

Brussels, 23 May 2007

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

\* *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.*

Since 1 January 2007, institutions for occupational retirement provision (hereinafter “IORPs”) have been governed by the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision (hereinafter the “Law”)<sup>1</sup>, which lays down the new legal standards for governance. This law also gives the managers of IORPs more freedom of action as regards both investment rules and provisioning rules.

In accordance with the “*prudent person*” principle<sup>2</sup>, the legislators adopted a qualitative rather than a quantitative approach to the management of IORPs. 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 must be implemented in a reasonable and proportionate manner. In accordance with the principle of subsidiarity, it is the responsibility of each IORP to define a consistent 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 on its risk profile.

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.

**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 the IORPs. It also contains additional, detailed explanations especially regarding how these principles are to be applied.

<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> 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.

For each of the legal provisions the note sets out rules describing and explaining their ideal implementation in a long-term perspective.

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 simply 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>3</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 appropriate and necessary qualifications and experience to carry out his or her duties.

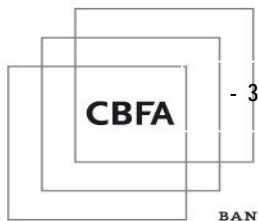
All these documents can be consulted or downloaded from the FSMA web site at [www.fsma.be](http://www.fsma.be) or obtained from the Department of Supervision of IORPs and Supplementary Pensions via email ([pensions@fsma.be](mailto:pensions@fsma.be)) or by telephone (02.220.55.50).

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<sup>3</sup> Standard letter of 23 May 2007 available on the FSMA web site: [www.fsma.be](http://www.fsma.be).



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## Introduction

### 1. Legal framework

IORPs must have a management structure, an administrative and accounting organization and an internal control mechanism that are appropriate to the activities it carries out. This structure, organization and mechanism must enable it to carry out the envisaged operations. They must not hinder the exercise of adequate supervision of the institution by the CBFA<sup>4</sup>.

The IORP must appoint an accredited statutory auditor or an accredited auditing firm<sup>5</sup>. In most cases, the IORP must also appoint an actuary<sup>6</sup>.

Finally, the Law imposes certain obligations on the different interveners in respect of the communication of information<sup>7</sup>. These obligations may be supplemented by other information obligations imposed by social and labour legislation<sup>8</sup>.

### 2. Task of an IORP and definition of its governance

The task of an IORP is to administer and manage pension schemes to ensure that they comply with the fiduciary and biometrical obligations of the pension scheme. In other words, its task is to serve as “a secure source of funds for retirement benefits”<sup>9</sup>. The governance of an IORP must be organized in line with this task.

Governance consists of a set of rules and behaviours, by which the IORP is managed and controlled, concerning both the structure of the IORP and the relations and interactions between the different interveners, be they sponsoring undertakings, direct or indirect participants in the management of the pension schemes or members and beneficiaries of the pension schemes.

These rules cover the organization of the IORP, on the one hand, and the control and communication mechanisms, on the other. The governance structure must ensure the appropriate separation of operational and supervisory functions and guarantee the responsibility and professional qualifications of those entrusted with these tasks. The operational and supervisory functions serve to encourage efficient decision-making, correct and speedy execution, transparency, and regular assessments and reviews.

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<sup>4</sup> Article 77 of the Law.

<sup>5</sup> Articles 103 to 108 of the Law.

<sup>6</sup> Article 109 of the Law.

<sup>7</sup> Article 96 of the Law.

<sup>8</sup> Cf. Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits and the Programme Law (I) of 24 December 2002, Title II, Section 4 – Supplementary pensions for self-employed persons.

<sup>9</sup> OECD, OECD guidelines for pension funds, 28 April 2005, [www.oecd.org](http://www.oecd.org).

## **2. Overview of the principles**

### **Principle No 1 – Management structure**

The IORP shall have a management structure appropriate to its activities. It shall, in particular, assign operational tasks clearly and distinguish appropriately between operational and supervisory tasks

### **Principle No 2 – Bodies of the IORP**

The composition, competences and responsibilities of each body of the IORP shall be clearly specified.

### **Principle No 3 – Internal control**

Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate internal control mechanism. The competent operational body shall ensure the implementation of internal control measures and shall inform the Board of Directors accordingly at least once a year.

### **Principle No 4 – Compliance function**

Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate compliance function. The competent operational body shall draw up an integrity policy and shall inform the Board of Directors accordingly at least once a year.

### **Principle No 5 – Business continuity**

The Board of Directors shall draw up a business continuity policy to ensure the uninterrupted provision of services and performance of activities by the IORP. The competent operational body shall develop and apply this policy and shall inform the Board of Directors accordingly at least once a year.

### **Principle No 6 – Internal audit**

Within the context of its duties and responsibilities, the competent operational body shall take the necessary measures to ensure that the IORP has an adequate internal audit mechanism that is independent of the activities audited.

### **Principle No 7 – Outsourcing**

The IORP shall draw up an outsourcing policy, which must be approved by the Board of Directors and must clearly specify the conditions under which outsourcing may be carried out.

### **Principle No 8 – Accredited statutory auditor or accredited audit firm**

The General Assembly shall appoint one or more statutory auditors or audit firms belonging to the Institute of Company Auditors (Institut des reviseurs d'entreprises/Instituut van de bedrijfsrevisoren) and accredited by the CBFA. The accredited statutory auditors shall collaborate in the task of supervision exercised by the CBFA, under their own personal and exclusive responsibility and in accordance with this section, with the rules of their profession and with the instructions of the CBFA.

### **Principle No 9 – Appointed actuary**

Except where the IORP manages certain types of pension schemes<sup>10</sup>, the Board of Directors shall appoint one or more actuaries who meet comply with the legal and regulatory provisions. The appointed actuary advises them on the financing plan, reinsurance and the amount of the technical provisions.

### **Principle No 10 – Internal circulation of information**

The IORP shall establish appropriate reporting systems between the persons and entities involved in the administration of the IORP to ensure effective communication and timely, relevant and accurate information.

### **Principle No 11 – External information**

The IORP shall provide the information required under the legal or contractual provisions clearly, precisely and within the legal timeframes or, in their absence, within a reasonable timeframe, to the members, beneficiaries, the CBFA and, where applicable<sup>11</sup>, to the consultative and concertation bodies.

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<sup>10</sup> These are pension schemes that do not cover biometric risks or which guarantee neither a given investment performance nor a given level of benefits.

<sup>11</sup> In accordance with the social and labour legislation applicable to the operation of the pension scheme.

### 3. The eleven principles

#### Foreword

The purpose of this note is to group together in a single document all the legal provisions, *best practices* and recommendations having in common the theme of governance. 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 in a long-term perspective.

The note on the prudential expectations of the CBFA represents a sort of manual to help the IORP to 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, the non-application of 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.

For the sake of clarity, the points excerpted from the circular are in *italics*.

#### ***Principle No 1 – Management structure***

*The IORP shall have a management structure appropriate to its activities. It shall, in particular, assign operational tasks clearly and distinguish appropriately between operational and supervisory tasks.*

*The IORP shall have one or more operational bodies in addition to the body that is the General Meeting. These bodies are entrusted with the administration of the IORP and are competent to represent it vis-à-vis third parties. They consist of a Board of Directors and, where applicable, one or more other operational bodies responsible for implementing the general policy of the IORP<sup>12</sup>.*

Given the special features of the IORP sector in Belgium, particularly its heterogeneous nature, it is left to the discretion of the Board of Directors of the IORP whether or not to delegate, totally or partially, the implementation of the general policy of the IORP to one or more other operational bodies.

