-type: none"> <li>• Governing legislation (for accountability and appeals)</li> <li>• Structure and responsibilities of governing body (or equivalent) including split between executive and non-executives, whether the CEO is also Chair, representational nature of non-execs, lengths of terms of appointment and limitations on re-appointment.</li> <li>• Information on reporting lines and accountability to government</li> <li>• Codification of the Supervisor's governance procedures</li> <li>• Staff code of conduct</li> <li>• Information on the Supervisor's decision making processes</li> <li>• Information on the appeals process</li> <li>• The Supervisor's performance measurement framework, measures and reports</li> <li>• The Supervisor's annual reports or equivalent</li> <li>• The Supervisor's website</li> <li>• Information on the Supervisor's internal control and risk management framework</li> <li>• Representations made as to issues with governance</li> </ul>	

## Overall Assessment

The following table can be used for making an overall assessment of the implementation of the Principles.

Principle	Assessment of implementation				
	Fully	Broadly	Partly	Not	N/A
<b>1: Objectives</b>					
<b>2: Independence</b>					
<b>3: Adequate Resources</b>					
<b>4: Adequate Powers</b>					
<b>5: Risk Orientation</b>					
<b>6: Proportionality and Consistency</b>					
<b>7: Consultation and Cooperation</b>					
<b>8: Confidentiality</b>					
<b>9: Transparency</b>					
<b>10: Governance</b>					
<b>Total</b>					