

\* *In the text, the words “the CBFA” or “the Banking, Finance and Insurance Commission”, shall be replaced by the words “the FSMA” or “the Financial Services and Markets Authority”, as a result of the “Twin Peaks” model of financial supervision introduced by the Royal Decree of 3 March 2011 implementing changes to the supervisory architecture for the financial sector, which entered into force on 1 April 2011.*

Brussels, 23 May 2007

Dear Sir or Madam,

Please find attached circular CPP-2007-2-LIRP/WIBP on the governance of institutions for occupational retirement provision (IORP).

This circular was finalized taking into account the reactions received during the open consultation organised by the CBFA in 2006 via its web site.

The CBFA also took into account the fact that the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision (hereinafter the “Law”)<sup>1</sup>, which entered into force on 1 January 2007<sup>2</sup>, lays down new legal standards for governance. This law also gives the members of the operational bodies more freedom of action in the management of the IORP, as regards both investment rules and provisioning rules.

In accordance with the “*prudent person*” principle<sup>3</sup>, the legislators adopted a qualitative rather than a quantitative approach to the management of the IORP. This naturally involves more responsible and professional management and results in the observance of the principles of good governance of IORPs.

Nevertheless, taking into account the heterogeneous nature of the IORP sector, the principles of good governance should be implemented in a reasonable and proportionate manner. In accordance with the principle of proportionality, it is the responsibility of each IORP to define a coherent and adequate policy of governance, which is relevant to the activities it carries out, depending on the volume, nature and complexity of its activities and hence depending on its risk profile. In the assessment, the effective character of all the measures taken will take precedence over the purely formal application of the individual principles.

In this new legal context, and in the light of the growing responsibility of the operational bodies of the IORP, the CBFA has decided to draw up, in a long-term perspective, three documents having in common the theme of the governance of IORPs.

**1. A circular, CPP-2007-2-LIRP/WIBP, on the governance of IORPs**

This circular brings together the relevant legal provisions accompanied, where necessary, by explanatory comments.

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<sup>1</sup> Law of 27 October 2006 on the supervision of institutions for occupational retirement provision, Belgian Official Gazette, 10 November 2006, 60162.

<sup>2</sup> With the exception of certain provisions, Article 234 of the Law.

<sup>3</sup> 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.

**2. A note, CPP-2007-2-LIRP/WIBP, on the prudential expectations of the CBFA regarding the governance of IORPs**

This note contains not only the aforementioned circular but also the *best practices* and recommendations regarding the good governance of IORPs. It also contains additional, detailed explanations especially regarding how these principles are to be applied.

For each of the legal provisions, the note sets out rules describing and explaining their ideal implementation from a long-term point of view.

The note on the prudential expectations of the CBFA serves as a sort of manual to help the IORP define a policy of governance that is coherent, adequate and relevant to its activities, in accordance with the aforementioned principle of proportionality.

This note also draws on the “*comply or explain*” principle. The IORP is therefore requested to comply with the *best practices* and recommendations unless it is able to explain why it should be exempt, taking into account its specific situation. Indeed, given the heterogeneous nature of the IORP sector, exemption from certain provisions may be justified in special circumstances. It goes without saying that the “*comply or explain*” principle does not hold in the case of binding laws or stipulations to the contrary.

**3. A self-assessment questionnaire**

The purpose of this questionnaire is to allow each IORP to assess its governance practices. It was designed as a working tool to allow each IORP to assess its governance measured against the yardstick of the relevant prudential expectations of the CBFA and to plan the steps to take in the future in order to implement or improve it. It does not have to be sent to the CBFA but it must be made available on request.

The CBFA has also drafted a standard letter of 23 May 2007 accompanied by a questionnaire containing the information that each member of an operational body of an IORP must send to the CBFA upon appointment or the renewal of its mandate<sup>4</sup>. The purpose of the information is to enable the CBFA to ensure that each member of an operational body has the necessary professional reputation, as well as the necessary and relevant qualifications and experience to perform his or her functions.

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<sup>4</sup> Standard letter of 23 May 2007 available on the FSMA web site at the following address: [www.fsma.be](http://www.fsma.be)

All these documents can be consulted on or downloaded from the FSMA web site at [www.fsma.be](http://www.fsma.be) or obtained from the Department of Supervision of IORPs and Supplementary Pensions via email ([pensions@fsma.be](mailto:pensions@fsma.be)) or by telephone (02.220. 55.50).

Should you have any questions, please contact the Department of Supervision of IORPs and Supplementary Pensions.

This letter, accompanied by circular CPP-2007-2-LIRP/WIBP, note CPP-2007-2-LIRP/WIBP and the self-assessment questionnaire is addressed to the IORPs governed by Belgian law referred to in Title II of the Law and to the accredited auditors and actuaries appointed by these IORPs.

Yours faithfully,

Jean-Paul Servais  
Chairman

*Annex 1 – Circular CPP-2007-2-LIRP/WIBP on the governance of IORPs*

*Annex 2 – Note CPP-2007-2-LIRP/WIBP on the prudential expectations of the CBFA regarding the governance of IORPs*

*Annex 3 – A self-assessment questionnaire*