#### (1) THE IMPLEMENTATION OF THE GENERAL POLICY IS DELEGATED TO OTHER OPERATIONAL BODIES

The Board of Directors of the IORP may delegate, totally or partially, the implementation of the general policy to one or more other operational bodies.

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<sup>12</sup> Article 21 of the Law.

*Where the Board of Directors of the IORP delegates the implementation of the general policy to one or more other operational bodies, it shall supervise these operational bodies<sup>13</sup>.*

*The other operational bodies are executive bodies which, under the supervision of the Board of Directors, implement the general policy of the IORP<sup>14</sup>. In other words they are responsible for the operational tasks.*

*They may be composed either of persons who are not directors, or of persons of whom some or all are directors. In the latter case, to enable effective supervision by the Board of Directors of the other operational bodies, the members of these other operational bodies who are also directors must jointly constitute a minority on the Board or, in the event of parity, cannot include the chairman of the Board of Directors, who must hold a casting vote on the Board of Directors in the event of a tie<sup>15</sup>.*

*Depending on the structure of the IORP, the “competent operational body” must therefore be either the Board of Directors or another operational body.*

## (2) THERE ARE NO OTHER OPERATIONAL BODIES

In the absence of other operational bodies, the Board of Directors shall exercise all management powers itself.

*Irrespective of the management structure, it may not hinder the exercise of adequate supervision of the IORP by the CBFA.*

### **Principle No 2 – Bodies of the IORP**

*The composition, competences and responsibilities of each body of the IORP shall be clearly specified.*

## **2.1. General Meeting**

### 2.1.1. COMPOSITION

*The General Meeting must consist of at least one ordinary member and, if the articles of association provide for it, extraordinary members. The articles of association must establish a procedure to ensure that the IORP may not function without any ordinary members for more than six months<sup>16</sup>.*

*Only sponsoring undertakings, on the one hand, and members and beneficiaries as well as their representatives, on the other hand, may be members of the IORP<sup>17</sup>.*

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<sup>13</sup> Article 27 of the Law.

<sup>14</sup> Article 31 of the Law.

<sup>15</sup> Article 33 of the Law.

<sup>16</sup> Article 14, § 1, of the Law.

<sup>17</sup> Article 14, § 2, of the Law.



*Each sponsoring undertaking must be a member of the IORP as long as the latter is entrusted with managing its pension scheme(s). This obligation to be a member does not concern sponsoring undertakings that are self-employed persons<sup>18</sup>.*

*Where a legal person is a member of the IORP, it is required to designate from amongst its partners, managers, directors, members of the management committee or employees a permanent representative entrusted with carrying out this task for and on behalf of the legal person<sup>19</sup>.*

Each ordinary member shall have at least one vote. Extraordinary members do not have a voting right unless the articles of association should decree otherwise<sup>20</sup>.

#### 2.1.2. COMPETENCE

*The General Meeting has the broadest powers to take or ratify actions concerning the IORP<sup>21</sup>.*

The General Meeting appoints and dismisses the directors, the accredited statutory auditor or the accredited auditing firm, expels the members, approves the accounts and the annual reports, passes the amendments of the articles of association, ratifies the financing plan, the statement of investment policy principles, the management agreements with sponsoring undertakings as well as the collective transfers, and discharges the directors, the accredited auditors and the accredited audit firms<sup>22</sup>. A decision by the General Meeting is also required for the dissolution and winding up of the IORP.

*The General Meeting must establish, in the articles of association, the method for appointing, discharging and removing directors, the extent of their powers and the way in which these powers are exercised<sup>23</sup>. It may also establish in the articles of association the procedure for planning renewals.*

## 2.2. Operational bodies

### 2.2.1. COMMON PROVISIONS

The members of the operational bodies shall manage the IORP in a balanced fashion taking into account the interests of all the stakeholders (sponsoring undertaking, members and beneficiaries, the IORP itself) in order to attain the primary objective of the IORP, which is to serve as a secure source of funds for retirement benefits. In the event of a conflict of interest, the IORP shall act with this objective in mind.

*Except for the person who is responsible for the day-to-day management of the IORP, where applicable, each of the operational bodies shall consist of at least two people, either natural or legal persons, who act in concert<sup>24</sup>. Where a legal person is appointed member of an IORP, it is required to designate from amongst its partners, managers, directors, members of the management*

<sup>18</sup> Article 14, § 2, para. 2 of the Law.

<sup>19</sup> Article 15 of the Law.

<sup>20</sup> Article 14, § 1, of the Law.

<sup>21</sup> Article 13 of the Law.

<sup>22</sup> Article 20 of the Law.

<sup>23</sup> Articles 20, 2°, and 46, 6°, of the Law.

<sup>24</sup> Articles 29 and 32 of the Law.

*committee or employees a permanent representative entrusted with carrying out this task for and on behalf of the legal person<sup>25</sup>.*

*Each member of an operational body of an IORP must have the necessary professional reputation and appropriate professional qualifications and experience to perform their functions. These qualifications and this experience shall be assessed taking into account the overall structure of the IORP (presence or not of one or more operational bodies other than the Board of Directors, etc.), the scale and complexity of its activities and the distribution of the operational and supervisory functions and taking into account the extent to which use is made of the services of advisers having these qualifications and this experience<sup>26 27</sup>.*

In any case, the members of the Board of Directors must have enough knowledge and experience to understand and judge the general policy pursued by the IORP as well as the decisions taken in a management context and to exercise control over the other operational bodies. It is recommended that training be provided, if necessary, to guarantee and maintain the level of knowledge required of the directors.

*The following operational tasks are clearly assigned to an operational body<sup>28</sup>:*

- to collect the contributions to the pension schemes and to pay the retirement benefits;
- to formulate the investment policy;
- to manage the assets and liabilities
- to inform the CBFA, the sponsoring undertakings, the members and the beneficiaries ;
- to formulate and monitor the internal control measures;
- to implement the resolutions of the General Meeting;
- to prepare the annual accounts and the annual report;
- to monitor the outsourcing activities and the advisers whose services have been requested;
- to formulate internal regulations;
- to formulate a regulation for managing conflicts of interest and to define a procedure for handling complaints.

*The members of the operational bodies are responsible for complying with the provisions of the pension schemes and for the responsible management of the funds of the IORP, so that the IORP can serve as a secure source of funds for retirement benefits<sup>29</sup>. Use of external service providers in no way diminishes the responsibility of the members of the operational bodies. They are responsible for the choice of the external service providers whose services they draw upon<sup>30</sup>, and*

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<sup>25</sup> Article 15 and 23 of the Law.

<sup>26</sup> Article 24 of the Law.

<sup>27</sup> Cf. the standard letter relating to the information to be transmitted to the CBFA concerning the members of the operational bodies of the IORP, available on the CBFA website.

<sup>28</sup> Article 22 of the Law.

<sup>29</sup> Article 26 of the Law.

<sup>30</sup> Article 78 of the Law.

for monitoring and supervising the work they undertake, especially with regard to compliance with the objectives, the policy and the strategy of the IORP.

It is advisable to examine the feasibility of taking out insurance for the responsibility of the members of the Board of Directors.

### 2.2.2. The Board of Directors

#### COMPOSITION

The term of office of the directors may not exceed six years, but is renewable<sup>31</sup>.

*The representatives of the sponsoring undertakings and the representatives of the members must form the majority on the Board of Directors of the IORP<sup>32</sup>. It should be noted that, in certain cases, the composition of the Board of Directors of the IORP might be subject to additional requirements under the applicable social and labour law<sup>33</sup>.*

#### COMPETENCE

The tasks of the Board of Directors are to determine the general policy of the IORP and to oversee the other operational bodies<sup>34</sup>. *The Board of Directors has the power to perform all acts necessary or useful for carrying out the company object of the IORP, with the exception of those acts which the law or the articles of association reserve to the General Meeting<sup>35</sup>.* It is therefore the Board of Directors that has the residual power.

*The Board of Directors represents the IORP in legal and other acts unless, under the terms of the articles of association, this task is delegated to one or more persons, whether or not they are directors or members of the General Meeting, acting individually, jointly or as a body<sup>36</sup>.*

In the context of its supervisory task the Board of Directors shall regularly check that the IORP has<sup>37</sup>

- an adequate internal control mechanism and an adequate internal audit mechanism;
- an adequate compliance function;
- an adequate business continuity policy;
- an outsourcing policy in cases where the IORP has recourse to outsourcing.

If the delegation of the implementation of a general policy is not delegated to another operational body of the IORP (see above), the Board of Directors is also responsible for all operational tasks.

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<sup>31</sup> Article 29 of the Law.

<sup>32</sup> Article 5 of the Royal Decree of 12 January 2007 on the prudential supervision of institutions for occupational retirement provision, Belgian Official Gazette, 23 January 2007, ed. 2, 2972 (hereinafter the “Royal Decree”).

<sup>33</sup> Thus, for example, the Belgian legislation on additional pensions requires in certain cases the equal composition of the Board of Directors of the IORP.

<sup>34</sup> Article 27 of the Law.

<sup>35</sup> Article 28, para. 1 of the Law.

<sup>36</sup> Article 28, para. 2 of the Law.

<sup>37</sup> See in particular Article 77 of the Law.

### 2.2.3. Other operational bodies

#### COMPOSITION

*The conditions for appointing members of the other operational bodies, their discharge, their remuneration and the length of their assignment are, where applicable, determined by the articles of association or, otherwise, by the Board of Directors<sup>38</sup>.*

#### COMPETENCE

*The other operational bodies are responsible for implementing the general policy of the IORP in accordance with a delegation and under the supervision of the Board of Directors. This delegation may not relate to the determination of the general policy of the IORP or to the actions that the law reserves to the Board of Directors<sup>39</sup>. The delegation may, however, relate to the actual management of the IORP, i.e. the overall management of the IORP, day-to-day management, or to part of the implementation of the general policy (asset management, etc.).*

### 2.3. Social committees

*For the implementation of the relevant provisions of the social and labour legislation applicable to the operation of pension schemes managed by the IORP, one or more social committees may be established within the IORP. These committees are not bodies of the IORP<sup>40</sup>.*

*The composition, competences and functioning of these committees are governed by the articles of association, by an agreement between the IORP and the sponsoring undertaking or by another document to this effect provided<sup>41</sup>.*

*Where a social committee has decision-making power in one or several areas or situations relating to the functioning of the IORP, the articles of association determine how this decision-making power is to be organized and what procedure is to be followed in the event of a dispute<sup>42</sup>.*

*The establishment and functioning of these social committees may not hinder the exercise of adequate supervision of the IORP by the CBFA<sup>43</sup>.*

#### **Principle No 3 – Internal control**

*Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate internal control mechanism. The competent operational body shall ensure the implementation of internal control measures and shall inform the Board of Directors accordingly at least once a year<sup>44</sup>.*

### 3.1. Definition and components

*Internal control covers all the measures required to ensure the ordered and prudent conduct of business, the economic and efficient use of resources, adequate knowledge and management of*

<sup>38</sup> Article 31, para. 2 of the Law.

<sup>39</sup> Articles 27 and 31 of the Law.

<sup>40</sup> Articles 27 and 31 of the Law.

<sup>41</sup> Articles 27 and 31 of the Law.

<sup>42</sup> Articles 27 and 31 of the Law.

<sup>43</sup> Articles 34, para. 4 of the Law.

<sup>44</sup> Articles 77 of the Law.

*risks for the purpose of protecting the funds, the integrity and reliability of technical, financial and management-related information as well as compliance with the legal and regulatory framework and the internal policies and procedures of the IORP.*

*The internal control mechanism covers the basic operational and administrative procedures of the IORP. The IORP must commit the necessary resources to enable it to attain the aforementioned objectives with reasonable certainty.*

### **3.2. General internal control measures**

The general internal control measures include organizational measures (e.g. the definition of the tasks and responsibilities of the staff members, the separation of tasks), control measures (e.g. double signature), accounting measures (e.g. reconciliation), as well as measures for ensuring the security of the assets.

The general internal control measures consist primarily of the development of identification mechanisms as well as the monitoring and, where applicable, the management of conflicts of interest. The activity of an IORP is characterized by the large number of interests, often converging but sometimes diverging or incompatible, which require proper management. For example, conflicts of interest may exist between the sponsoring undertaking - the organiser of the pension scheme - and the IORP, the directors and the IORP, the members and the IORP, and among the members or the beneficiaries themselves. The procedures for managing conflicts of interest differ in terms of the nature, the size and the complexity of the IORP. It is good practice to inform the stakeholders of the general nature of the sources of conflicts of interests as well as the policy adopted by the IORP to manage such sources.

The general internal control measures also consist of internal mechanisms to prevent the undue exploitation of privileged or confidential information. It is recommended that a professional code of ethics be established imposing high standards of integrity, honesty, confidentiality and fairness on the staff members, the directors, the members of the operational bodies and on the external service providers.

### **3.3. Specific internal control measures**

In addition to general internal control measures, specific internal control measures are implemented to manage risks. These measures relate to the knowledge and management of risks (e.g. the investment risk and the biometric risks) and the integrity and reliability of technical, financial and management-related information, including external communication.

The investment policy provides in particular for internal control measures to enable the competent operational body to submit investments to scrutiny prior to their investment as covering assets and to monitor the investments after they have been made.

### **3.4. Responsibility of the Board of Directors**

The Board of Directors shall ensure that the internal control mechanism is appropriate to the situation of the IORP in order that the persons to whom the operational and supervisory functions are assigned may act in accordance with the function of the IORP and with the objectives specified in the articles of association or in the relevant documents.

Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate internal control mechanism. It shall also stimulate a positive attitude towards control.

### **3.5. Responsibility of the competent operational body**

Within the context of its task to manage the IORP, the competent operational body shall take all the necessary measures to ensure that the IORP has an adequate internal control mechanism. This means that it will implement the internal control measures.

This operational body shall evaluate the internal control mechanisms at least once a year and inform the Board of Directors of the situation at least once a year. The minutes of the Board of Directors and of the competent operational body shall mention the deliberations relating to the state of the internal control system and its evaluation.

This evaluation shall be based on the report by the internal auditor and on other sources. It shall cover all aspects of internal control such as objectives, the means implemented, the methods used, the shortcomings identified and the appropriate nature and effectiveness of the internal control mechanism.

#### ***Principle No 4 – Compliance function***

*Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate compliance function. The competent operational body shall draw up an integrity policy and shall inform the Board of Directors accordingly at least once a year<sup>45</sup>.*

#### **4.1. Definition**

*The compliance function is an independent function within the organization geared towards the review and improvement by the IORP of compliance with the rules relating to the integrity of its activity. These rules arise from the policy of the IORP itself and from the applicable legal and regulatory provisions.*

#### **4.2. Responsibility of the Board of Directors**

Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate compliance function. This task shall be carried out on the basis of a report drawn up by the competent operational body and the relevant mention shall be made in the minutes.

#### **4.3. Responsibility of the competent operational body**

*The competent operational body shall formulate an integrity policy in a policy memorandum that is regularly updated. The policy memorandum shall define the objectives of the IORP and analyse the risks incurred in this area.*

In the context of its task to set up and evaluate an appropriate control mechanism, this operational body shall take the necessary steps to ensure that the IORP has an adequate compliance function.

The competent operational body shall report at least once a year to the Board of Directors on the evaluation of the compliance function.

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<sup>45</sup> Article 77 of the Law.

#### **4.4. The implementation of the integrity policy**

*The implementation of the integrity policy is ensured by a compliance officer, who reports at least once a year to the competent operational body.*

The competent operational body shall take all the necessary steps to ensure that, where applicable, both the external service providers and the staff of the IORP are informed of the integrity policy. If necessary, the compliance officer shall set up a dialogue between the external service providers and the staff members in order to achieve a standard implementation of the integrity policy.

#### **4.5. Contents of the compliance function**

Compliance consists of the effective implementation of the integrity policy of the IORP. In the context of its task to set up an adequate internal control mechanism, the competent operational body shall ensure that the necessary steps are taken to implement the integrity policy of the IORP.

The implementation of the integrity policy shall consist at the very least of the following:

- the monitoring of the laws and regulations as well as the monitoring of their interpretation and the appointment of a person as a point of contact at the supervisory authorities.

This primarily relates to compliance with:

- the law of 27 October 2007 on the supervision of IORPs and the implementing decrees and regulations;
  - for pension schemes subject to Belgian law, the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits and the Programme Law (I) of 24 December 2002, Title II, Section 4 – Supplementary pensions for self-employed persons;
  - for pension schemes the management of which has been entrusted to the IORP by a sponsoring undertaking of a Member State of the European Economic Area other than Belgium<sup>46</sup>:
    - the provisions of social and labour legislation applicable to the management of the pension scheme;
    - the information requirements;
    - the rules for investing covering assets;
  - the law of 8 December 1992 on the protection of privacy, fundamentally amended by the law of 11 December 1998;
  - the regulations on discrimination;
- the orientation and training of the personnel of the IORP, where applicable;
  - the appointment of a person for the members, the beneficiaries and the sponsoring undertakings to contact with questions or complaints as well as the setting up of a procedure to deal with complaints;
  - checking with the sponsoring undertakings whether the consultative bodies have been consulted whenever required under the applicable regulations;
  - the investigation and monitoring of violations of the laws and regulations and, where applicable, the internal professional code of ethics regulating, in particular, the management of conflicts of interest;
  - the inspection of internal and external documents of relevance to policy and functioning (e.g. internal audit reports, minutes of the management bodies, information and comments by the supervisory authorities).

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<sup>46</sup> Article 67 of the Law.

#### **4.6. Status of the compliance officer**

Each IORP shall have a compliance officer to coordinate, and take the initiative in, compliance matters. The compliance officer shall report to a competent operational body at least once a year. This operational body may assign additional tasks to the compliance officer.

The compliance officer must have an appropriate status within the IORP. This status must be guaranteed by a charter approved by the competent operational body and ratified by the Board of Directors in the context of its supervisory function.

This charter shall deal primarily with the objective, the assignments and tasks of the compliance officer, the place of the compliance officer in the organization and his or her competences and responsibilities. It shall also comprise:

- the necessary qualification to see the collaborators and to peruse all documents, files and information of the IORP, including the minutes of the consultative and decision-making bodies, to the extent required for the performance of his or her task;
- the right to express opinions freely in the context of his or her assignment.

*The compliance function may be assigned to a member of the staff or be performed by a member of an operational body. It may also be outsourced (see point 4.7.).*

The knowledge, experience and integrity of the compliance officer are examined at the time of appointment. The appointment or replacement of the compliance officer as well as the reasons for such replacement are notified to the CBFA.

It must be possible for the compliance officer to inform the chairman of the Board of Directors, the internal auditor, the accredited statutory auditor and the appointed actuary directly and on his or her own initiative following the procedures to be defined by each IORP.

The advice that the appointed actuary has to provide in accordance with Article 109 of the Law <sup>47</sup> relating to, among other things, compliance with certain regulatory, contractual and statutory provisions shall be submitted to the compliance officer.

The compliance officer may not be the accredited statutory auditor, the appointed actuary or the internal auditor of the IORP.

#### **4.7. Outsourcing of the compliance function**

The compliance function may be outsourced. In the event of such outsourcing, a written agreement will be entered into between the IORP and the external expert. The competent operational body shall ensure that the IORP concludes an agreement of a sufficiently long duration with an expert having the required skills keeping in mind the characteristics of the IORP.

The aforementioned agreement shall determine the tasks and the responsibilities of the expert as well as their permanent nature with reference to the principles of this circular.

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<sup>47</sup> Cf. Principle 9 of this circular.



The agreement shall also stipulate that the competent operational body, the accredited statutory auditor, the appointed actuary, their collaborators and the CBFA may at all times inspect any document drawn up by the expert in the context of his or her assignment.

The competent operational body shall monitor the expert's compliance activity and shall appoint the persons responsible for following up on the expert's recommendations.

The expert appointed may not be the internal auditor, the accredited statutory auditor or the appointed actuary.

***Principle No 5 – Business continuity***

*The Board of Directors shall draw up a business continuity policy to ensure the uninterrupted provision of services and performance of activities by the IORP. The competent operational body shall develop and apply this policy and shall inform the Board of Directors accordingly at least once a year<sup>48</sup>.*

**5.1. Justification and definition**

The IORP must have an organization that is appropriate to the activities it carries out. This means that the IORP shall use every reasonable means to ensure that its services are performed and its activities are carried out without interruption.

More specifically, the IORP must ensure that its organization, systems and procedures are designed in such a way that, in the event of serious and unplanned interruptions to its activities, it is able to continue to fulfil its obligations and protect the rights of the members and beneficiaries.

An adequate business continuity policy is therefore a necessary instrument for the attainment of these objectives.

**5.2. Scope**

It is incumbent on each IORP to take into account its specific characteristics in order to establish an adequate and proportionate business continuity policy especially as regards objectives, planning and the resources committed to implement it.

*The policy to ensure business continuity must make it possible for the IORP to deal with serious and unplanned interruptions to its activities resulting from events such as the failure of computer-based systems, social unrest, the failure of public utility services (telecommunications, etc.) or the total or partial destruction or inaccessibility of the operational buildings, the unavailability of members of the operational bodies or of key personnel, the retention, disappearance or deterioration of data, and the loss of important counterparties or service providers.*

*This does not concern interruptions to activities that the IORP has planned and of which it has notified the persons concerned (due for example to relocation) or acts of war, terrorist attacks or the rapid, large-scale proliferation of fatal contagious diseases.*

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<sup>48</sup> Article 77 of the Law.

### 5.3. Implementation of a business continuity policy

Each IORP shall have an adequate business continuity policy. More specifically, the IORP must ensure that its organization is designed in such a way that, in the event of serious and unplanned interruptions to its activities, it is able to maintain its essential functions or to re-establish them quickly and thus resume within a reasonable timeframe the provision of its normal services and the performance of its normal activities.

To this end the Board of Directors shall formulate the strategy and the main themes of the business continuity policy. It shall ensure that the competent operational body takes the necessary steps to develop and apply the policy. Periodically and at least once a year, this operational body shall report to the Board of Directors on the evaluation of business continuity.

The business continuity policy of the sponsoring undertaking may encompass the activities carried out by the IORP. If this is the case, the Board of Directors may take it into account when it prepares the continuity policy.

### 5.4. Involvement of external service providers

In cases where external service providers are used, the IORP shall take reasonable steps to ensure that the agreed services are available at all times or can be resumed quickly, namely by incorporating capacity guarantees into the outsourcing agreement.

With regard to this and other important points to be taken into consideration when outsourcing, reference should be made to principle No 7 on outsourcing.

#### ***Principle No 6 – Internal audit***

*Within the context of its duties and responsibilities, the competent operational body shall take the necessary measures to ensure that the IORP has an adequate internal audit mechanism that is independent of the activities audited<sup>49</sup>.*

#### **6.1. Definition**

*Internal audit is an independent function aimed at reviewing and evaluating the adequacy, effectiveness and efficiency of the internal audit. The internal auditor assists the operational bodies in the exercise of their responsibilities and may provide them, for that purpose and as necessary, with analyses, evaluations, recommendations, advice and information concerning the activities audited.*

#### **6.2. Independence of the internal audit of the activities audited**

*The internal auditor is independent of the activities audited. This means that he or she has an appropriate status and performs his or her task impartially and objectively.*

Internal auditors may, on their own initiative, perform their task with regard to all the functions of the IORP. Internal auditors have the right to express their opinions freely. If the internal auditor is a member of the staff of the IORP, the principle of independence means that, in terms of hierarchical control, he or she is directly accountable to a member of the competent operational body.

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<sup>49</sup> Article 77 of the Law.

*It must be possible for the internal auditor to inform the chairman of the Board of Directors, the compliance officer, the accredited statutory auditor or the appointed actuary directly and on his/her own initiative following the procedures to be defined by each IORP.*

To this end, an audit charter should be drawn up guaranteeing the status of the internal auditor and dealing, as a minimum, with the objective and the scope of the internal audit function as well as the internal auditor's place in the organization, his or her competences and responsibilities. The charter will confer upon the internal auditor the necessary right of initiative and qualification to see the collaborators and to peruse all documents, files and information of the IORP, including the minutes of the consultative and decision-making bodies, to the extent required for the performance of his or her task. This charter shall be drawn up by the internal auditor, approved by the competent operational body and ratified by the Board of Directors in the context of its supervisory function.

Impartiality means that internal auditors must perform their task objectively. This impartiality requires that internal auditors are not involved in the operational organization of the IORP or in the formulation, implementation or execution of organizational and internal control measures, the effect of which would be to make them responsible for them and to compromise their independence of judgement.

As the areas of investigation of the internal audit also cover the compliance function and the function of the actuary, the internal audit function cannot be performed by the appointed actuary or the compliance officer and there can be no hierarchical link between them.

### **6.3. Competence**

The professional competence of the internal auditor is essential for the proper functioning of the internal audit function. This competence must be assessed taking into account the nature of the assignment and the ability of the internal auditor to obtain information, investigate, evaluate and communicate. It must be adequate to enable the internal auditor to examine all the areas in which the IORP operates.

Internal auditors may, however, obtain external opinions or outsource (see point 6.6.) all or part of certain investigations when they do not have the competence required for this purpose or do not have it to the necessary extent.

Although internal auditors may seek assistance to perform their audits from external specialists or the internal auditors of a service provider, the internal auditor of the IORP shall remain responsible for the quality and the quantity of the audits performed and shall ensure that the standards and criteria applied during the performance of the audits meet the qualitative and quantitative audit requirement of the IORP.

### **6.4. Scope of the audit**

*All the activities of the IORP are covered by the scope of investigation of the internal auditor. No activity may be excluded. The internal auditor may peruse all the documents, files and information of the IORP, including management-related information and the minutes of the consultative and decision-making bodies, to the extent required for the performance of his or her task. The internal auditor shall report to the competent operational body at least once a year.*

The internal audit shall encompass, in a general way, the examination and adequate evaluation of the effectiveness and efficiency of the internal control mechanism as well as the way in which the assigned responsibilities are assumed.

In particular, the internal auditor shall investigate compliance with policies, the management of risks (whether or not they are measurable), the reliability of technical, financial and management-related information as well as of external reporting, the continuity and reliability of the electronic information systems and the functioning of the administrative services.

The internal auditor shall pay particular attention to the legal status of supervision, including the principles or recommendations in matters of organization and functioning formulated by the CBFA.

### **6.5. Planning, execution, reporting and monitoring**

The audit work consists of the establishment of an audit plan defining the objectives and the scope of the task and determining the resources required. The audit work also consists of the examination and evaluation of the available information and the communication and monitoring of the results.

The internal auditor shall investigate and evaluate all the activity of the IORP in all its aspects. To this end, the internal auditor shall use the most appropriate type of audit to attain the relevant objective, namely:

- the financial audit, the aim of which is to check the reliability of the accounting procedures and the resulting annual accounts;
- the conformity audit, which seeks to check the procedures and processes intended to ensure compliance with the rules, regulations and procedures (“compliance audit”);
- the operational audit, which consists in checking the quality and adequacy of the systems and procedures, critically analysing the organizational structures and evaluating the compatibility between the methods and means used and the objectives set;
- the management audit, the purpose of which is to assess the quality of the management function in the context of the objectives of the IORP.

Each assignment shall be described in a report, written in the most timely fashion and sent to the auditee and to the competent operational body. The report must contain not only the findings and recommendations of the internal auditor but also the reactions of the auditees. It shall also mention the points on which there is consensus at the time the assignment is closed. The internal auditor shall give an indication of the relative importance of the shortcomings noted and the recommendations made.

### **6.6. Outsourcing the internal audit function**

*The internal audit function may be outsourced.* In the event of such outsourcing, a written agreement will be entered into between the IORP and the external expert. The competent operational body shall ensure that the IORP concludes an agreement of a sufficiently long duration with an expert having the required skills keeping in mind the characteristics of the IORP.

The aforementioned agreement shall determine the tasks and the responsibilities of the expert as well as their permanent nature with reference to the principles of this circular.

The agreement shall stipulate that the competent operational body must give its consent to the risk analysis and to the plan drawn up by the expert prior to their implementation. The agreement shall also stipulate that the competent operational body, the accredited statutory auditor, the appointed actuary, their collaborators and the CBFA may at all times inspect any document drawn up by the expert in the context of his or her assignment, in particular the programme and the working documents.

In the agreement, the expert undertakes to effectively implement, in the performance of his or her assignment, the means provided for in the audit plan.

The competent operational body shall monitor the expert's compliance activity and shall appoint the persons responsible for following up on the expert's recommendations.

*The expert appointed may not be the internal auditor, the accredited statutory auditor or the appointed actuary of the IORP.*

#### **Principle No 7 – Outsourcing**

*The IORP shall draw up an outsourcing policy, which must be approved by the Board of Directors and must clearly specify the conditions under which outsourcing may be carried out<sup>50</sup>.*

##### **7.1. Definitions of outsourcing and an outsourcing policy**

*An institution for occupational retirement provision may entrust to a third party the exercise on its behalf of one or more activities having a substantial influence on its operations, either by a mandate or by a business contract. Administrative and financial functions (accounting, asset/liability management, investment management) or specialized functions (internal audit, compliance, etc.) may be outsourced.*

The IORP must pay special attention to compliance with the principles mentioned below whenever an outsourced activity is likely to have a substantial impact on its functioning. An appropriate measure in this regard is the impact the malfunction or lack of function of the outsourced activity may have on the fulfilment of the approval requirements to which the IORP is subject, its financial situation, its continuity and its reputation.

*The IORP shall draw up an outsourcing policy, approved by the Board of Directors, which takes into account the principles set out below and defines the conditions under which outsourcing may be carried out.*

##### **7.2. Maintaining the responsibility of the bodies of the IORP**

*Outsourcing in no way diminishes the responsibility of the operational bodies of the IORP towards its members and beneficiaries, the sponsoring undertaking or the supervisory authorities. This means that the bodies of the IORP remain fully responsible for determining the policy and for supervision with regard to all the outsourced activities and processes. They shall take all the necessary care to manage all risks associated with outsourcing, especially the operational risk. Essentially, therefore, outsourcing relates above all to the aspects of execution of the relevant activity or operational process.*

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<sup>50</sup> Article 78 of the Law.

This principle also means that the competent operational body shall implement measures to enable it to exercise permanent control over the activities of the external service providers and that the IORP will continue to have the experience, the knowledge and the necessary means to monitor the functioning and the quality of the outsourced activities and to make any necessary adjustments.

The monitoring procedures implemented by the IORP and the reports it receives shall be appropriate to the nature of the outsourced activities and the risks associated with them. To this end, the IORP shall provide clear means of communication with an obligation for the external service provider to report all problems that have a substantial impact on the outsourced activities as well as all emergencies.

### **7.3. Decision to outsource activities**

The IORP shall base its decision to outsource activities on an analysis, the scope of which will depend on whether or not outsourcing the activities will have a substantial impact on the functioning of the IORP. This analysis will focus as a minimum on a detailed description of the services or activities to be outsourced, the anticipated effects of outsourcing services or activities (including an estimate of the costs and benefits), the conditions established in the document defining the outsourcing policy and an in-depth assessment of the risks of the envisaged outsourcing project in terms of financial, operational, legal and reputational risks.

This analysis shall also contain a description of, on the one hand, how the IORP manages the risks, and, on the other, how it ensures the compliance function with regard to the outsourced activities, in the context of the dialogue between the compliance officer and the external service providers regarding the standard implementation of the compliance policy<sup>51</sup>.

The IORP shall duly document this process for the purpose of internal and external supervision.

### **7.4. Choice of external service provider and maintenance of continuity**

The choice of external service provider shall be made with the necessary vigilance and prudence taking into account the financial soundness, the reputation and the technical and management-related capacities of the service provider.

The IORP must evaluate the extent to which the external service provider has adequate contingency plans and compare them with its own business continuity requirements.

The IORP must also take the necessary precautions to enable it to appropriately transfer the outsourced services to another service provider or to take them back under its own management whenever the continuity or the quality of the service provision risks being compromised.

The outsourcing agreement shall therefore contain contractual clauses that are sufficiently flexible, namely clauses of adaptation and termination giving the IORP the option of devising an alternative solution.

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<sup>51</sup> Cf. point 4.8. of this circular.

In order to reserve the possibility, if necessary, of switching external service provider or of taking all or part of the outsourced activities back under its own management, the IORP shall, as soon as the relevant activities have been outsourced, pay attention to the following points:

- the technologies, systems, applications and instruments used must be sufficiently standard and known and solutions that are less common or depend excessively on the service provider are not implemented;
- adequate functional documentation of the systems used by the service provider must be established and updated;
- the necessary understanding of the technical characteristics in terms of functioning, organization and management of the outsourced services must be maintained;
- it must be possible at all times to retrieve all the data specific to the IORP in any exploitable form.

#### **7.5. Subcontracting agreement**

*Outsourcing shall require a written agreement taking into account the principles of management described under this point. Special attention must be paid in this regard to the aspects of continuity, the revocable nature of the outsourcing and the integrity of the internal and external control. The IORP must also clearly define in the agreement the rules of conduct which, in pursuance of its compliance policy, must apply in the exercise of the activity on the basis of the detailed description prepared by the IORP<sup>52</sup>.*

In addition, the agreement must provide, in the light of the statements made under 7.2, a clear description of the responsibilities of both parties.

#### **7.6. Integrity and confidentiality of the data entrusted to the outsourcee**

The IORP shall investigate the extent to which the data integrity and confidentiality rules in force at the external service provider are appropriate to the nature and importance of the outsourced activities in accordance with its own policy in this area and with the practices in force in the supplementary pensions sector.

The IORP shall ensure that the external service provider has set up and maintains the necessary data protection procedures to preserve at all times the confidentiality and integrity of data relating to the members and beneficiaries, including during exchanges with the principal and external communication. The way in which the most important security, confidentiality and reputational risks are covered by the external service provider, the relevant control mechanism and penalty clauses for non-compliance, if any, must, in principle, be included in the outsourcing agreement.

When the outsourcing terminates, the IORP shall ensure that all data are extracted and deleted or destroyed by the external service provider.

#### **7.7. Cascaded outsourcing**

The IORP shall conclude clear agreements with the external service provider regarding the conditions the latter must meet so that it can, in turn, outsource all or part of the outsourced activity to third parties. If partial outsourcing is possible, it will be necessary to indicate in the written agreement to what partial activities or partial processes it may relate. Where important activities or

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<sup>52</sup> Cf. point 7.3. of this circular.

processes are involved, the IORP must take the necessary precautions so that it can assess the consequences of such a decision in advance and with precision and check that such a decision does not violate the contractual provisions and principles set out under the 7<sup>th</sup> principle. The IORP shall pay particular attention to safeguarding the integrity of internal and external control and of control by the CBFA.

### **7.8. Internal audit and compliance vis-à-vis outsourced activities**

The internal auditors shall monitor the internal control, quality, security and continuity of all the activities of the IORP, including the outsourced activities, which shall continue to be an integral part of the scope of audit. To this end, the internal auditors must, whenever they deem it necessary, have access at all times and without hindrance to the outsourced activities and it must be possible for them to exercise control over these activities. The IORP shall take the necessary steps to ensure this.

Finally, like the internal audit, the compliance function must also be monitored fully on the part of the outsourcing IORP with regard to each outsourced activity.

### **7.9. Audit and prudential control of the outsourced activities**

The CBFA, the accredited statutory auditor and the appointed actuary must, in order to carry out their supervisory tasks, have access at all times and without hindrance to the outsourced activities and it must be possible for them to exercise control over these activities, including by means of on-the-spot checks. The IORP shall take the necessary steps to ensure this.

Subcontracting shall not prejudice the effective audit of the annual accounts, the certification of the technical provisions by the accredited statutory auditor, the calculation of the technical provisions by the appointed actuary or the correct and timely transmission of the legal and regulatory reports and the statements of accounts, statistics and techniques to the authorities.

### **7.10. Maintenance of the applicable legal and regulatory framework.**

Subcontracting shall not prejudice compliance by the IORP with the prudential rules to which it is subject in Belgium. Vigilance is essential in cases where services or activities having a substantial impact, such as the management of investments, are outsourced to service providers abroad. In addition, outsourcing shall not lead to legal rules other than those applicable to pension schemes managed or agreed between the parties applying to the relationship between the IORP and the members and beneficiaries.

#### ***Principle No 8 – Accredited statutory auditor or accredited audit firm***

*The General Assembly shall appoint one or more statutory auditors or audit firms belonging to the Institute of Company Auditors and accredited by the CBFA. The accredited statutory auditors shall collaborate in the task of supervision exercised by the CBFA, under their own personal and exclusive responsibility and in accordance with this section, with the rules of their profession and with the instructions of the CBFA<sup>53</sup>.*

### **8.1. Appointment of the accredited statutory auditor or accredited statutory audit firm**

*The General Assembly shall appoint one or more statutory auditors or audit firms belonging to the Institute of Company Auditors and accredited by the CBFA in accordance with its regulations.*

<sup>53</sup> Articles 103 to 108 of the Law.



Where an accredited statutory audit firm is appointed, it shall appoint the accredited statutory auditor who is to perform the audit. In the event of resignation, the CBFA and the IORP shall be notified in advance and given the reasons for the resignation.

## 8.2. Tasks<sup>54</sup>

*The accredited statutory auditors shall collaborate in the task of supervision exercised by the CBFA, under their own personal and exclusive responsibility and in accordance with this section, with the rules of their profession and with the instructions of the CBFA.*

*The accredited statutory auditors shall ensure that the IORP has adopted adequate measures for its administrative and accounting organization and internal control systems, in view of complying with the laws, decrees and regulations governing the legal status of the institution for occupational retirement provision. Each year, in a spirit of total independence, they shall certify the technical provisions and draw up a report on the annual accounts, in which they shall assess the financial situation and the management of the IORP. This report shall be supplemented by the drafting of other reports if the CBFA deems this necessary.*

*Within the context of their functions at the IORP, accredited statutory auditors shall report to the CBFA any decision, fact or development they become aware of, while performing their task or any other legal task, that might:*

- constitute a violation of the laws and regulations applicable to the IORP and its activities, including social regulations<sup>55</sup>;
- prejudice the continuity of the operation of the IORP;
- lead to a refusal to certify the accounts or to reservations regarding their certification.

They shall immediately bring to the attention of the members of the operational bodies any violation of the laws and regulations applicable to the IORP and its activities as well as any fact that, in their opinion, might compromise the financial situation of the IORP or the rights of the members and beneficiaries. The accredited statutory auditors shall provide the CBFA with a copy of all communications addressed to the members of the operational bodies of the IORP that are of relevance to the CBFA's supervisory task<sup>56</sup>.

## 8.3. Independence

Accredited statutory auditors shall act independently. *They may not perform the function of appointed actuary in the same IORP. They must in all respects be totally independent of the appointed actuary, the compliance officer, the internal auditor or their office when these functions are outsourced.*

## 8.4. Reporting to the CBFA

*Accredited statutory auditors shall report to the CBFA on the financial situation and the management of the institution for occupational retirement provision at its request or, in the absence of such request, once a year.*

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<sup>54</sup> Article 108 of the Law.

<sup>55</sup> Article 108 of the Law and, for Belgium, see Article 51 of the Law of 28 April 2003 and Article 59 of the Programme Law (I) of 24 December 2002.

<sup>56</sup> Article 108, last paragraph of the Law.

### ***Principle No 9 – Appointed actuary***

*Except where the IORP manages certain types of pension schemes<sup>57</sup>, the Board of Directors shall appoint one or more actuaries complying with the legal and regulatory provisions. The appointed actuary advises them on the financing plan, reinsurance and the amount of the technical provisions*

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#### **9.1. Appointment**

The Board of Directors shall appoint one or more specialists in actuarial sciences, who fulfil the conditions established by the legislation and the regulations<sup>59</sup>. IORPs that manage pension schemes that do not cover biometric risks and which do not guarantee either a given investment performance or a given level of benefits do not have to appoint an actuary.

#### **9.2. Tasks**

*The position of appointed actuary consists of the following tasks<sup>60</sup>:*

- prior to the introduction of a pension scheme, to the modification of an existing pension scheme that is likely to influence its financing and the modification of a financing plan, issuing an opinion concerning the technical actuarial methods used by the IORP for its financing, concerning the establishment of technical provisions and concerning insurance and reinsurance;
- issuing an opinion on the justification that the IORP must provide concerning the methods and bases it uses for calculating the technical provisions, which must be of such a nature that they guarantee the permanence of its commitments;
- issuing an opinion concerning the security of the transactions, the technical provisions and the profitability on an annual basis;
- prior to the signing of an insurance or reinsurance agreement, issuing an opinion regarding this insurance or reinsurance.

*The appointed actuary shall also draw up a report each year concerning the technical provisions, which will be submitted to the CBFA together with the annual accounts of the IORP<sup>61</sup>.*

*Appointed actuaries are also required to notify the CBFA and the directors of the IORP of any fact or decision constituting a violation of the legislation or regulations applicable to the IORP and its activities that comes to their attention in the context of their functions, including the applicable social regulations in the case of the management of pension schemes governed by Belgian social and labour legislation<sup>62</sup>.*

Appointed actuaries shall receive without delay any information they consider indispensable for the performance of their task. The Board of Directors and, where applicable, another competent operational body shall therefore provide the appointed actuaries with any information that may

<sup>57</sup> These are pension schemes that do not cover biometric risks and which do not guarantee either a given investment performance or a given level of benefits.

<sup>58</sup> Article 109 of the Law.

<sup>59</sup> Article 46 of the Royal Decree.

<sup>60</sup> Article 44, para. 1 of the Royal Decree.

<sup>61</sup> Article 44, para. 3 of the Royal Decree.

<sup>62</sup> Article 51 of the Law of 28 April 2003 and Article 59 of the Programme Law (I) of 24 December 2002.

have a bearing on the advice they issue or which is considered useful for their task. This information consists of comments made by the CBFA and the action taken as a result.

### 9.3. Independence

*Appointed actuaries shall perform their tasks completely independently. This means that appointed actuaries may not be members of the Board of Directors of the IORP, of any other operational body of the IORP or of a sponsoring undertaking, or perform a function likely to compromise their independence<sup>63</sup>.*

*An appointed actuary may not perform the function of accredited auditor or that of compliance officer or internal auditor in the same IORP.*

#### ***Principle No 10 – Internal circulation of information***

*The IORP shall establish appropriate reporting systems between the persons and entities involved in the administration of the IORP to ensure effective communication and timely, relevant and accurate information<sup>64</sup>.*

There must be between all the persons and entities involved in the administration of the IORP appropriate reporting systems to ensure effective communication and relevant, accurate and timely information.

*Reporting systems or other procedures or methods of operation must therefore be established to ensure that the members of the Board of Directors and other operational bodies receive adequate, accurate, complete, consistent and timely information to enable them to fulfil their functions and guarantee the proper performance of their tasks.*

The IORP shall ensure that the accredited statutory auditor, the appointed actuary and the external services providers receive relevant, accurate and timely information so that they can perform their tasks in an efficient manner.

The IORP shall also ensure that the sponsoring undertaking provides it in a timely manner with information of relevance for the calculation of the entitlements of the members and beneficiaries. This information concerns the amount of their remuneration, the duration of their membership and their scheme of work.

#### ***Principle No 11 – External information***

*The IORP shall provide the information required under the legal or contractual provisions clearly, precisely and within the legal timeframes or, in their absence, within a reasonable timeframe, to the members, beneficiaries<sup>65</sup> the CBFA and, where applicable<sup>66</sup>, to the consultative and concertation bodies.*

The IORP shall provide the relevant information clearly, precisely and quickly to all the parties concerned, i.e. the members, beneficiaries, the consultative bodies and the CBFA.

<sup>63</sup> Article 43 of the Royal Decree.

<sup>64</sup> Article 77 of the Law.

<sup>65</sup> Article 96 of the Law.

<sup>66</sup> In accordance with the social and labour legislation applicable to the operation of pension schemes.

*All information provided by the IORP must be identifiable as coming from the IORP (name and identification code issued by the CBFA)<sup>67</sup>.*

*This means that members and beneficiaries or, where applicable, to their representatives, shall receive the following:*

- on retirement or when other benefits become due, the appropriate information on the benefits which are due and the corresponding payment options<sup>68</sup>;
- on request, the statement of investment policy principles<sup>69</sup>;
- on request, detailed and substantial information on<sup>70</sup>:
  - the target level of the pension benefits, where applicable;
  - the level of benefits in case of cessation of employment;
  - where the member bears the investment risk, the range of investment options, if applicable, and the actual investment portfolio, as well as information on risk exposure and costs related to these investments;
  - the arrangements relating to the transfer of pension rights to another IORP in the event of termination of the employment relationship;

The legal obligations deriving from the social and labour legislation governing the pension schemes managed by the IORP must also be taken into consideration.

Reference must therefore be made to the Law of 28 April 2003 and the Programme Law (I) of 24 December 2002 for pension schemes governed by Belgian social and labour legislation. There is, in particular, an obligation to provide:

- each year, brief particulars of the situation of the institution as well as the current level of financing of their accrued individual entitlements<sup>71</sup>;
- once a year, the annual data sheet having to do with the amount of their entitlements as well as the current level of financing of reserves<sup>72</sup>;
- at least once every 5 years, for members over 45 years of age, the amount of pension they can expect to receive upon retirement<sup>73</sup>;
- within a reasonable time, any relevant information regarding changes to the pension-scheme rules<sup>74</sup>;
- on request, the annual accounts and the annual reports of the IORP or of the member's pension scheme<sup>75</sup>;
- on simple request, a historical overview of their entitlements<sup>76</sup>.

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<sup>67</sup> Article 60 of the Law.

<sup>68</sup> Article 96, para. 5 of the Law.

<sup>69</sup> Article 96, para. 2 of the Law.

<sup>70</sup> Article 96, para. 3 of the Law.

<sup>71</sup> Article 96, para. 4 of the Law.

<sup>72</sup> Article 26, § 1 of the Law of 28 April 2003 and Article 48, § 1, of the Programme Law (I) of 24 December 2002.

<sup>73</sup> Article 26, § 3 of the Law of 28 April 2003 and Article 48, 3, of the Programme Law (I) of 24 December 2002.

<sup>74</sup> Article 96, para. 1, 2°, of the Law.

<sup>75</sup> Article 96, para 1, 1°, of the Law.

<sup>76</sup> Article 26, § 2, of the Law of 28 April 2003 and Article 48, § 2, of the Programme Law (I) of 24 December 2002.

For pension schemes governed by Belgian social and labour legislation, each year the IORP shall draw up a report on the management of the pension commitment, unless another person is designated in the collective labour agreement. This report shall be made available to the sponsoring undertaking, which shall forward it, on simple request, to the members and to the supervisory committee<sup>77</sup>.

In addition to this information, the IORP may also be required by the sponsoring undertaking established in Belgium to provide the following information:

- the pension regulations or agreement<sup>78</sup>;
- upon departure of a member, the amount of accrued reserves and benefits as well as the choices open to the member for the allocation of reserves<sup>79</sup>;
- in the event of a change of pension scheme, whether followed by a transfer of reserves or not, the identity of the new pension scheme<sup>80</sup>.

All information must be provided to the members and beneficiaries or to their legal representatives, where applicable, in the language legally imposed in the context of the social relations between workers and employers<sup>81</sup>.

A procedure should be established to ensure that personal information is transmitted confidentially and within a reasonable timeframe.

The sponsoring undertaking shall submit the statement of investment policy principles to the supervisory committee and to the works council or, if the sponsoring undertaking does not have a works council, to the committee for prevention and protection at work or, if the sponsoring undertaking does not have a committee for prevention and protection at work, to the trade union delegation<sup>82</sup>.

*The IORP shall provide the CBFA with all the information and documents required by the legislation and the regulations<sup>83</sup>. Such documents are the draft annual accounts (balance sheet and income statements), the draft amendment of the articles of association or of the statement of investment policy principles<sup>84</sup>, the decisions that could have an impact on the entitlements of the members or beneficiaries, as well as the technical and statistical elements.*

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<sup>77</sup> Article 42, § 1 of the Law of 28 April 2003.

<sup>78</sup> Article 5 of the Law of 28 April 2003 and Article 44 of the Programme Law (I) of 24 December 2002.

<sup>79</sup> Article 31 and 32 of the Law of 28 April 2003 and Article 52 of the Programme Law (I) of 24 December 2002.

<sup>80</sup> Article 35 of the Law of 28 April 2003.

<sup>81</sup> Article 4/16 of the Royal Decree of 12 January 2007 amending the Royal Decree of 14 November 2003 implementing the Programme Law (I) of 24 December 2002, Belgian Official Gazette, 23/01/2007, ed. 2, 2984.

<sup>82</sup> Articles 39, § 1, 5°, and 41, § 2, para. 2, of the Law of 28 April 2003.

<sup>83</sup> Cf. in particular, Article 98 of the Law.

<sup>84</sup> Article 41bis of the Law of 28 April 2003.